

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

November 19, 2018

The purpose of this report is to provide for a review of the uses in the Mixed-Use Employment (MXE) Zone. Recent approved developments in the zone have raised the concern about the appropriateness of certain uses in the MXE Zone, given its stated purpose for employment use.

The Mayor and Council enacted a moratorium on new applications for certain commercial, assembly and entertainment and industrial uses in the MXE Zone on July 2, 2018, and adopted a modification to the moratorium on August 1, 2018. The purpose of the moratorium was to allow for an analysis of the uses in the MXE Zone, which would identify potential changes to the Zoning Ordinance.

Historical Background

The construction of the Washington National Pike (U.S. 240, later I-70S and now I-270) opened up that corridor to substantial new development. The County's General Plan also recommended that the corridor become a major employment and concentrated development area and enacted planning and zoning measures to implement that recommendation. This coincided with a decision by the Federal government to begin decentralizing agencies from downtown Washington to the suburbs in response to the Cold War threats. Among those drawn to the corridor were the Atomic Energy Commission (now the Department of Energy) to Germantown and the Bureau of Standards (now NIST) to Gaithersburg. Rockville's master plans in 1960 and 1970 embraced this employment potential for both the federal and private sectors, establishing areas along both sides of I-270 near interchanges for "restricted industrial" growth.

The employment development of choice at the time was the auto-centric campus-style office and light industrial park. Both the County and City developed a new zone that encouraged this type of development, which was known as the I-3 (Industrial Park) Zone in both jurisdictions. In the city, the zone required a five-acre minimum lot area, a maximum 20-percent building coverage, 100-foot setbacks, and a minimum of 300 feet of street frontage. General offices, medical laboratories and research laboratories were among the uses permitted. This zone did not allow any residential or retail uses, with a few institutional uses allowed. Warehousing was limited to the warehousing of consumer goods.

In the 1960s the City annexed the land along both sides of I-270 and along Shady Grove Road east of I-270, and placed most of the properties in the I-3 Zone, although some of the properties were initially in the former I-2 (Light Industrial) Zone. Most of the existing office and lab development in these areas occurred between 1960 and 1990 in these industrial zones.

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

Creation of the Mixed-Use Employment (MXE) Zone

Among the stated policies for economic development set forth in the current (2002) Comprehensive Master Plan are the following:

- Attract businesses that will yield the highest economic benefits to the City and its citizens.
- Ensure compatibility of industrial and commercial uses with nearby residential areas.
- Encourage an appropriate balance of office, retail, industrial and residential uses and emphasis on mixed-use development.

The comprehensive plan recognizes that a number of sites developed in the 1970s did not utilize the full development potential of the I-3 Zone. The plan encouraged redevelopment of these sites to achieve full potential, with one option available being the optional method of development in the I-3 Zone, which allowed for a mix of office, retail and residential development.

One of the guiding principles of the 2008 comprehensive Zoning Ordinance revision was to diversify the range of uses allowed in the commercial and industrial zones, which were single-purpose zones and did not allow for mixed-use development at that time. The intent was to control development primarily by varying development intensity levels, rather than by differing classes of uses.

The creation of the MXE Zone with the revision reflected this intent and the master plan policies by greatly expanding the types of uses allowed, including retail, institutional and residential uses that were not previously allowed in the former I-3 Zone.

Residential uses, including single-family and duplex dwellings, are permitted as conditional uses in the MXE Zone, the condition being that they are only allowed in those areas of the zone recommended for such use in the Master Plan. Townhouses, attached dwelling units, and multi-family units are permitted without conditions. Most retail sales uses are permitted, including consumable and durable goods to be used in the home and wearing apparel sales. All types of office uses are permitted, as well as light industrial uses, service industrial uses, and warehousing.

The expectation at the time was that the MXE Zone areas would continue to be primarily employment and office-centered locations. The expanded range of uses were expected to be ancillary to and support the employment areas. For instance, added retail uses would serve the

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

employees with convenience and food services. Additional residential opportunities could allow employees to live in close proximity to their jobs.

Along with the Zoning Ordinance revisions, the City also initiated a comprehensive map amendment to apply the new zones. Most of the areas that were in the I-3 Zone were placed in the MXE Zone, which was the nearest equivalent new zone. Attachment B is a map of properties in the MXE Zone. In Planned Developments (PDs) with areas designated for employment use, the MXE Zone is the designated equivalent zone for those areas, per Article 14 of the Zoning Ordinance.

Current Market Conditions and Rockville 2040

Most of the areas zoned I-3 were developed with campus-style office projects between the mid-1960s and 1990 consistent with the intent of the zone. Some additional development came between the late 1990s and 2009. However, market research indicates that the vacancy rate for office development has increased in recent years. For example, in the Research Boulevard corridor the vacancy rate grew from 6.1% in 2010 to almost 20% in 2013. It is currently at 13.3%.

One consequence of the softening office market has been a turn towards other types of uses in the MXE Zone for which there is market demand. This includes recent developments such as the Research Row retail center at the intersection of West Montgomery Avenue and Research Boulevard, the conversion of a former office building to a self-storage facility on Research Place, and a new self-storage facility now under construction next to the Research Row site. It also includes development of townhomes on properties previously planned to be office use in King Farm; and a proposed large-scale mixed-use redevelopment project along Shady Grove Road, on approximately 30 acres that currently contains office buildings developed in the 1960s and 1970s.

In response to these changes, the City contracted with the Washington, DC chapter of the Urban Land Institute (ULI), for a Technical Assistance Panel (TAP) to study and make recommendations regarding the Research Boulevard area based on a study produced by the City's Long Range Planning staff. The TAP group's work was conducted over a two-day period, March 27-28, 2017, and resulted in a report (Attachment C). The TAP panel confirmed the market trends that have been indicated and recommend that a vision for the corridor be developed.

Key conclusions of the TAP Study were as follows:

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

- The largest private employer in the city, Westat, is a key office anchor in the MXE Zone on Research Boulevard. As they are an owner of their own properties, they will remain an “anchor.”
- Buildings that are in good condition and have a strong set of modern amenities are being leased by businesses.
- Older buildings that do not have such amenities will not lease easily and are likely to be demolished (e.g., the new retail site) or repurposed (e.g., the new self-storage facility).
- Vacant sites will not be developed as office space until lease rates become significantly higher. Specifically, under current conditions, developers will only build new commercial office space if they have confidence in the ability to lease their office space for at least \$45 per square foot. At this time, in the Research Boulevard corridor, rates are approximately \$28-30 per square foot.
- There is demand for commercial laboratory space in the region, though initial development costs can be high. On a case-by-case basis, when there is an occupant waiting to commit to a long-term lease, such space will be developed.

As part of the Rockville 2040 project to update the Comprehensive Master Plan, staff is currently developing a set of master plan draft policies for review by the public, the Planning Commission and the Mayor and Council. These policies have been, and continue to be, informed by community and business input, as well as the TAP and interactions with REDI. Current thinking would be as follows for those areas currently zoned MXE:

- The Research Boulevard area should remain focused on employment in office, research and development and other commercial uses, with some flexibility to provide amenities that would support this employment area, particularly in properties facing Shady Grove Road.
- The Piccard Drive area should be allowed to evolve with the market. Unlike Research Boulevard, Piccard Drive is closer to residential neighborhoods and amenities that are in King Farm. As such residential development in that area would not be in conflict with other master plan goals, as long as public facilities can support such growth. However, office uses would still be encouraged and strengthened, where possible. In fact, one of the fastest growing companies in Rockville, Zenimax, a gaming company, is located on Piccard Drive.

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

- Properties facing Shady Grove Road are appropriate for mixed-use development, which potentially includes retail, residential and/or office uses.
- The Tower Oaks Planned Development, with a suburban office campus and hotels, is clearly not playing out as originally intended in the 1980s. The areas designated for employment use within Tower Oaks, with a designated equivalent zone of MXE, should be permitted to evolve to new uses, as has occurred with the approval of the new EYA residential project, the Reserve at Tower Oaks.

At present, there are 683 acres of land in the MXE Zone in the City. Total leasable area of the existing development in the MXE Zone is 7,948,843 square feet. This breaks down as follows:

<u>Use Type</u>	<u>Leasable Area</u>
Retail – 14.5 ac.	139, 406 sq. ft.
Hotel/Motel – 25.58 ac.	397,558 sq. ft.
Self-Storage – 4.67 ac.	204,854 sq. ft.
Office/Flex – 638.25 ac.	7,207,025 sq. ft.

The gross floor area ratio (FAR) of the office/flex component is 0.26.

Potential Changes to the MXE Zone

What has become apparent with the slowdown of the suburban campus office market is that other uses now allowed in the MXE Zone have become profitable, including some uses that have very little potential to generate the employment levels contemplated by the master plan. The intent of the MXE Zone currently reads as follows:

“Intended for areas that are either currently developed or are recommended for development primarily for office, light industrial, and industrial park uses, this zone allows for medium density development of office, retail, and residential uses. A mix of office and residential uses, including live/work and work/live units, is encouraged.”

Staff analyzed the uses previously allowed in the I-3 Zone and the uses currently allowed in the MXE Zone (Attachment A). The expansion of the allowable uses has opened up the old I-3 areas to different forms of development, but an unintended consequence has been that a number of these uses are not significant employment generators. This may be the result of the character of the use or that the ratio of land area to employment generation being very low.

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

In order to help reframe the intent of the zone, staff suggests revisions to the purpose of and uses allowed in the MXE Zone that would better meet the type and level of employment desired. The first suggestion is to revise the wording of the intent of the zone as follows:

Intended for areas that are either currently developed or are recommended for development primarily for office, light industrial, ~~and industrial park, and similar~~ employment-generating uses, this zone also allows for medium to high density development of office, retail, and residential uses. A mix of office and residential uses, including live/work ~~and work/live~~ units, is encouraged.

Inserting the new language is intended to accentuate the preference for employment-generating uses, while allowing for mixed-use redevelopment to occur in the zone. The reference to work-live units is proposed for deletion as that term does not appear in the code.

Attachment A provides a comparison between the uses that were allowed in the former I-3 Zone and that are allowed in the current MXE Zone, based on the current categories of uses. A comparative analysis of the uses reveals that there are several uses that are now allowed in the MXE Zone that should be excluded in order for the zone to remain focused on employment opportunities. Conversely, staff did not identify uses that should be added to the permitted uses in the MXE Zone, as the uses that generate employment are already permitted.

Maintaining the MXE Zone as a major employment center for the city and the local region has been a continuing goal of the Master Plan. When land in the MXE Zone is allowed to be used in a manner that generates very little employment or does not support employment then such a use is not consistent with the intent of the plan or the zone. Accordingly, the staff has reviewed the uses in the MXE Zone and suggests changes to the uses as follows:

Commercial/Office Uses

Change the use "Sale of Boats and Marine Supplies" from Conditional Use (the condition being that all sales and storage must take place indoors) to Not Permitted. This use would typically use large enclosed display and storage areas while generating minimal employment opportunities. The use is conditional in the MXCD and MXB zones, but is not permitted in other mixed-use zones. There are no such uses currently located in the MXE Zone.

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

Change the use “Automotive Repair Garage” from Permitted to Not Permitted. This is more properly a service industrial type use and is not a significant employment generator. The use is permitted in the MXB and I-L zones. There are no automotive repair garages in the MXE-zoned areas.

Change the use “Funeral Home” from Permitted to Not Permitted. This use typically does not result in significant full-time employment opportunities. The use is permitted in all other mixed-use (MX) zones.

Change the use “Mechanical Car Wash” from Permitted to Not Permitted. These are small, auto-oriented that typically are not significant employment generators. Mechanical car washes are allowed as accessory uses to auto filling stations, which are allowed by special exception in the MXE Zone.

Change the use “Motor Vehicle and Trailer Sales” from Permitted to Not Permitted. Auto sales typically occupy large land areas for vehicle storage and display that would prohibit land from being used in a manner that can better generate a higher employment concentration in that same land area. The use is allowed as a conditional use in the MXCD and MXB zones and is permitted use in the I-L zone. There are no vehicle dealerships in the MXE zone areas.

Assembly and Entertainment Uses

Change the use “Rental Halls for Meetings and Social Occasions” from Permitted to Not Permitted. This use typically does not result in significant full-time employment opportunities. The use is permitted in the MXTD, MXNC, and MXB zones, and is a conditional use in the MXNC Zone. Note that meeting and banquet facilities that are included within a hotel are considered accessory to the primary use and would not be affected by this deletion.

Change the use “Shooting Gallery” from Special Exception to Not Permitted. The use is typically not a significant employment generator. This use is only allowed as a special exception in the MXE Zone, and not permitted in any of the other mixed-use zones. The use is allowed by special exception in the Industrial zones (I-L and I-H).

Industrial and Service Uses

REVIEW OF USES IN THE MXE (MIXED-USE EMPLOYMENT) ZONE

Change “Self-Storage Warehouse” from Permitted to Not Permitted. Self-storage warehouses provide very small employment opportunities, typically limited to staffing of the front desk. The use is a conditional use in the MXB Zone and the Industrial zones (I-L and I-H). In these zones, the use cannot be located within 250 feet of a school. Additionally, in the MXB Zone the use cannot adjoin or confront single-unit residential dwellings.

Proposed Zoning Text Amendment

To make the zoning changes recommended in this report, an adoption of a zoning text amendment is required. One of the issues that the Mayor and Council may want to consider is whether to grandfather pending development applications that include uses that may become not permitted uses in the MXE Zone. Staff recommends that applicants that have completed the pre-application process prior to August 1, 2018, the date the Mayor and Council adopted the six-month moratorium, be allowed to complete the site plan process, and that those facilities, if built, not be considered nonconforming uses.

The amendment will also propose a technical revision to reinsert the line item for restaurants with a drive-through. This use was inadvertently deleted from the land use tables during the process of adopting the revisions related to the Rockville Pike plan implementation (TXT2018-00247) and needs to be reinstated.

Recommendation

Staff recommends that the above uses be changed from permitted uses to not permitted uses in the MXE Zone as they are not compatible with the purpose of the MXE Zone, and its focus on employment-generating uses and compatible mixed-use development to support those uses. Staff therefore requests direction from the Mayor and Council on the preparation of a zoning text amendment to revise the uses in the MXE Zone. Staff notes that, although it was mentioned during the enactment of the moratorium on certain uses in the MXE Zone that other zones such as the MXB (Mixed-Use Business) Zone would potentially be examined, staff elected not to examine the MXB Zone, given its origins in the former I-1 (Service Industrial) Zone, and the upcoming Rockville 2040 policy recommendations that might consider the zone in a comprehensive light.

Attachments

- A. Use Comparison Table
- B. Map of MXE Zone areas

Zones										Conditional requirements or related regulations
Uses	Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Corridor Transition (MXCT)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)		
j. Industrial and service uses Warehouse, self-storage	N	N	C ¹	C	N	N	N	N	N	In the MXE Zone, the use is only permitted on sites that are contiguous to a property that is zoned to accommodate heavy industrial uses. In the MXB and MXE zones, not permitted on a lot within 250 feet of any lot on which a public school is located. In the MXB Zone, must not adjoin or confront single-unit dwellings.

Key: P = Permitted Use; C = Conditional Use; S = Special Exception; N = Not Permitted

¹Conditional use in the MXC Zone is not permitted when adjoining a residential zone.

²Special provisions for motor vehicle and trailer sales:

- a. All buildings, off-street parking and loading areas and all outdoor storage and display of motor vehicles must be set back 50 feet from any adjoining or abutting land classified in a residential zone. Where the Plan recommends a setback from a public street greater than the minimum required, the Plan takes precedence.
- b. The storage of waste material, auto parts, refuse and motor vehicles is prohibited in any required setback area.

c. The requirement for providing public use space may be met in whole or in part through the fee-in-lieu process as set forth in Article 17. Except that new and/or expanded motor vehicle and trailer sales including new and reconditioned parts and accessories and service incidental thereto are permitted on those properties on which such uses are located as of March 16, 2009.

⁴ See Section 25.08.05 d.

25.08.05 – Nonconforming Uses

* * *

d. Self-storage warehouse use in the MXE Zone.

1. a. Any self-storage warehouse use in the MXE Zone that exists or is subject to an approved or pending site plan application as of [the date of adoption] may continue as a conforming use for a period of ten (10) years from the date the use becomes nonconforming.
- b. Notwithstanding subsection 1.a., any such self-storage warehouse use in the MXE Zone may not be expanded, altered, or enlarged beyond the size and configuration of the original site plan approval.
2. After the ten (10) year period set forth in subsection 1.a. expires, such a self-storage warehouse use in the MXE Zone will be considered nonconforming.