



City of Kingston Laws and Rules Committee
Meeting Agenda
Wednesday, October 16, 2019
6:30 PM

NEW BUSINESS

Final Action Report - Kingstonian & Response from Riseley & Moriello
[20191011143715.pdf](#)

1OLD BUSINESS

Laws and Rules Committee Agenda Item Report

Meeting Date: October 16, 2019

Submitted by: Elisa Tinti

Submitting Department: Common Council

Item Type: Informational Purposes

Agenda Section:

Subject:

Final Action Report - Kingstonian & Response from Riseley & Moriello

Suggested Action:

Attachments:

[20191011143715.pdf](#)

FINAL ACTION REPORT FORM

Per GML 239-m and -n FINAL ACTION REPORTS ARE
REQUIRED TO BE SUBMITTED WITHIN THIRTY DAYS
AFTER FILING

Complete the local agency final action box, add the local file
number, include any required submittals, and sign the form



L & A
Copy to Alderman

Name of Project: Kingstonian Development Group, LLC

Referral Number: 2019159

UCPB Decision: Required Modifications

Local Agency Final Action:

☒ Approve ☐ Disapprove

Member Vote: Yes: ☐ No: ☐

☒ County Planning Board Decision -
Reviewed no County Impact

☐ Concurs with County Planning Board
Modifications or Disapproval

☐ Contrary to County Planning Board
Modifications or Disapproval (see
required submittals if checked)

Required Submittals:

Within thirty days after final action, the referring body must file a report of the final action it has taken with the UCPB. A referring body that acts contrary to a recommendation of modifications or disapproval of a proposed action shall set forth the reasons for the contrary action in such report attached to this form.

Local File Number:

Municipality:

Kingston City

Referring Agency:

Local Governing Body

Type of Referral:

Zoning Map Amendment

Name of Applicant:

Kingstonian Development Group, LLC

Project Location:

9-21 North Front Street

Description:

Petition to expand the Mixed-use Overlay District
to a 0.313 acre parcel

☐ Required Submittals Attached

☐ Resolution Attached

Local Officer:

Date:

~ For Ulster County Planning Board Use Only ~

Local Board Decision:

Original Date Received: 9/3/2019

Original Review Date: 9/4/2019

Final Action Date Received:

Status: Reviewed

Return Form to:

Referral Officer

Ulster County Planning Board

Box 1800 Kingston, N.Y. 12402

Need Help? Telephone: 340-3340

Form Revised 09/26/2000 UCPB

UCPB Date Stamp

REFERRAL RESPONSE



ULSTER COUNTY PLANNING BOARD

General Municipal Law of New York State

Article 12B

Sections 239-1 and 239-m

Referral Number

2019159

Municipality Kingston City
Referring Agency Local Governing Body
Type of Referral Zoning Map Amendment

Local File Number

Name of Applicant Kingstonian Development Group, LLC
Name of Project Kingstonian Development Group, LLC
Project Location 9-21 North Front Street
Description Petition to expand the Mixed-use Overlay District to a 0.313 acre parcel

UCPB Decision

Required Modifications

See Attachments



Referral Officer

Representing the Ulster County Planning Board

Date Received 9/3/2019

Date Reviewed 9/4/2019

Form Date 9/5/2019

Status Reviewed



RECOMMENDATION

James L. Noble, Jr.
Common Council
420 Broadway
Kingston, N.Y. 12401

REFERRAL NO: 2019-159
DATE REVIEWED: 9/4/2019

Re: Kingstonian Development Group, LLC – Zoning Map Amendment

Summary

The applicant has petitioned the City of Kingston to extend the City's Mixed-Use Overlay District to a 0.313-acre parcel located to the north of its existing northern boundary at 9-21 North Front Street. The request is directly related to the applicant's current application for a mixed-use development, which includes a proposed hotel, market-rate apartments, parking garage, and retail and commercial spaces. The project also proposes to close Fair Street creating a Pedestrian Plaza at the North Front Street level and access to the parking garage below. The project will require a special permit, site plan, and lot line revision approvals from the City of Kingston's Planning Board to proceed. In addition to the zoning map change, the Common Council would also appear to need to approve the sale of the property, the closing of the Fair Street, and perhaps funding associated with the Downtown Revitalization Initiative (DRI).

The following materials were received for review:

- Referral Form
- Zoning Petition dated 6/4/19
- Memo to Eric Kitchen, Code Enforcement Officer, from Riseley and Moriello dated 8/28/19
- Verification Form
- Parcel Description
- Existing Conditions Map
- City Zoning Map
- Preliminary Site Plan

Discussion

The Ulster County Planning Board (UCPB) considered several key factors in rendering its recommendations for the proposed zoning change. This included consistency with the City's Comprehensive Plan, an analysis of the history of the Mixed-Use Overlay District including a review of the Generic Environmental Impact Statement (GEIS) and the purposes found therein, the current zoning standards for the Mixed-Use Overlay District, as well as the petition submitted by the applicant.

The UCPB also noted the history of the efforts by the City to encourage the development of the site and the current proposed use of DRI funding to encourage site development.

The UCPB's response to the rezoning proposal is contextual to the broader issues confronting the City as it considers the project. However, its focus is on the affordable housing component of the Mixed-Use Overlay District and the District's overall applicability to the entire project. In reading this response we ask all to

understand that the UCPB strongly endorses the redevelopment of this site with the caveat that the City's plans and policies have meaning heightened by the use of public lands and funds while tempered with finding solutions within a transparent discussion of the broader public benefit including the full amount of the public involvement needed to bring the project to fruition.

Consistency with the Comprehensive Plan

The City of Kingston's Comprehensive Plan, adopted March 15, 2016, has clear goals for affordable housing and for the future of the Mixed-Use Overlay District (MUOD). The two key strategies quoted below lay out a broader requirement for affordable housing city-wide coupled with the abandonment of the mixed-use overlay district.

"Strategy 1.12: Require affordable housing for any new or expanded residential building or development project. The City should consider expanding the number of projects that must provide a "fair share" of affordable housing. Currently, affordable housing is only required for projects taking advantage of the mixed-use overlay district provisions. The City could require an affordable set-aside or fee-in-lieu for any substantial new residential development and should target the goal of equitably distributing affordable housing throughout the City, but with attention to transportation access and access to services for very low-income housing or supportive housing."

"Strategy 1.1.5: Abandon Mixed-Use Overlay District in favor of City-wide standards for adaptive reuse and affordable housing... The affordability standards, which dominate the Mixed-Use District requirements, could be simplified and a standard set of rules regarding the provision of affordable housing for all multifamily residential applications in the City should be promulgated regardless of location."

The proposed expansion of the MUOD at a time when the City's Comprehensive Plan calls for it to be abandoned is highly questionable if not simply inconsistent with the Plan. The latter would seriously jeopardize approval of the proposed zoning map amendment. In addition, the Project is seeking to utilize the MUOD while proposing only market-rate apartments whereas the City's Comprehensive Plan Strategy is to require a set aside of affordable units for all multi-family housing projects, regardless of location.

Analysis of the Mixed-Use Overlay District

It is important to understand the use of overlay districts within zoning statutes. Overlay zones add regulations on top of the district(s) that they encompass. In so doing those regulations can be used to accomplish a variety of goals either through restrictions or incentives. Examples include water quality, access management, special design standards, or as in the case of Kingston, historic preservation as exemplified in the Historic Preservation Overlay District or the adaptive reuse of existing commercial and industrial buildings for housing, a portion of which is required to be affordable, as found in the MUOD. The MUOD, like other overlay districts, does not alter the underlying uses permitted in the C-2 zone except for providing for multifamily housing when associated with adaptive reuse. This is made clear in the language within the statute and reinforced by a review of the DGEIS/FEIS that again speaks to the purpose of the MUOD.

Specifically, the MUOD purpose section (§405-27.1) provides for:

A. *Purposes and principles.*

(1) The Mixed-Use Overlay Zoning Districts are intended to implement a City of Kingston Comprehensive Plan Element for the areas known as the "Stockade and Midtown Mixed Use Overlay Zoning Districts."

(2) According to the Comprehensive Plan Element, the creation of the Mixed-Use Overlay Zoning District has two underlying purposes.

- (a) The first purpose is to adaptively reuse existing commercial and industrial buildings to provide rental multifamily housing, including affordable housing, to the present and future residents of the City of Kingston.*
- (b) The second purpose is to encourage mixed-use, mixed-income, pedestrian-based neighborhoods."*

Each of two purposes above is further detailed in §405.27.1B as guidelines for affordable housing component (§247.1A(2)(a)) and the mixed-use, mixed-income, pedestrian-based neighborhoods (§427.1A(2)(b)).

Special Permitted Uses

Section 405-27.1D sets the two types of uses that are allowed in the MUOD and requires them to obtain special permits. These uses by special permit as noted below are in addition to what is already allowed in the underlying C-2 District:

- "(1) The conversion of existing commercial or industrial buildings, or sections of them, into residential apartments and work/live spaces of which some will be dedicated as affordable housing. Such uses will be subjected to § 405-30, Site development plan approval.*
- (2) Site and building enhancements that promote a mixed-use, mixed-income, pedestrian-based neighborhood. Such uses will be subjected to § 405-30, Site development plan approval."*

The above special permit language in the MUOD is the only reference that the UCPB can find that alters the permitted uses in the underlying C-2 District. The C-2 District does not provide for the development of newly constructed mixed-use structures nor does it allow multifamily structures. This places the project, as proposed, in jeopardy. If the project is adaptive reuse it must comply with the affordable housing provisions. If it is not, it may very well not be allowed under either the MUOD or the C-2 District. It is also noted that § 405-7F additionally provides for "Any uses not specifically permitted shall be deemed to be prohibited." This limits the ability for interpretation as to the plain reading of the MUOD provisions.

Proposed Map Amendment

Read in the context above, the existing boundaries of the Stockade District portion of the Mixed-Use Overlay District were thoughtfully drawn and aligned with the potential of the properties within it to become a mixed-use project. The proposed map amendment would bring into the MUOD an existing 1750-square foot single-story former diner and associated parking lot. There is little ability of this existing structure to be adaptively reutilized as provided for in the statute. Its exclusion was and should continue to be the thoughtful result of the framers of the MUOD and its associated boundaries.

Recommendations

Provision of Affordable Housing

The availability of affordable housing is not just a local issue, but an issue at the national, state, and regional scales. The City's Comprehensive Plan and Mixed-Use Overlay District make plain the City's recognition of the local problem and provide a strategy to meet it.

The applicant's petition to expand the MUOD conflicts with the City's Comprehensive Plan proposal to abandon the MUOD and in so doing create a city-wide affordable housing component for all multifamily developments. The UCPB strongly supports the approach of creating mixed-use affordable projects without being tied to a single district's standards.

Required Modification

As discussed above, the proposed simple map amendment raises concerns well beyond where the District boundaries are drawn. The proposed map amendment is not consistent with the purpose of the MUOD and the MUOD itself now appears inconsistent with the City's Comprehensive Plan. The

City is faced with a decision on the future of the MUOD not only from a Comprehensive Plan consistency standpoint, but also as to whether the MUOD, as written, can accommodate the project as proposed given the failure of the MUOD to encompass the construction of new development as a special permitted use. The degree to which affordable housing and mixed-income plays a role in the origin of the MUOD and the Comprehensive Plan suggests that a solution be sought that includes affordability within its provisions.

The UCPB's overarching recommendation rests on the City's own planning documents. Toward that end, we find the map amendment to be inconsistent with the purposes of the MUOD and the Comprehensive Plan and therefore it should not be implemented without clarification of the ability of the District to be used to issue special permits for new construction. Additionally, if such new construction is allowed by special permit a provision of affordable housing shall also apply.

The following is a discussion of the two alternatives that can address the UCPB required modification. The City is free to explore other options that meet the County's overarching recommendation above:

Option 1 – Follow the recommendations of the Comprehensive Plan and abandon the Mixed-Use Overlay District in favor of establishing City-wide affordable housing regulations for all multi-family development per Strategy 1.1.5. It should be noted that Strategy 1.1.3 of the Comprehensive Plan calls for only a 10% set aside for housing proposing more than 6 units contrasted against the current requirement in Mixed-Use Overlay District of 20%. The Comprehensive Plan Strategy 1.1.4 can be applied to allow mixed-uses in the C-2 Districts. The appropriate utilization of both strategies would then allow mixed-use development coupled with an affordable housing provision that meets the goals of the Comprehensive Plan and more importantly the needs of the City. The linkage between development and affordability should be strong such as the language used in the existing MUOD which states “the planning board shall deny ...”

Option 2 – Modify the Existing Mixed-Use Overlay District by specifically allowing new construction under the special use section and adding the applicability of the affordable housing provision to this use. This would meet the repeatedly stated goals of the Mixed-Use Overlay District and be consistent with Strategy 1.1.4 of the Comprehensive Plan. This is more of a “band-aid” approach to achieving the goals of the Comprehensive Plan for the more limited area of the MUOD while the City develops city-wide means to implement Strategy 1.1.5.

SEQRA

The Kingstonian Development is currently before the City of Kingston's Planning Board for a special permit, site plan review, and lot line revision review and is a Type I Action with coordinated SEQRA review. As of the date of the UCPBs September meeting, the City of Kingston Planning Board as the lead agency had not completed gathering additional information and studies from the applicant in order to render its SEQRA determination.

Required Modification

The Common Council shall not take final action on this rezoning petition until the Lead Agency has completed the SEQRA process.

Advisory Comments

The proposed expansion of the Mixed-Use Overlay District is not the only approval needed by the City of Kingston Common Council. The Project plans to show the abandonment of Fair Street as a through street. It may also be necessary for the Common Council to approve the use of DRI funds, arrangements for the parking garage, and address any proposed payment in lieu of taxes needed for the project. To date, these issues have lacked transparency and the applicant seems to be pursuing a linear approach to approvals. This results in

*2019-159 Kingstonian Development Group, LLC.
Zoning Map Amendment*

little availability of project economics beyond that provided by the applicant. While the UCPB certainly understands the ability to shield the economic discussion under SEQRA absent the need to balance environmental impacts against economic impacts, it is disquieting that there is little disclosure of the public investment needed to bring the project to fruition. Clearly, the City is privy to the "asks" that are on the table and should understand the value of the subsidies in whatever form, that will be necessary for the Project to proceed. It would be appropriate as part of the public/private partnership that this project represents that the public understand how much of a role they are being asked to play.

Reviewing Officer

A handwritten signature in blue ink, appearing to read 'R. Leibowitz', with a long horizontal line extending to the right.

Robert A. Leibowitz, AICP
Principal Planner

Cc: Gio Gagliardi, UCPB
John Bonavita-Goldman, UCPB
Suzanne Cahill, Planning Director
Elisa Tinti, City Clerk

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September 30, 2019

City of Kingston Common Council
Hon. Steven Noble, Mayor
City Hall
420 Broadway
Kingston, New York 12401

RE: Kingstonian Project: Applicant Response to Ulster
County Planning Board Recommendation

VIA E-MAIL AND REGULAR MAIL

Dear Mayor Noble and Common Council Members:

This Memorandum is submitted in response to the September 4, 2019 Recommendation of the Ulster County Planning Board ["UCPB"], same in connection with the above referenced project [copy annexed].

The UCPB operates pursuant to the statutory directives of Section 239-m of the General Municipal Law of New York State and under Section 239-d of said law, the "Powers of the board" are set forth.

This statutory construct confers circumscribed authority on the UCPB to plan and study, in pertinent part, "needs and conditions of metropolitan, regional, county and community planning in such county or counties or area covered by constituent municipalities".

However, the UCPB possesses no authority under statute, or to my knowledge, applicable case law to travel beyond its planning authority in order to micromanage rezoning of a parcel of land by the Common Council in order to read into the applicable law recitals which simply do not exist.

In this regard, Zoning Laws are in derogation of common law and as such, the meaning of terms within any Zoning Law are to be construed in a light most favorable to the landowner or applicant. Therefore, zoning restrictions are not to be extended by implication to prohibit a use and will be limited to the plain meaning of that which is clearly proscribed. [See the legal analysis set forth within my August 28, 2019 Memorandum to Mr. Eric Kitchen, Zoning Enforcement Officer, City of Kingston,

for detailed address of Zoning Law interpretation; copy provided.]

The language of Section 405-27.1 of the City of Kingston Zoning Ordinance ["Zoning Law"] reads clearly, concisely and unambiguously in permitting "site enhancements" within the Mixed Use Overlay District which includes the construction of new residential units without an affordable housing requirement. [See your writer's September 9, 2019 Memorandum to Mr. Kitchen in consideration of this issue; copy enclosed.]

The UCPB utilized its Recommendation in order to examine the City of Kingston Comprehensive Plan, while completely misreading the plain meaning of the controlling Zoning Law recitals. Moreover, the UCPB offers conclusory, speculative and generalized postulations as to what the intent of the Comprehensive Plan is in light of the Zoning Laws purported "context".

The UCPB does not know what the then constituted Common Council was thinking when Section 405-27.1 of the City of Kingston Zoning Law was adopted. Nor can the UCPB employ a crystal ball, tarot cards or a Ouija board to divine the intent of the statutory recitals beyond the plain meaning set forth within said Zoning Law.

Moreover, the Comprehensive Plan merely provides for planning recommendations and if the Common Council did not see fit to translate the Comprehensive Plan guidance to enacted law, New York State case law holds that the enacted Zoning Law always controls over a Comprehensive Plan. McGrath v. Town of North Greenbush, 254 AD2d 614 (3rd Dept., 1998), lv. to app. den. 93 NY2d 803 (1999).

The New York State Court of Appeals has considered the dichotomy between Comprehensive Plan recommendations and the effect of dispositive Zoning Law. Consequently, the City of Kingston Zoning Law is the best evidence of the city's land use policies and as such, constitutes the currently implemented Comprehensive Plan. McGrath, Supra; Tilles Investment Company v. Town of Huntington, 74 NY2d 885 (1986).

Therefore, the UCPB can wax poetic as to what it believes the Comprehensive Plan to mean from a planning perspective. However, it does not alter the fact that, in the absence of lawful and specifically enacted Zoning Law Amendments, the present Zoning Law controls over Comprehensive Plan guidance. Udell v. Haas, 21 NY2d 463 (1968); King Road Materials, Inc. v. Garagalo, 173 AD2d 931 (3rd Dept., 1991).

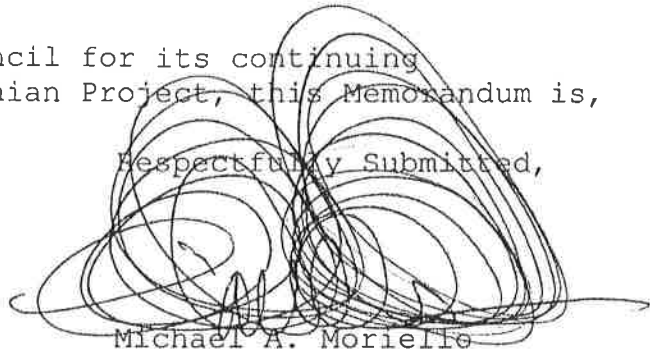
It is further submitted that the foregoing issues have been properly analyzed by the City of Kingston Zoning Enforcement Officer upon the Request for Interpretation made by Ms. Rebecca Martin, Ms. Sarah Wenk and Mr. Ted Griese; said Request being subsequently expanded by Emily Svenson, Esq. All of the respective issues have been determined wholly in my client's favor by way of written Interpretation dated September 27, 2019. [A copy of this document is annexed.]

As to the UCPB Required Modification listing "Option 1" and "Option 2" as avenues which the UCPB blithely instructs your legislative body to follow, I offer that the same are not authorized at law, belied by the facts and presumptuously authoritarian in approach. Therefore, it is my position that a majority plus one vote of the Common Council is not required to overrule the UCPB in the instant matter.

With respect to the UCPB Advisory Comments which intimate that certain project related issues have "lacked transparency" and/or shielded, "disclosure of the public investment", my client is in complete disagreement. A comprehensive coordinated SEQRA review and attendant administrative/legislative proceedings have been followed by my client, the City of Kingston and the involved agencies in multiple public forums. Accordingly, this post-hoc editorializing is both unfortunate and unbecoming of the UCPB.

Thanking the Common Council for its continuing consideration of the Kingstonian Project, this Memorandum is,

Respectfully Submitted,

A large, dense, and somewhat chaotic handwritten signature in black ink, covering the signature line and extending upwards into the text area.

Michael A. Moriello

MAM:def

Enclosures

cc: Mr. Joseph Bonura, Jr.
Mr. Brad Jordan
Mr. Patrick Page
Dennis M. Larios, PE
Dennis Doyle, AICP
Robert Leibowitz, AICP
Ms. Suzanne Cahill
Kevin Bryant, Esq.
Daniel Gartenstein, Esq.
[all via e-mail]