

ORDINANCE 24-05

AN ORDINANCE EXTENDING THE MORATORIUM ON DEVELOPMENT APPLICATIONS

WHEREAS, the General Assembly has, through the Frederica Town Charter, granted Town Council home rule authority, particularly with regard to planning and zoning decisions; and

WHEREAS, the Mayor and Council of the Town of Frederica is entrusted with ensuring the harmonious development of the Town of Frederica and with preserving, protecting and enhancing the present and future health, safety, order, convenience, prosperity, and general welfare of the citizens of the Town; and

WHEREAS, in an effort to promote the above-referenced public policies, the Mayor and Council requires additional time to research and implement amendments to its zoning ordinance and/or adoption of new standards and amendments relating to impact fees and other assessments; and

WHEREAS, in an effort to accommodate population and structural growth within the Town, Mayor and Council requires additional time to research and implement staffing, budget, and other safety and order concerns necessary to provide adequate public service resources to residents; and

WHEREAS, an extension of the temporary suspension of the acceptance of formal, Code-compliant major and minor applications is necessary and appropriate to protect the integrity of the rule making process, and is in the best interest of the Town and its residents, to allow Mayor and Council to continue to comprehensively review the Town's Code and the Town's need for increased resources to adequately accommodate growth.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL
OF THE TOWN OF FREDERICA IN COUNCIL MET:

Section 1. The Town of Frederica hereby extends the temporary suspension of the process of accepting and acting upon Code-compliant applications for subdivisions, site plans, new construction, major alterations, changes in use, and

all other development permissions, requests, and applications (moratorium) to terminate 90 days after the adoption of this Ordinance.

The following situations are exempt from the provisions of this Ordinance:

1. Situations which threaten health, safety and welfare;
2. Customary extensions, projections, and accessory uses, such as sheds, porches, garages, for existing single-family homes;
3. Additions to existing single-family homes, as long as the addition conforms to the prevailing setbacks and bulk standards found in the neighborhood;
4. New single family, stick built homes constructed or placed on existing lots, provided that:
 - a. the new home conforms to the prevailing setbacks and bulk standards found in the neighborhood;
 - b. the property owner neither owns, nor has control over, any lot within 1000 feet of the property lines of the lot upon which the home will be constructed or placed; and
 - c. the lot was recorded prior to the effective date of this Ordinance.
5. Structures constructed by governmental agencies or utility providers that are deemed necessary to assure the provision of adequate and uninterrupted public services or utilities to the community.

Section 2. Severability. The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not a or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Section 3. Effective date. This Act shall become effective thirty days after adoption.

ORDAINED AND ENACTED INTO THE LAW by a majority vote of the Council Members present at a regular session of Frederica Town Council, Delaware on the 18th day of December, 2024.

First Reading: December 4, 2024

Public Hearing and Second Reading: December 18, 2024

Published: January 18, 2025



William C. Glanden,
Mayor

I do hereby certify that the foregoing is a true and correct copy of the Ordinance passed by the Town Council at its meeting on December 18, 2024 at which meeting a quorum was present and voting throughout that the same is still in full force and effect.



Council Secretary

Synopsis:

This Ordinance extends the Moratorium against the acceptance of development applications during a specified period of time during which ongoing research and revisions to the Code and Land Development Ordinance, and other public safety concerns are studied and considered.

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is made and entered into this 20TH day of MARCH, A.D. 2024, by and between JMER PROPERTIES, LLC, a Delaware limited liability company (hereinafter referred to as the “Developer”), and THE TOWN OF FREDERICA, a municipal corporation of the State of Delaware (hereinafter referred to as the “Town”).

WITNESSETH:

WHEREAS, on or about October 14, 2021, the Developer and the Town entered into that certain Development Agreement (the “Agreement”), providing for certain rights and obligations of the parties relative to the development of that certain real property located within the territorial limits of the Town, known as the “Asbury Square Shopping Center”, more particularly identified as Tax Parcels #05-08-141.00-01-02.00-000, #05-08-141.00-01-05.00-000, and #05-08-141.00-01-08.00-000 (the “Project”); and

WHEREAS, the Agreement requires the Developer to post and maintain a performance bond in the amount of \$1,242,754.48 (the “Bond”) in order to secure the Developer’s obligation to construct and install certain infrastructure improvements for the Project in a good and workmanlike manner, including but not limited to certain earthwork, erosion and sediment control facilities, storm water management ponds, storm sewer improvements, public water service utility facilities, paving and concrete improvements, and landscaping (collectively, the “Bonded Improvements”); and

WHEREAS, paragraph 6 of the Agreement provides a mechanism for reduction of the Bond, following the Developer’s satisfactory construction and installation of a substantial portion of the Bonded Improvements; and

WHEREAS, paragraph 6(E) of the Agreement limits the amount of any and all bond reductions to no more than seventy percent (70%) of the total amount of the Bond, so that the minimum required amount of the Bond shall never be reduced below thirty percent (30%) of the value of the work required to construct and install the Bonded Improvements; and

WHEREAS, the Developer has satisfactorily completed all of the Bonded Improvements except for the completion and acceptance of as-built drawings and the furnishing and installation of approximately \$48,250.00 worth of landscaping improvements (the “Landscaping Improvements”); and

WHEREAS, the Town has previously agreed that installation of the Landscaping Improvements for the Project may proceed in phases, as each pad site comprising the Project is constructed (rather than requiring the Developer to install all of the Landscaping Improvements,

only to have said Landscaping Improvements destroyed or compromised as pad sites are developed; and

WHEREAS, requiring the Developer to continue maintaining a Bond in an amount no less than thirty percent (30%) of the value of the work required to construct and install the Bonded Improvements would require the Developer to maintain a continuing Bond in the amount of \$372,826.34 – an amount which is more than seven times (7X) the value of the Landscaping Improvements remaining to be installed (\$48,250.00); and

WHEREAS, under the unique circumstances here encountered, it appears reasonable to consider a reduction of the minimum required Developer's Bond since the constructed roadways, curbs, sidewalks, and stormwater management facilities will remain the responsibility of Asbury Square Maintenance Corporation in perpetuity;

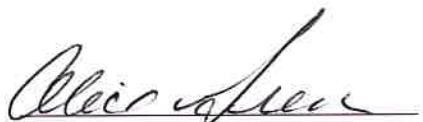
NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Developer do hereby agree as follows:

1. Notwithstanding anything in the Agreement to the contrary, the required amount of the Developer's Bond shall be and is hereby reduced to One Hundred Thousand Dollars (\$100,000.00), representing more than 200% of the value of the Landscaping Improvements yet to be installed for the Project, pending the satisfactory installation, inspection, and approval of the Landscaping Improvements.

2. Except as modified by this Amendment, all of the terms and conditions of the Agreement between the Developer and the Town remain unchanged and are hereby ratified and affirmed.

IN WITNESS WHEREOF, intending to be legally bound, the Developer and the Town have hereunto set their hands and seals the day and year first above written.

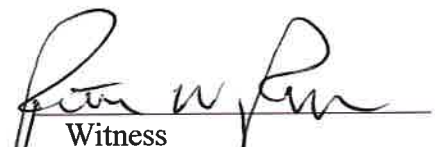
Signed, Sealed & Delivered
In the Presence of:


Witness

The Developer:
JMER Properties, LLC

BY:  (SEAL)
John W. Pardee
Managing Member

The Town:
Town of Frederica, Delaware


Witness

BY:  (SEAL)
William Glandon, Mayor