

request of the Planning Board, the Board of Aldermen initiated a process to review the implementation of the NSA Plan and a committee was subsequently appointed (Northern Study Area Plan Implementation Review Committee (NSAPIRC)). The NSAPIRC's charge was to review the implementation of the NSA Plan; the group met, held two community forums and prepared a series of recommendations toward realizing the goals of the plan. In February of 2011, the Town hosted a series of design workshops facilitated by the Durham Area Designers (DAD) to further explore design elements and potential zoning concepts identified by the NSAPIRC. The Board received a presentation on the findings from the design workshops including concept plans for the study site on February 21, 2012.

Since the presentation of the design workshop concept plans, the Board has held three work sessions to begin to formulate a possible new general use zoning district to implement the recommendations of the NSAPIRC for mixed-use development opportunities. Two themes remained consistent throughout these meetings. The first was consistency with the NSA Plan; establishing a district that would allow the land uses identified by the design workshop participants and the site owner, while retaining the "design with nature themes" that seem appropriate for an area under transition. The second was the creation of a new mixed-use district which would allow the property owner some certainty of development potential and some flexibility to respond to marketplace demands.

After further consideration, staff prepared a draft ordinance that would authorize the creation of a new site specific, flexible zoning district, tentatively called FLX. Though the draft FLX district responds to the recommendations of the NSAPIRC to increased mixed-use opportunities in the Northern Study Area, the ordinance does not limit the district to any specific geographic area so long as the property meets four key criteria: (1) is at least twenty-five acres in size, (2) is under single ownership or control, (3) is located adjacent to a major arterial such that, when developed, the principal entrance to such development will be from that arterial, and (4) has been the subject of a site specific planning study by the Town to determine the most appropriate potential development options for such tract.

Property owners seeking the FLX zoning district would have to petition for a change of zoning (Attachment C). The application materials would include a narrative describing the purpose or theme of the proposed district and how that purpose would be consistent with the outcome(s) from the planning study. The initial application would also include a site plan showing key elements in the proposal, such as the placement of exterior entrances and internal circulation systems, initial stormwater analysis and related features, as well as the location of the proposed land uses and their approximate size. A draft checklist to assist with the preparation of a FLX rezoning request is provided (Attachment D). Staff would evaluate the applicant's submittal for compliance with the elements in the FLX ordinance and consistency with the outcomes from the planning study, and draft conditions. If the Board approved the rezoning, the description of the district, the specific conditions and the site plan would be recorded with Orange County and filed with zoning staff. Following the rezoning, the use of the property would be "by right" subject to a zoning permit, approved at the staff level based on standard requirements for zoning permits and any specific requirements described in the district narrative, conditions or site plan.

The proposed FLX zone is somewhat unique from the other zoning districts described in the Land Use Ordinance (LUO) in several regards. For example, the LUO typically dictates which land uses are allowed in each zoning district, and which type of permit is required for each use. Districts are organized by an overarching type of use, such as residential or commercial, or a combination of uses. In the case of the proposed FLX zone, the applicant would request the inclusion of a selection of land uses as part of the application. The location of the proposed land uses would be shown on the site plan. One of the main objectives in the creation of the new mixed-use district is to allow the property owner some flexibility to adjust in response to the market within the parameters of an approved conceptual plan for the site. However, the

applicant would have to provide sufficient detail in the rezoning application and associated site plan so that: 1) the Board of Aldermen and the public would have a complete understanding of what the site would look like at buildout, and 2) staff would have enough information to determine future zoning permit and construction plan compliance (e.g. development standards, either from the existing LUO provisions or from a new set of standards prepared by the applicant, building types and site layout, land use categories, building massing and appearance).

Each request for a FLX zoning district would be specific to the parcel(s) involved. As a legislative decision, the Board of Aldermen would consider the particulars of the petition and the site plan as a policy matter. The Board's decision would be guided by Section 15-324(a-e) which speaks to consistency with adopted plans and policies, and particularly Section 15-325, Ultimate Issue Before Board on Amendments, which outlines the central issue for the Board as whether the rezoning advances the public health, safety or welfare.

The Board discussed the draft ordinance on September 8th and requested revisions which have been incorporated into a revised ordinance dated 9-28-2015 (Attachment B). The majority of the changes are found in subsection (f) and speak to the procedure for submitting rezoning requests for the FLX district and an interest in increasing the amount of detail in the application materials. The new language added to the existing provisions (1) through (3) under subsection (f) is described below and is identified in the draft ordinance by the underlined text:

- (1) as part of the first part of the application process, the applicant must include a description of the findings of the site specific planning study and explain how development proposed as part of a new FLX district would be consistent with that study;
- (2) a preliminary draft of the draft ordinance [creating the new district] shall be referred to a Joint Advisory Board meeting prior to coming before the Board with a request to set a public hearing; and
- (3) if planning staff determines that a proposed modification to the original ordinance establishing a FLX district has no substantial impact on neighboring properties, the general public, or those intended to occupy the site, staff may forward the application to the Board with or without comment. The Board may then (i) decline to call for a public hearing-rejecting the modification to the FLX district, (ii) set a public hearing and direct staff to prepare a draft ordinance, or (iii) direct additional processes for public input before setting a public hearing.

In addition, a new provision (11) under subsection (c) relating to manner in which development on the FLX tract will be required to meet or exceed the standards for LEED gold certification was also added.

The draft ordinance was referred to Orange County and presented to joint advisory board review on September 17, 2015. The advisory board comments reveal some uncertainty relating to the application process, particularly with regard to the amount of detail that would be required in the rezoning materials and the opportunity for public input at different stages in the review process (Attachment E). Staff notes that every step of the process that would be associated with this type of zoning district has not been specified in the ordinance itself, though several have been. Additional steps could be delineated in relation to a request for rezoning - i.e. at the time the Board of Aldermen decides on an initial request, and an outline of the review process that the staff, public, advisory board, and Board of Aldermen would follow could be prepared and approved.

FISCAL & STAFF IMPACT: Public hearings involve staff and public notice costs associated with advisory board and Board of Aldermen review.

RECOMMENDATION: Staff recommends that the Board of Aldermen consider the resolution finding

consistency (Attachment A-1), and the draft ordinance (Attachment B).