

City Planning Department



Memo

To: Cranston City Plan Commission
From: City Planning Department
Date: December 4, 2020
Re: **Ordinance #7-20-04** – Change of Zone – 1000 New London Ave – “Cranston Crossing”

This memo is not intended to be a stand-alone document, but is meant to supplement the Planning Department Memo dated 11/25/20 and complete staff’s analysis and recommendation based on information shared during the December 1, 2020 Plan Commission meeting. Application documents and comments on this application are available [here](#).

Before we begin, we’d like to say that Cranston should be proud of the public hearing that took place on the ordinance on December 1, 2020. At least 125 people joined the ZOOM meeting on a complex and controversial matter, and everyone who wanted to speak was able to be heard. Thank you to all involved.

I. Introduction & Executive Summary

As stated in the disclaimer above, this memo is intended to pick up after the December 1, 2020 meeting and is targeted at addressing points raised at the meeting. Due to time constraints, and in an effort to be concise, staff will attempt to limit its analysis to what it believes to be the bottom line on the identified issues.

In **Section II**, the memo will address the **procedural challenges** raised in opposition to the project.

Section III identifies **outstanding issues** that staff was unable to address in the 11/25/20 memo due to information arriving late and provides an opinion as to whether the Department believes they provide sufficient grounds for approval or denial of the project.

In **Section IV**, staff will identify **concerns** that are appropriate to acknowledge at this phase, but are **to be properly vetted in later phases** of the overall development review process.

Section V contains staff’s **remaining concerns** with the Overall Development Plan application and/or MPD.

Section VI provides the **substantive and qualitative analysis** of the MPD application specific to the codified requirements in Code Sections 17.120.030 and 17.96.070.

Section VII is the final analysis.

Section VIII is the staff recommendation.

II. Procedural Challenges

The Cranston Neighbors for Smart Development raised two procedural challenges opposing the MPD application.

The first objection, as articulated in the letter from attorney Amy Goins, Esq., dated 11/20/20 (available by clicking the “Cranston Neighbors for Smart Development – Legal Issues Letter 11-

20-2020," link [here](#)) holds that the MPD ordinance request MUST be accompanied by the Major Land Development Master Plan application in order to comply with State and local laws.

The City does not agree with this interpretation, which was alluded to in staff's 11/25/20 memo, but is anticipated to be corroborated by the letter from Assistant City Solicitor, which has not yet been received by staff. Ultimately, staff defers to the Legal Department on this issue.

The second procedural objection was that the application has used the wrong vehicle, otherwise put, that the application should require a comprehensive plan amendment to Highway Commercial future land use designation and the zone change request should be for C-4 for the commercial uses and S-1 for the open space. Staff addressed this issue in detail in its 11/25/20 memo. In sum, staff finds some merit to the argument that a comprehensive plan amendment to Highway Commercial and a rezone to a mix of C-4 and S-1 could achieve the desired outcome, but this does NOT invalidate the MPD application, which the City must review on its merits.

III. Analysis of Issues Not Previously Addressed

A. Correspondence from RIDOT

RIDOT has expressed concern with the proposed improvements associated with the project. In absence of an official letter, we have reached out to them over the phone to try to understand the extent of their issues. The main question posed by staff was whether the applicant would be able to revise their plan based on RIDOT's comments to obtain approval. Otherwise put, *can the applicant make this work if comments are addressed?* The answer was "yes." The reason that this question is even more important than knowing RIDOT's comments on the current iteration of the road improvements is because the applicant is not required to have RIDOT approval in order to obtain MPD approval, the law requires that they have RIDOT approval before obtaining *Preliminary Plan* approval for the anticipated *Major Land Development* application. The MPD can be approved conditional to RIDOT's eventual approval. This provides the city with the assurance that these RIDOT's concerns MUST be met before the project could be constructed. Therefore, with full respect to the road improvement concerns, **RIDOT's concerns can and will be addressed at a later time (should the MPD be approved) and do not provide justification to deny the MPD application.**

B. Letter from the Department of Corrections

The Department of Corrections submitted a letter in opposition to the project on December 1, 2020. The letter cites concerns regarding security due to the number of vehicles and proximity of the development to the correctional facility, stating "We believe this proximity is an issue that could lead to conveyance of contraband into the prison as well as potential facilitation of escape by Medium security inmates."

Staff is certainly appreciative of the correspondence and security issues raised by the Department of Corrections, and would hope to continue the dialogue should the project move forward, but wants to make it clear that *the security of the facility is NOT the obligation of the abutting land owners*. There is no law which restricts properties abutting the prison in any way. Zoning and land use restrictions are based on striking a balance between property rights and protecting others from nuisance. Staff believes that the Department of Correction's request for restricting off-site activity is not a normal request shared commonly by land owners, it is due to their extraordinary security needs, which is why it would be unreasonable put that burden on the abutting land owner. Therefore, staff believes that **RIDOC's concerns do not provide justification to deny the MPD application.**

C. Letter from the Department of Administration

The Department of Administration Division of Capital Asset Management and Maintenance submitted a letter in opposition to the project on December 1, 2020. The letter itemizes six (6) “big picture” concerns which are summarized in brief below, followed by a brief staff analysis of each.

1. There will be no land swap for the State-owned Pitch N Putt parcel.

Staff Response: This has been acknowledged and the application was amended accordingly.

2. Opposition based on the anticipated traffic impacts.

Staff Response: RIDOT certainly has the right to approve or deny the traffic improvements, but this review is not required to be completed before the City makes a decision on the MPD.

3. Opposition to the access road abutting the Pitch N Putt.

Staff Response: The application will meet or exceed all codified requirements in the City. The City acknowledges that “no part of the Pitch N Putt will be made available for any purpose such as lateral support or otherwise.”

4. There has been no approval from RIDOT.

Staff Response: Acknowledged. RIDOT certainly has the right to approve or deny the traffic improvements, but this review is not required to be completed before the City makes a decision on the MPD.

5. Opposition based upon security concerns considering the proximity to the prison facilities.

Staff Response: This issue is addressed in response to the RIDOC letter above.

6. Concerns/criticism regarding the cell tower relocation process.

Staff Response: Staff acknowledges that the tower relocation is merely conceptual at this point and will need to be approved through due process with the State and City.

Staff is appreciative of the correspondence and concerns raised by the Department of Administration, and would hope to continue the dialogue should the project move forward, but **staff does not believe these issues provide enough justification to deny the MPD application.**

IV. Legitimate Concerns to be Addressed at Future Phases

The public gave robust and substantial opposition based on the anticipated negative impacts that the project could impose should it be developed. In this section, staff seeks to collectively address the concerns regarding:

- Traffic & Road Improvement Design
- Buffering/visual impacts
- Noise
- Stormwater
- Lighting
- Dumpsters & Rodents

These are all topics of legitimate concern, but they all fall well within the scope of issues that can be mitigated at the appropriate development phase(s). The City Plan Commission, Development Plan Review Committee and various other State agencies such as the RIDEM, and RIDOT will ultimately review and decide if these identified impacts can be well engineered with proper mitigation strategies. These processes provide multiple opportunities for the public to participate and for the applicant to address concerns and comments. In considering this subject zone change, or any zone change, it is improper to assume that an applicant might fail in their attempt to obtain regulatory approval, thereby foreclosing on their right to work through these processes.

To put it another way, there is no risk on the part of the City or the neighborhood in allowing a rezone to proceed because when the time comes to engineer the site, these issues MUST be addressed in order to receive approval. The developer assumes these risks. The City must trust its regulations and processes or amend them. It must enforce them so that they may be trusted.

It is the opinion of the Planning Department that the above identified potential issues brought forth by the public do not rise to the level of garnering a negative recommendation by the City Plan Commission at the MPD application phase.

V. Remaining Concerns

Staff raised several concerns about the application in its 11/25/20 memo which remain unresolved. The following list identifies the items and provides brief comments on each.

Parcel 3

Staff has been clear that we are not comfortable with the request to obtain all rights under C-4 zoning without any clarification of what the uses would be and without the inclusion of this parcel in the Overall District Plan. Staff appreciates the applicant's willingness to limit the allowed uses on the parcel to retail only, as John Bolton stated during the December 1st meeting, but the omission of detail on the Overall District Plan undermines the MPD process via noncompliance with Overall District Plan Contents required in Code Section 17.100.040.B. **Staff continues to recommend that the applicant revise the plan to either propose open space for this parcel, or alternatively, to amend the application to include plans at a level of detail to comply with the City Code.**

Loading Area

In the previous section, staff acknowledged noise concerns as an item which can and will be addressed at a later phase in the overall approval process of the project. That being said, staff acknowledges the *potential* for noise concerns expressed by the members of the abutting community, especially those closest to the Costco loading area and Parcel 3. Preserving the quality of life of Cranston neighborhoods is consistent with the intent and purposes of our zoning code and is consistent with the Comprehensive Plan. Different land uses are increasingly compatible the more that incompatible activity is mitigated and/or buffered. It is due to these reasons that staff recommended that the applicant revise the plan so that the loading area be located on the other side of the building. Staff has not heard an explanation from the applicant as to why they have chosen not to adhere to this request. Michael DiGiuseppe, Managing Partner of Coastal Partners, LLC (the applicant), during the December 1st meeting, spoke about his willingness to make every effort to address public concerns, to work with the community and be approachable. **Staff encourages the applicant to make the change or explain why the loading area cannot be relocated and what measures will be employed (beyond the policy of shutting off trucks while loading/unloading) to assure that loading trucks will not disturb Cranston residents.**

Signage

Staff continues to be concerned with the lack of details regarding signage, as the signage is likely to exceed what is allowed in C-4. Signage allowances should be explicitly incorporated into the MPD ordinance. Should the applicant request a variance from their own MPD, the City Council is the authority to grant such relief, not the Zoning Board of Review. Staff is hoping to avoid, in the event that the ordinance receive approval, that the applicant would **NOT** have to return to City Council to amend the ordinance for signage. **This is not grounds to deny the MPD, but raises questions of whether it should be amended.**

Gas Station Location

As stated in the previous 11/25/20 staff memo, and as confirmed by attorney John Bolton during the meeting, the tanks are roughly **530'** from the nearest residential property line. This clearly exceeds the 300' minimum as prescribed in City Code Section 8.08.041 *Flammable or Explosive Storage Tanks*. **Staff discourages the City Plan Commission from recommending denial of potential land uses on the grounds that the tanks are too close to residential property.**

That being said, there appears to be sufficient land area to redesign the site to be more sensitive to the community. Staff had recommended that the applicant relocate the gas station to be as far away from the residential neighborhood as possible, to which the applicant did not oblige nor provide an official explanation as to why. Michael DiGiuseppe, Managing Partner of Coastal Partners, LLC (the applicant), during the December 1st meeting, spoke about their willingness to make every effort to address public concerns, to work with the community and be approachable. **Staff encourages the applicant to make the requested change or explain why the gas station cannot be relocated.**

Historic Cemetery

There was not a significant amount of discussion involving the proposed relocation of the historic cemetery during the December 1st meeting, yet staff wants to reiterate and clarify its position. As stated in the 11/25/20 memo, there is a separate process specifically for the relocation of the Cemetery, with the City Council as the deciding body. Staff acknowledges that the Cranston Historical Cemeteries Commission (CHCC), the Rhode Island Advisory Commission on Historical Cemeteries (RIACHC), and the Rhode Island Historical Preservation and Heritage Commission (RIHPHC) have submitted comments in opposition to the cemetery's relocation. The Comprehensive Plan speaks to the preservation of historic and culturally valuable assets. For these reasons, staff requested an alternative site plan showing the historic cemetery undisturbed, or in lieu of this, staff would also accept a statement addressing this issue explaining why alternative site designs are not possible or preferred which would preserve the historic cemetery in its current location. Not taking anything away from Council's discretion and authority in this matter, **the Plan Commission should consider whether the relocation of the historic cemetery, absent of an alternative site plan or justifying explanation from the applicant, is consistent with the Comprehensive Plan.**

VI. Analysis of the Application Based on the Codified Requirements

Per City Code Section 17.96.070, the proposal must demonstrate that it meets the requirements for planned districts:

All planned district proposals shall demonstrate that there is a general public benefit to be gained by deviation from the requirements of the existing zoning classification. These benefits may include but are not limited to:

- A. Preservation of unique or sensitive natural areas or significant historic sites;*
- B. Preservation of architecturally significant buildings;*
- C. Ecologically sensitive building orientation, utility placement, roadway pattern and/or construction methods.*

Should the city council, in reviewing an MPD or the planning commission in reviewing an RPD, conclude no general public benefit is to be gained in approving a particular application, they may reject said proposal.

Staff views that the application offers the following benefits:

- 18 acres of dedicated open space to the city and an additional 3.28-acre portion of designated open space on Parcel 1;
- 400-450 permanent jobs and 300-350 construction jobs;
- Approximate net gain of \$725,000 in tax revenue per year;
- Positive economic externalities.
- Avoidance of long vacancy, underutilization, and/or uncertainty about the future of the site.

These perceived/anticipated benefits may not excuse any shortcomings in the application, but they do provide grounds for the Plan Commission to make the finding that the application offers public benefits.

The other applicable criteria for approval are found in Section 17.120.030 which requires the review by the Plan Commission. This section specifically requires:

Among its findings and recommendation to the city council with respect to a proposal for adoption, amendment or repeal of a zoning ordinance or zoning map, the planning commission shall:

- A. Include a statement on the general consistency of the proposal with the comprehensive plan of the city, including the goals and policies statement, the implementation program and all other applicable elements of the comprehensive plan; and*
- B. Include a demonstration of recognition and consideration of each of the applicable purposes of zoning as presented in [Section 17.04.010](#) of this title.*

The following section attempts to address this finding.

VII. Final Analysis

Zone change proposal and conformity with the Comprehensive Plan

Staff disagrees with the assertion from the neighborhood group that the proposal should be deemed a new MPD, rather than a major amendment of the existing MPD simply because it makes no difference whatsoever in the vetting and permitting process. A new MPD, or any major amendment to an existing MPD triggers a restart of the rezoning and permitting procedure deeming this assertion irrelevant and a matter of semantics. Staff has no issue moving forward with the application currently filed as a Major Amendment to the existing MPD.

It is staff's opinion that the core issue for the Commission members to consider is the application's consistency with the goals and policies of the City's 2012 Comprehensive Plan. The answer is not so apparent once we take a closer look. For instance, during the public hearing, we were given contradictory testimony from two well respected planning experts about how this proposal conforms, and does not conform to the City's current Comp Plan. The Commission has seen this unfold from time to time when the Plan is less than clear about the future use of a particular property.

From my perspective as Director, I have been with the Planning Department for sixteen years, and consider myself one of the primary authors of the current Comprehensive Plan (2012). On the existing Future Land Use Map (FLUM), the subject parcel was given the rare designation of MPD (Mixed-Use Planned District) changed from the 1991 designation of Open Space. I believe some additional context is required that was not discussed during the December 1st public hearing.

In 2007, a major proposal for redevelopment of the Mulligan's Island property was filed that was not entirely dissimilar, yet more intensive, than the present proposal. This proposal was removed from consideration by the applicant before it was ever voted upon after community opposition. As the owner had been actively marketing the land to major commercial developers, while not successful, it gave planning a clear indication that Mulligan's Island would not remain in its current form indefinitely. Therefore, staff well understood that whatever shape the next proposal might take, it would likely rely upon the flexibility in zoning afforded to an MPD given the asymmetrical geometry and frontage limitations of the subject parcel. When staff was formulating the FLUM with the designation of this parcel as MPD, we understood that any new (or major amended) zone change request would require exactly the intense vetting we have undertaken with the present application.

Staff agrees with the applicant that the FLUM envisions an MPD at this site. What form, mix, or intensity this plan would follow and still be consistent with the goals and policies of the plan is not prescribed and is inconveniently silent. The task of the Plan Commission would then be to weight all the merits and deficiencies to determine if the proposal is *compatible* and *appropriate* within its surroundings. In this instance, the surrounding neighborhood is intended to be buffered by distance, vegetated screening and there are no physical connections into the surrounding residential street network. As mentioned earlier in this report, this is also assuming that a potential development obtains all of the other required regulatory approvals.

I believe this concept of compatibility is a key concept for the Commission to ponder. Throughout the City of Cranston, virtually all of our commercial corridors and industrial parks directly abut residential areas. These divergent land uses might not always be entirely compatible but they find a way to co-exist which is the hallmark of urban areas. Why can't that hold true for this area? As the proposal will not physically interact with the residential areas, the issue of compatibility now revolves around the mitigation of perceived and actual impacts. The applicant has demonstrated that they have the ability (not yet the approvals) to mitigate these issues. If during the Major Land Development process impact mitigations are shown to be ineffective, the proposal will not move forward. Staff does not feel that the pointed question about the intensity of future development has a definitive answer within the Comprehensive Plan.

VIII. Recommendation

The City Plan Commission has been provided with a wide range of expert testimony, various supplementary documents, commentary, expert opinions, and objections from the surrounding neighborhood. Staff has tried our best to vet this complex information for you as best we could. Key to all of this is the understanding that this is a zone change application, not a land development project.

The City is well equipped to handle the mitigation strategies of a development proposal such as this since this development is not atypical. The Comprehensive Plan has been shown consistent with the proposal in some aspects, but is silent and unclear in others. Ultimately, the City Plan Commission has been specifically empowered to interpret the intent of the Comprehensive Plan.

Staff therefore offers no specific recommendation on the proposed MPD ordinance amendment. We further recommend that the City Plan Commission weigh the merits and deficiencies of this particular application and exercise their own rational judgement to decide if this application is an appropriate future land use at this location and how it conforms or not to the Comprehensive Plan.