

Allan W. Fung
Mayor



Christopher M. Rawson
City Solicitor

**DEPARTMENT OF LAW
CITY HALL**

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December 6, 2020

Michael Smith, Chairman
City of Cranston Plan Commission
869 Park Avenue
Cranston, RI 02910

RE: Ordinance #7-20-04 -Change of Zone – 1000 New London Avenue
Amendment of an existing MPD

Dear Chairman Smith:

The Plan Commission has asked for a legal opinion concerning issues that were raised during the December 1, 2020 hearing on the above referenced matter. I will attempt to be as brief as possible and will be in attendance at the December 8, 2020 hearing to answer any questions from the Commissioners.

- I. Is this matter properly before the City Plan Commission and should this body make a recommendation to the City Council on the merits.

The matter before the Commission is a major alteration to an existing MPD as defined in Section 17.100.040(e)(2) of the Cranston Zoning Ordinance. Section E2 specifically states that “No major alteration shall be allowed without approval of the City Council”. The procedure for an adoption or amendment of a Zoning Ordinance is governed by both Section 17.120.010 et seq. of Cranston Code of Ordinances and Section 13.05 of the City Charter. In both the Code and the Charter, it proscribes that the City Council shall seek the advice of the City Plan Commission concerning the consistency of the proposal with the comprehensive plan and if the application considers each of the applicable purposes of the zoning code. This Commission has a proscribed amount of time to act on the matter and it has been my consistent opinion during my tenure

because Section 13.05 of the City Charter requires a “resolution disapproving the ordinance” to then require an affirmative vote of two thirds of the city council to pass the matter, that no action by the Commission is tantamount to an approval because no action is not a “resolution disapproving the ordinance”. While I will address the merits of the legal issue argued by both Counsel for a neighborhood group opposed to the project and the applicant in the next paragraph, I spend time on this issue because one option *Cranston Neighbors* has put forth is that this Commission has an option to “decline to decide this matter”. Based upon the foregoing, I would strongly recommend the this Commission provide a positive or negative recommendation based upon the criteria previously discussed and as outlined in the Planning Department memorandum and not decline to decide this matter based upon any legal theory.

Counsel for *Cranston Neighbors* next makes the argument that the application is “fatally flawed” because it did not follow the Precedent of Approvals Doctrine and to essentially include an application for Master Plan approval with its application for a zone change. Counsel for *Cranston Neighbors* cites the process it followed when “the developer simultaneously submitted (1) an application for an amendment to an existing MPD; and (2) Master Plan application for the project.” I would respectfully disagree with this assertion as that the project and amendment at 100 Sockanosett was an not amendment to an MPD but rather is was an amendment to the conditions governing a flex C-5 zone granted approval in 2016 and therefore followed slightly different procedures than the instant application. (2016 & 2019 Ordinances attached).

As to the argument that this Commission should deny the application based upon the Precedent of Approvals Doctrine and not consider the application on its merits, I again respectfully disagree with the argument of *Cranston Neighbors* and it is my opinion that this commission should consider and vote on the merits of the application as it relates to the consistency of the proposal with the comprehensive plan and if the application considers each of the applicable purposes of the zoning code. The procedure for a Major Alteration to an MPD set forth in the Ordinance does not require an applicant to simultaneously apply for major land development approval. R.I.G.L § 45-23-61 reads “Where an applicant requires both planning board approval and council approval for a zoning ordinance or a zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change to the planning

board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).” Section 17.100.04(E)(2) of the Cranston Zoning Ordinance (the “Ordinance”), pertaining to Major Alterations of an existing MPD zone, contains the rezoning procedures set forth in Section 17.100.040 of the MPD Ordinance. This requires that the Applicant proceed with a rezoning request before the City Council pursuant to Section 17.100.040 (C) and the procedure for a Major Alteration to an MPD set forth in section 17.100.040(E)(2) of the Ordinance does not require an applicant to simultaneously apply for major land development approval. Because the Applicant is merely seeking a rezoning of the property, through the process for a Major Alteration of an existing MPD, the inclusion of a Master Plan submission is not required and therefore the precedent of approval doctrine would not prohibit this application from moving forward.

Additionally, should the members of the Commission disagree with this opinion, I would again caution against an “inaction” by this Commission at this stage as to its charge under the ordinance and finally there is no prohibition from any party raising this or any other issue at the ultimate hearing before the City Council or any committee thereof.

II. The scope of the amendment to the MPD somehow necessitates a different process for this application.

This application is before the City Council and this Commission as a major amendment to an existing Mixed Plan District. Section 17.100.040(E) of the Ordinance defines when an application is to be considered a minor or major amendment. *Cranston Neighbors*, through its expert, has argued that the scope of the amendment is so great that there should be some additional or different process to this application. It is undisputed that this parcel is an existing Mixed Plan District and the applicant is proposing that the parcel remain an MPD with a different or new set of approvals. While the scope of the amendment is extensive, Section 17.100.040(E) provides only two different procedures to amend an existing MPD, one being minor and one being major and the ordinance does not provide any other additional or alternate procedure for an applicant to follow should the amendment be “extensive”. As such, the applicant has properly followed

the procedure as set forth in Section E2 concerning a Major amendment to an MPD and this Commission should decide the matter according the Charter and Ordinance.

In Conclusion, the opinions discussed in this memorandum address only procedural and legal questions raised at the hearing and are in no way an opinion on the merits of the application or the opposition thereto. I would again urge this Commission to issue either a positive or negative recommendation to the City Council based upon the criteria outlined in staff memorandum and the evidence and presented by all participants.

Very truly yours,



Stephen H. Marsella, Esq.
Assistant City Solicitor

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THE CITY OF CRANSTON

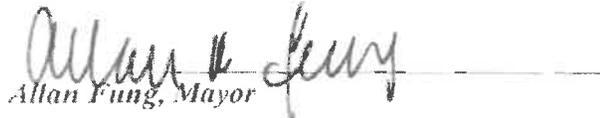
ORDINANCE OF THE CITY COUNCIL
IN AMENDMENT OF CHAPTER 17 OF THE CODE OF THE CITY OF CRANSTON,
2005, ENTITLED 'ZONING'
(CHANGE OF ZONE - 100 Sockanosset Crossroad)

No. 2016-25

Passed:
July 25, 2016


John E. Lanni, Jr., Council President

Approved:
August 4, 2016


Allan Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

SECTION 1: That the Zoning Map accompanying and made a part of Chapter 17 of the Code of the City of Cranston, Rhode Island, 2005, entitled "Zoning", as adopted January 24, 1966, as amended, is hereby further amended, by deleting therefrom the following:

By deleting from M-2 and S-1 Districts, all of Plat 14, Lot 2 and a portion of Lot 14, Lot 1 located on the Southerly side of Sockanosset Cross Road.

And by adding thereto the following:

C-5 with conditions, set forth in attached Narrative as Exhibit "B", all of Plat 14, Lot 2 and a portion of Lot 1, located on the Southerly side of Sockanosset Cross Road, and described in the attached metes and bounds Exhibit "A"

SECTION 2: This Ordinance shall take effect upon its final adoption

Positive Endorsement:

Negative Endorsement: (Attach reasons)

 7/25/16
Christopher Rawson Date

Christopher Rawson Date

Petition filed by 100 Sockanosset LLC

Referred to Ordinance Committee July 14, 2016



THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL

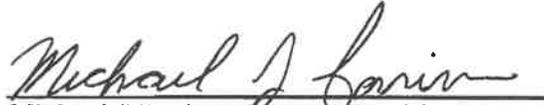
**IN AMENDMENT OF CHAPTER 17 OF THE CODE OF THE CITY OF CRANSTON,
2005, ENTITLED 'ZONING'**

(CHANGE OF ZONE - 100 Sockanosset Crossroad)

No. 2019-3

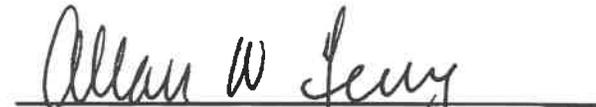
Passed:

January 28, 2019


Michael J Farina, Council President

Approved:

February 4, 2019


Allan W Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

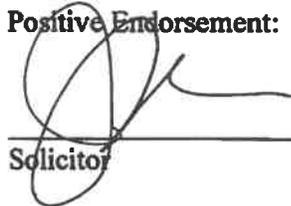
Section 1: That the Zoning Map accompanying and made a part of Chapter 17 of the Code of the City of Cranston, Rhode Island, 2005, entitled "Zoning", as adopted January 24, 1966, as amended be further amended by modifying the conditions of the C-5 with Conditions zoning designation for Plat 14, Lot 2 (see attached modified conditions).

Section 2: That Chapter 17 of the Code of the City of Cranston, Rhode Island, 2016, entitled "Zoning" as adopted December 1, 2016, as amended, is hereby further amended, by modifying the narrative conditions (see attached modified Conditions) of the C-5 with Conditions zoning designation for Plat 14, Lot 2.

Section 3: This Ordinance shall take effect upon its final adoption.

Positive Endorsement:

Negative Endorsement: (Attach reasons)



Solicitor Date 1/28/2019

Solicitor Date

Petition filed by 100 Sockanosset LLC

Referred to Ordinance Committee January 17, 2019