

THE MAYOR AND COUNCIL OF
THE TOWN OF NEW MARKET

EAST MAIN ST. REZONING

ORDINANCE NO. 2023-09

AN ORDINANCE TO AMEND THE ZONING MAP

The Mayor and Council of The Town of New Market adopt the Findings of Fact and Analysis incorporated into this Ordinance by reference and appended hereto as an attachment.

IT IS ORDAINED by the Mayor and Council of The Town of New Market that, for the reasons set forth in the adopted Findings of Fact and Analysis, the lands described therein comprised of 5.41 acres on the south side of East Main Street that includes Frederick County Tax Assessment Map 79 Parcels 3812 and Parcel 3813 totaling 5.17 acres and the abandoned 0.25 acre unimproved Tenth Alley ROW are rezoned from Residential Merchant District(RM) and Historic District (HD) to Town Residential/Commercial Mixed Use District (TRC) and Historic District (HD).

AND IT IS FURTHER ORDAINED, that this Ordinance shall become effective on the _____ day of _____, 2023.

ATTEST:

BY ORDER OF THE
MAYOR AND COUNCIL OF
THE TOWN OF NEW MARKET

Town Clerk

Winslow F. Burhans III, Mayor

Council Members:

Shannon Rossman, Council Member

Matthew Chance, Council Member

Dennis Kimble, Council Member

Chris Weatherly, Council Member

Michael Wright, Council Member

INTRODUCED: _____, 2023

ENACTED: _____, 2023

EFFECTIVE: _____, 2023

The Town of New Market



1793

July 6, 2023

RE: New Market Planning Commission recommendation for approval to the Town Council in the matter of Permit # 1853 - E Main Street Property Rezone to TRC Floating Zone

Based on the evidence submitted on this matter the Planning and Zoning Commission finds the following:

1. That a public hearing has been held on July 6, 2023, before the Planning and Zoning Commission at which time the evidence was submitted into the record.
2. That the public had the opportunity to comment at the public hearing.
3. That the applicant has collected sufficient information to provide the Town Council and the Planning and Zoning Commission with a basis to agree with the overall concept of the project, to amend the zoning map, and set a maximum permitted land use density for the TRC.
4. That the proposed TRC zoning map amendment and the proposed Schematic Plan/Development Concept meets the Criteria for Approval, complies with the Town's Master Plan is consistent with the Principles of Smart Growth, and the Purpose of the TRC Zone based on the attached staff report of June 28th 2023.
5. That a residential density of 4.0 in this Property is too low and would not be an efficient use of limited lands zoned for planned development within a designated growth sub-area, and thereby requires an increase in residential density.

Therefore, the Planning Commission recommends to the Town Council that they approve the proposed zoning map amendment to TRC; and a maximum land use density of 10.17 on the residential areas of the Gross Site Area.

The Town of New Market



June 28, 2023

TO: New Market Planning and Zoning Commission
FROM: Pat Faux, Zoning Administrator and Shawn Burnett Town Engineer
RE: Staff Report
Permit # 1853 B- E Main Street Property Rezone to TRC Floating Zone

Dear All,

On May 2, 2023, the Town received an application for a Rezone to the TRC floating zone. A hard copy of the application material is available for viewing at Town Hall. The materials are available for online viewing on the Town website at:

<https://www.townofnewmarket.org/planning-zoning/pages/east-main-street-trc-floating-zone-application> or at the following:

<https://www.dropbox.com/scl/fo/k6bc2q8tyktqd52ozyy6z/h?dl=0&rlkey=gavk8y9k5g63duve82g5sje1g>.

Staff notes that the Applicant has also provided a Master Plan with a Traffic Assessment, a Fiscal Impact Statement, a Natural Resources Inventory/ Forest Stand Delineation, and a Preliminary Plan of Subdivision/Site Plan, with SWM report, these have also been posted for the Commission's consideration but are for informational purposes only at this time. After a rezoning decision is made by Town Council these applications will be brought forward for Planning Commission consideration.

In accordance with the Town Land Development Ordinance (LDO), the Planning Commission is required to consider several items, make several Findings of Fact, and make a recommendation to the Town Council regarding this rezone request. The recommendation needs to address the following items:

1. Consideration of four items before amending the Town Zoning Map per LDO Article III Section 3.4:
 - (1) Is there a public need for the proposed amendment;
 - (2) Is the proposed amendment consistent with the Town Master Plan
 - (3) Is the property in question suitable for the uses permitted under the proposed zoning, and
 - (4) Consideration and make findings of fact with regard to the matters enumerated in Article 66B, §4.05(a)(2) of the Annotated Code of Maryland.

2. Consideration of Conformance with the following seven Criteria for rezone to the (TRC) Town Commercial Mixed Use floating zone per LDO Article IV section 16.2 (b) to determine whether an amendment to the zoning map allowing the establishment of a TRC should be approved or disapproved:
 - (1) The relationship of any development with the Comprehensive Plan, zoning regulations, and other established development policy guidelines;
 - (2) The general location of the site and its relationship to existing land use in immediate vicinity;
 - (3) The long term implications the TRC would have on subsequent local development patterns and the demand for public facilities and services in the surrounding area;
 - (4) The topography and relationship to existing natural and man-made features, both on site and in the immediate vicinity;
 - (5) The TRC's proposed phasing schedule and how it relates to the provision of public services and facilities necessary to serve the TRC;
 - (6) The availability and suitability of vehicular access;
 - (7) The availability of water and sewer facilities including a point of discharge and water appropriation.
3. A recommended Maximum Land Use Density (i.e. residential density) per LDO Article IV section 16.2 (c).

STAFF REPORT

After a review of the provided Rezone application materials staff has determined that the application meets the TRC Rezone submittal requirements per LDO Article IV section 16.2 (a) and advises that the materials provide sufficient information to form the basis of a Planning Commission decision on a zoning change, and a maximum permitted density. Staff notes that per LDO Article III Section 3.4 the Planning Commission may request any additional pertinent data or information needed to render a decision.

Staff recommends that the Commission schedule a Public Hearing on this application and that after hearing from the public, the Commission make Findings and a Recommendation to the Town Council (see attached draft motion). For that purpose, we offer the following Analysis and Recommended Findings of Fact for Planning Commission consideration and the project record.

ANALYSIS & RECOMMENDED FINDINGS OF FACT

This Town Residential / Commercial Mixed Use District (TRC) Floating Zone Map Amendment Application ("the Application") is a request for a TRC floating zone on approximately 5.42 acres of land ("the Property"). The Application is submitted by DR Acquisitions LLC (the "Applicant").

The Property has no street address and is undeveloped. It is located on the south side of Main Street generally opposite of the intersection with Marley Street. It is bounded on the north by Main Street, on the south by South Alley, on the west by the Masonic Hall, the unimproved Ninth Alley ROW and the Community Park. On the east it is bounded by a private residence zoned RM. The Property - also referred to as the "Gross Site Area" in the application - includes two parcels of land owned by the applicant and identified on the Frederick County Tax Assessment Map 79 as Parcel 3812 and Parcel 3813 that total 5.17 acres. The application also

includes the 33'+/- wide 0.25 acre unimproved Tenth Alley ROW owned by the Town. This alley ROW divides the two parcels. The Applicant will be requesting that the Town Council vacate the unimproved 0.25 acre ROW in exchange for a future dedication of a larger 60' wide, 0.45 acre, improved roadway ROW that aligns with and extends the existing Marley St. This exchange would begin via a quit claim of the alley by the Town and then dedication by the applicant of the ROW for the new public road with the final plat for a development.

Both the two parcels and the Tenth Alley ROW are currently zoned RM (Residential Merchant District) and HD (Historic District Overlay). The applicant is requesting that the TRC Floating zone be applied to both the two parcels and the Tenth Alley ROW.

Considerations before amending the Town Zoning Map, LDO Article III Section 3.4:

Is there a public need for the proposed amendment? Yes, there is a public need for this map amendment in order to achieve a well-planned mixed-use infill development on the only large vacant property left in the historic district section of Main St. The resulting infill development is needed in order to achieve the Town's Master Plan goals and objectives to:

- *"preserve and capitalize on the historic downtown of New Market"*
- *"locate more residents and employees within easy walking distance of Main Street"*
- *"attract new businesses to create a more viable critical mass of activity throughout the business week as well and on weekends"*
- *"Increase the Town's tax base and revenues to meet the Town's future fiscal responsibilities"*

Is the proposed amendment consistent with the Town Master Plan? Yes, the 2016 Town Master Plan identifies infill development as being "consistent with the Town's Vision for the future, it projects that mixed use infill with new residential units will occur. It states that the Town has the *"ability and desire to attract infill conversion and expansion of retail uses and service activities along Main Street"*. It notes that based on current zoning and the limited amount of vacant land on or near Main St. that there is a limited ability to achieve these objectives. It identifies the TRC and other floating zone categories as a key tool in enabling infill development. The Master Plan specifically targets the Property for redevelopment, the Land Use Map (see Exhibit E) re-designated it as MRS (Mixed Residential Service) Land Use Category to better achieve the Plan's vision. The proposed Schematic Plan, its building masses, uses and gridded circulation pattern are also consistent with Town's Master Plan which shows the historical street and alley grid pattern and states that the Town should: "preserve and capitalize on the historic downtown of New Market".

Is the property in question suitable for the uses permitted under the proposed zoning? Yes, in addition to being the only large vacant property left in the town core and Historic District section of Main St., the site has direct access to Main St. and South Alley and is located near the I-70/MD 75 interchange. It is served by public utilities. It is relatively flat and contains minimal environmentally sensitive areas. Its development does not require the removal of any historically significant structures.

Consideration and findings of fact with regard to the matters enumerated in Article 66B, §4.05(a) (2) of the Annotated Code of Maryland (Now the MD Land Use Code). The proposed zoning is consistent with Maryland's 12 visions of Smart Growth which are restated in Chapter II Master Plan Challenges of the 2016 Town Master Plan. The visions to be considered include concentrating growth in existing centers, creating compact mixed use pedestrian friendly communities, provision of a range of housing types and public participation in the planning process.

CRITERIA FOR TRC FLOATING ZONE APPROVAL Article IV, Section 16.2.1.b 1 -7

(1) The relationship of any development with the Comprehensive Plan, zoning regulations, and other established development policy guidelines:

Findings of Fact: The Town's 2016 Master Plan, LDO and other policies envision the type of small scale mixed use infill development proposed by the application. The applicant's Justification Statement states the relationship of the Subject Property to the Town's 2016 Master Plan, LDO and other policies. The Schematic Plan shown in Exhibit A is consistent with Town plans, regulations, and policies. The Town's 2016 Master Plan, LDO, Historic District Guidelines and other policies envision the type of infill illustrated in the Schematic Plan.

Analysis: The Town's regulations and development policies and Historic District Guidelines have been written to facilitate such infill. The 2016 Master Plan states that the Town should: "preserve and capitalize on the historic downtown of New Market"; *"Encourage infill development in and around downtown to locate more residents and employees within easy walking distance of Main Street"*; *"Attract new businesses to create a more viable critical mass of activity through-out the business week as well and on weekends."* The provided schematic plan proposes the development of the following along Main St. 10,000 sq. ft. of new office space, 12,000 sq. ft. of new retail space including a new restaurant, 6 live work capable duplex units. In the interior of the property 36 town homes are proposed. The application conforms to TRC zone requirements including:

- The site exceeds the minimum required size of 2 acres.
- Reservation of a minimum of 20 percent of the site for shared common open space and 10% of that shared common area for an outdoor recreational use.
- A proposed Floor Area Ratio (FAR) does not exceed the limitation of 0.40 per acre.

(2) The general location of the site and its relationship to existing land use in immediate vicinity.

Findings of Fact: Exhibit B provides a plan showing 20-foot contours, existing natural and man-made features. Exhibit F identifies adjacent owners. Exhibit D shows the existing zoning in the Property and surrounding properties and vicinity, it places the site in context of the Town as a whole. Exhibit E shows the proposed relationships with the existing land uses in the immediate vicinity. The site's physical characteristics, its long-term vacancy, size

and location on Main Street, as well as its relationship to the adjacent Community Park makes it suitable for TRC zoning. The land surrounding the parcel is zoned RM Residential Merchant

The Schematic Plan, Exhibit A, offers improved vehicular circulation for this part of Town, increased public access to the Community Park and pedestrian connections to and through the property. The Schematic Plan and the Architectural Illustrations shown in Exhibit L have been presented to the Historic District Commission and has received early positive, but informal feedback, on the Project's consistency and compatibility with the Historic District Guidelines.

Analysis: The proposed layout of commercial and residential buildings fronting onto and close to Main St. and its gridded street and alley pattern preserves and extends the historic character of Main St. Current relationships to adjacent properties will be enhanced by the following among other features:

- An attractive new streetscape, plaza, and gateway into the historic district
- Added public on-street parking to serve the district.
- New, relocated, and improved Town streets and alleys.
- Removal of areas of invasive tree species.
- Vegetative buffers along the property line with abutting residences.

(3) The long term implications the TRC would have on subsequent local development patterns and the demand for public facilities and services in the surrounding area.

Findings of Fact: The Project will support the long-term vitality of the downtown and the Town as a whole and complete that pattern of development never fully achieved by the Town's founders, and will follow development pattern, mix and scale envisioned by the founders. It will significantly improve the critical mass of businesses downtown improving the district's ability to attract customer and visitors. Demand for public facilities and services in the surrounding area roads, parks, utilities, and library & schools will increase but are either adequate to support the demand or are anticipated to be reasonably mitigated by the applicant during future site development process.

Analysis: This is supported by development concept that shows new businesses, new residents placed close to Main Street and enhanced pedestrian connectivity. It is further supported by the application statements that the applicant proposes an HOA that will own and maintain all the shared common areas recreation areas, lighting, private alleys, parking lots, drives and storm water facilities on site. The HOA will handle waste collection as well. Thus, the Town's obligation to maintain new facilities will be limited to the improved South Alley and the extended Marley St. As a result of this commitment combined with the land uses proposed, staff anticipates that the Project will make a positive contribution to Town revenues and will aid the Town's ability to provide public services and facilities necessary to the Town as a whole. A detailed review of both the traffic analysis and the fiscal impact statement will occur at the Master Plan stage of review as is required by Town code.

Currently it appears there is adequate water and wastewater treatment capacity available to serve this project based upon the presented uses (approx. 60 EDUs). The applicant will be required to address water/sewer APFO and adequate downstream sewage conveyance capacity along with traffic impact mitigation during the future site development process.

(4) The topography and relationship to existing natural and man-made features, both on site and in the immediate vicinity.

Findings of Fact: The site is vacant, there are no existing structures and no modern storm water detention facilities. No floodplains exist on site. As shown on Exhibit B, environmental features include ephemeral channels and specimen trees. A wetland mapped on the National Wetlands Inventory located on one of the parcels is no longer existent and has been confirmed as such via wetland delineations. Wetlands have been discovered south of South Alley and applicant will be required to obtain necessary permits for any proposed impacts to any regulated wetlands and buffers. Past surface water flow patterns on site have been redirected in recent years by State built drainage improvements in the area. A County public sewer main traverses the site, while a County water main exists in Main Street. The site has generally gentle topographic conditions. It has a few areas of steep slopes, including a slope along Main St. The site has been cleared in the past and has several stands of young Bradford Pear trees. These are considered invasive but are also of sufficient density to be considered forest. The existing conditions of both the site and vicinity pose no undue restrictions on the site rezoning and redevelopment under the TRC zone.

Analysis: This finding is supported by Exhibit B which shows the existing natural and manmade conditions on the Property and immediate vicinity. A field review of the site was conducted on June 20th by Town staff to confirm reported existing conditions.

(5) The TRC's proposed phasing schedule and how it relates to the provision of public services and facilities necessary to serve the TRC.

Findings of Fact: The applicant states that the Project will be built in one Phase and that further details regarding the construction sequence will be provided during the approval process.

Analysis: This is supported by the Justification Statement

(6) The availability and suitability of vehicular access.

Findings of Fact: The Property currently has vehicular access available as it fronts onto both Main Street and South Alley as well as on two undeveloped alleys. The Property is located at the Eastern end of Main St. close to MD 75 and I-70. These roads are suitable to support development under the TRC zoning category.

Analysis: This Finding is supported by the LDO requirements for a TRC Master Plan, by the applicant's Justification Statement provided in Exhibit C and by Exhibit J, the informational Traffic Impact Analysis. Further information regarding current and proposed conditions is provided by Exhibit A, the Schematic Plan. Further reviews of onsite and any off-site improvements needed will occur during subsequent Master Plan and Subdivision Review Processes if rezoning occurs. A full review of a Traffic Impact Analysis is a required part of the Master Plan Review Process. Staff notes the following:

- The applicant proposes to shift the existing unimproved 33' +/- wide 10th Alley ROW so that it coincides with Marley St., to dedicate a 60' +/- ROW and to construct an extension of Marley St. there.
- The site has no direct existing driveway curb-cuts onto Main St. or South Alley. Per the Schematic Plan, full movement access to Main St. would occur via Marley St. extended and one private alley along the east side of the site. Full movement access to South Alley would occur via Marley St. extended and three private alleys. Several proposed private alleys will provide access internal to the site.
- The 9th Alley ROW abutting the Community Park is proposed to remain unimproved with the exception of an access point/ loading area to serve the planned Town Events Pavilion in the Community Park. A significant existing grade change in the 9th Alley ROW prevents access to Main St.
- The applicant proposes to improve the unpaved town owned section of South Alley that abuts the Property so it connects into the paved Bye Alley. In order to avoid the potential for cut-through traffic into downtown via South Alley the section of South Alley between the Community Park and Marley St will be signed for one way traffic going east towards Bye Alley,

(7) The availability of water and sewer facilities including a point of discharge and water appropriation.

Findings of Fact: There is adequate water and wastewater treatment capacity available to serve this project based upon the presented development uses. Water and sewer service is already available to the site.

Analysis: This is supported by comments provided by the County DWSU staff and by Exhibit A of the application which states that both water and sewer service is provided by Frederick County and exists on the Property; that the parcels have a W-5/S-1 classification for service.

As shown in Exhibit G sheet 4, the Utility Plan sheet of the informational Subdivision Plan, an existing sewer main traverses the property and a water main exists in Main St. The applicant will be required to address water/sewer service capacity needs and adequate downstream sewage conveyance capacity during the future site development process.

Maximum Land Use Density

Findings of Fact: The applicant proposes to utilize 4.13 acres of the Property for residential uses and requests a maximum residential density of 10.17 dwelling units per acre on that portion of the Property. This requested DUA is a higher density than the 4.0 DUA established by Subsection 16.6.2 of the TRC zoning text, however per Subsection 16.6.4 the Planning Commission may require a higher density in order to *"make efficient use of limited land zoned for Planned Development within a designated growth area"*.

Analysis: This density request is justified based on the need to *"make efficient use of limited land zoned for Planned Development within a designated growth area"*. It is supported by the 2016 Master Plan. As the last large vacant property on Main Street, this site is a key infill property and one of a very limited number of sites available for infill redevelopment within close proximity - i.e., walking distance- to the Main Street core, Town schools, shops, and services. It is part of the Town's designated growth area within the Town boundary. As the site is located near the Eastern end of the historic district, it is advantageously placed to accommodate compact mixed use redevelopment without requiring all traffic to traverse the main part of the Main street district.

Development Concept/Schematic Plan

Findings of Fact: The applicant has provided a Schematic Plan dated March 2023 as Exhibit A. The provided concept complies the relevant zoning requirements at this stage as it provides a schematic plan generally identifying location, densities, and acreage of all proposed land uses.

- Floor Area Ratio (FAR) - The TRC zone requires that Floor Area Ratio of the commercial portions of the site to not exceed 0.40. The schematic plan complies and shows a FAR of 0.39.
- Open Space - The TRC zone requires that a minimum of 20% of the site be reserved for shared common open space and 10% of the shared common area to be used for an outdoor recreational use. The application proposes areas that exceeds the 20% and 10% requirements. The offered outdoor recreational use is in the form of an outdoor plaza. In addition, a tot lot is also shown, but is not counted.

This design will at later stages of review and approval require added detail, refinement, and adjustments in order to conform to LDO requirements if or when the Commission formally reviews applications for the Master Plan, Subdivision Plan and Site Plan material provided here for information.

ATTACHMENT #2 DRAFT MOTION

Based on the evidence submitted on this matter the Planning and Zoning Commission finds the following:

1. That a public hearing has been held on July 6, 2023, before the Planning and Zoning Commission at which time the evidence was submitted into the record.
2. That the public had the opportunity to comment at the public hearing.
3. That the applicant has collected sufficient information to provide the Town Council and the Planning and Zoning Commission with a basis to agree with the overall concept of the project, to amend the zoning map, and set a maximum permitted land use density for the TRC.
4. That the proposed TRC zoning map amendment and the proposed Schematic Plan/Development Concept meets the Criteria for Approval, complies with the Town's Master Plan is consistent with the Principles of Smart Growth, and the Purpose of the TRC Zone based on the staff report of June 28, 2023.
5. That a residential density of 4.0 in this Property is too low and would not be an efficient use of limited lands zoned for planned development within a designated growth sub-area, and thereby requires an increase in residential density.

Therefore, the Planning Commission recommends to the Town Council that they approve the proposed zoning map amendment to TRC; and a maximum land use density of 10.17 on the residential areas of the Gross Site Area.