

Chapter 175 PND Ordinance Amendment – Statement of Justification

Introduction

FRLP believes the Town could be incentivizing better development through use of the PND, whereas the existing ordinance seems to do the opposite by piling on myriad additional rules, regulations, and steps to the rezoning and development process. In affect, these added “costs” to an applicant in terms of additional time, submission requirements, and compliance costs required by the existing PND ordinance outweigh the benefits of using the PND ordinance in lieu of a Euclidean zoning approach.

PND Ordinance/District - Overview:

The PND Ordinance is the only ordinance that requires multiple steps in the rezoning process, which include a “Concept Plan”, “Master Land Use Plan”, and a “Development Plan”. This adds 2 steps to the rezoning process. These extra review and creation requirements also each include a slew of additional requirements, most of which are not found in any other zoning ordinances.

The requirements for the Concept Plan submission would seem reasonable and be consistent with the other 175 districts provided that the Concept Plan was the actual rezoning. The Concept Plan is step 1 of 3. The requirements for a “Master Land Use Plan” alone, includes 23 submission requirements, many with multiple parts. The final required step in the PND ordinance adds a new “Development Review” process, which includes the Development Plan to be submitted after approval of the PND rezoning. This is also unique to the PND ordinance.

As it is currently written, the “Development Plan” requires an engineered preliminary plan per the chapter 148 requirements (175-37.18(A)). No other Chapter 175 zoning district adds the Chapter 148 requirements as a “requirement” of the rezoning process. Further, Section 175-37.18(D) appears to also require, “Final Plats shall be submitted...” and Section 37.18(E) than requires that those plats be recorded within 6 months of approval. While these Development Plan/Review requirements might not affect a smaller development with only one phase, they are untenable and nonsensical for any project with multiple phases and/or a longer-term build-out time horizon (i.e. over 50 units).

Comparison - MCD Ordinance/District - “Review and Creation” Process:

For comparison purposes, the most similar zoning ordinance in the Town Code is the recently enacted Mixed-Use Campus District (“MCD”) that was created for the Avtex site. The MCD ordinance was created to provide for a mix of business uses, primarily commercial and industrial, where using a Euclidean zoning approach might be unable to accomplish certain goals and objectives of the Town. The PND ordinance acts in a very similar way, and in an effort to encourage a mix of uses, except that the PND is intended primarily for a mix of residential and commercial uses. In addition, both ordinances allow an applicant some flexibility that a traditional zoning approach might prohibit.

The intent of both the PND and MCD districts is to foster and encourage a mix of uses in future Town developments. Despite having similar goals and objectives, the “review and creation” requirements for a MCD rezoning are reasonable while those for a PND are extreme. The MCD district requires a “Concept Plan” only for a rezoning and thus eliminates both the “Master Land Use Plan” and the “Development Review” processes.

The PND ordinance is the only zoning ordinance that requires more than 1 step in Chapter 175. The “Review and Creation” requirements for the MCD district are 1.5 pages long– while the “Review and Creation” requirements for the PND district are 7 pages, this section alone is longer than almost every other zoning ordinance in their entirety.

Proposed Changes:

Ideally, FRLP would prefer that the Town consider using the Concept Plan as the rezoning process and we would propose eliminating both the Master Land Use Plan and the Development Review sections completely. We would propose replacing the PND “Review and Creation” requirements with those found in the MCD Zoning District. FRLP believes that such additional regulatory requirements and multiple step processes create significant disincentives for a landowner to pursue or consider a PND rezoning.

That said, and to err on the side of pragmatism, we have not included any of these “ideally” preferred changes into the proposed amendment at this time.

The changes proposed are an best effort to minimize the number and substance of proposed changes to the greatest extent possible, while improving the functionality and reasonableness of the ordinance enough to make it a viable rezoning option for a landowner to pursue.

Conclusion:

FRLP believes that the Town’s PND ordinance could be markedly improved with several tweaks and modifications. The PND ordinance was written in a different time, and for a specific 2004 project proposal. FRLP believes that its proposed amendment would make PND a vastly more viable zoning option for any/all applicants in the future. And FRLP respectfully requests that the Town consider our proposed changes to the PND ordinance.

FRLP has never truly considered the PND ordinance as an option for our project and have only recently begun considering it based on discussions with staff. As such, we greatly appreciate the Town’s continued patience with us as we navigate these and the many additional issues facing our project and its potential development one day.

175 PND Ordinance Proposed Changes:

<u>Section:</u>	<u>Proposed Change:</u>	<u>Rationale:</u>
175-37.5 (A)	1. 90-day time window for P.C. comments. 2. Removed Council from Concept Plan process. 3. Added new language from Sketch Plan review process, per 148-305.B.2 of Town Code.	Made the process more informal and proposed a timeline for P.C. comments. Added language to make process more akin to sketch plan review process (i.e. encouraging informal discussions and initial plan feedback) while keeping with the original intent and spirit of this process. These changes are proposed as a way to make this process more palatable for future PND applicants (if any).
175-37.5 (B)	Master Land Use Plan, Changed the first sentence.	Suggested as an potential way of clarifying that a Master Land Use Plan can be submitted without going through the Concept Plan process.
175-37.5 (B)	Master Land Use Plan, Removed #12 and added this requirement as new 37.5 (C)	Proposed to move this so it will not be required for a “Development Plan” process.
175-37.5 (C)	Deleted old (C), “Demonstration of Purposes”, added TIA requirement	FRLP believes that the existing 37.5(C) is already covered in “Evaluation Criteria” (175-37.2) and elsewhere and be addressed in any proffers and/or design standards.
175-37.5 (C)	Deleted old (C) (see below) and replaced with the edited TIA language in the Town MCD District.	Used TIA requirement language from Town Code Section 175-33 for MCD District requirement.
175-37.6 (F) 4 (d)	HOA and Open Space: Added “having maintenance responsibility over”.	
175-37.11 (C)	Clean-Up	More closely aligns with the intent, rational, and purposes of the PND ordinance.
175-37.13 (A)1 & (B)1	Parking requirements	Applicant’s should not be “penalized” for applying for PND – i.e. proposed to align these requirements with their comparable residential districts in 175.
175-37.18 (A)	Eliminated tie in to 148-1020 requirements	This process will be required during the subdivision process – it should not be required as a part of rezoning process.
175-37.18 (A) 1	Added requirements from “Master Land Use Plan”	If appropriate/needed such requirements could be more tenably addressed at this juncture in the process.
175-37.18 (D)	Removed “Final Plats” requirement from zoning ordinance.	Required per Chapter 148.

Section 175-37.5(C), “Demonstration of Purposes”, states, “The purposes shall be demonstrated in each of the components as follows:” It proceeds to list 5 separate “components” which have a combined 25 “sub-components”. A literal reading of this requirement is that the Applicant will need to demonstrate the nine (9) purposes of the ordinance (i.e. 175-37.1) in each of the twenty-five (25) subcomponents listed. In one brief sentence, with 12 words, the Town has asked two hundred and twenty-five (225) questions. Best case, the question could be answered by demonstrating the 9 purposes in the 5 main components, which is still 40 questions with multiple parts each.

Additional Insight on Regulatory “Creep”:

Philip Howard, *Six Presidents have failed to cut red tape, here’s how Trump could succeed*, The Washington Post, December 13, 2016

https://www.washingtonpost.com/opinions/six-presidents-have-failed-to-cut-red-tape-heres-how-trump-could-succeed/2016/12/13/d8b4a9ae-bf1d-11e6-94ac-3d324840106c_story.html?hpid=hp_no-name_opinion-card-c%3Ahomepage%2Fstory&utm_term=.53d49c9efca0