

MEMORANDUM

November 27, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney *JZ*

SUBJECT: ZTA 13-04, Zoning Ordinance – Revised and District Map Amendment G-956
Worksession #12 – Issues raised in November Council Public Hearings

This memorandum responds to the latest testimony concerning the proposed District Map Amendment (DMA) and Zoning Ordinance Rewrite. Map issues are discussed first, followed by comments on the text. Issues raised concerning MPDU incentives are listed but are fully discussed in an attached memorandum from Senior Legislative Analyst Linda McMillan. A large number of issues were already considered by the Committee. Where the Committee fully discussed an issue, it is listed at the end of the memorandum without additional staff comment. If testimony concerns the PHED recommended resolution of a previously discussed issue, it is treated as a new issue.

Unless the Committee requires more information, staff intends to use this memorandum for both the December 2 and December 9 PHED meetings.

1) The process for approving a District Map Amendment

The Planning Board contemplated the adoption of the District Map Amendment at the same time as the adoption of the text. This process would allow for complementary revision to either the text or the map. Testimony recommended approval of the zoning text, holding another public hearing and then considering approval of the District Map Amendment. Other testimony recommended not approving any District Map Amendment.

The following presents the issues in reverse order.

Should the Council approve a District Map Amendment?

Yes, it should. At the very least, even if the Council rejects the draft Rewrite, a DMA is necessary to convert the County's official zoning map from paper to an electronic media. The current mapping system is a hand-me-down from 1927. It takes some 1,200 maps to describe zoning in the County. Numerous properties are on the edge of a map, making it necessary to look at 2 or more maps to be certain of the zoning. There are only 3 official copies of the maps (at the Planning Department,

Department of Permitting Services, and the Board of Appeals). Residents must go to these locations to see the official maps. The original set of maps was printed on canvas so that it would not deteriorate over time. For the past 20 years, the production of canvas used for maps has been discontinued. Since then, paper maps, which do not hold up well to long-term public use, have been used when zoning changes are made. In short, the paper maps are inaccessible, hard to use for consumers, and costly to maintain. A zoning map available on the web is accessible, adjustable to any location, scalable, and cheaper to maintain. Paper reproduction and distribution are not needed, nor is storage space at information counters.

Assuming the Council does approve a version of the proposed text and repeals the current code without retaining all of the current zones, a DMA is necessary. It is impossible to implement zoning regulations when the zone on the map has no corresponding rules in the code.

If the Council retains the current zones in its approval of the new code (Chapter 9 of the proposed code already includes some floating zones for retention), a DMA is only necessary for the purpose of converting paper maps to digital maps. The newer zones could be applied over time through master plans and subsequent sectional map amendments or just by a series of sectional map amendments.

How long would it take to apply the CR family of zones through the recommendations of master plans, and what would happen during that period?

The Planning Board Chair has estimated that it will take 30 years; this estimate is disputed by Councilmember Elrich. Mr. Elrich provided alternative processes (attached to this memorandum). He believes that the Council could complete its work on a “staged DMA” by November 1, 2014. During that period in which the new zones would not completely cover all current zones, the Council could:

- (a) adopt a new ordinance with a provision for more retained zones (making the retained zone provisions significantly longer, almost like 2 separate ordinances);
or
- (b) adopt a new ordinance and retain the current ordinance to the extent that “old” zones are still on the zoning map (requiring DPS and Planning Staff to be expert in 2 ordinances).

Both options have problems. Option (a) could result in a much longer new ordinance. The total number of allowable zones would increase. The Council would need to make decisions on allowable land uses because the current categorization of land uses is different than in the proposed code. The elegance of a single land use table may be lost.

With option (b), the thought of having 2 ordinances in place is fraught with peril. It is difficult enough for zoning users to be experts in one zoning ordinance. Using 2 ordinances would likely result in administrative errors. Councilmember Elrich believes the minimal time period that both codes would be effective makes this a non-issue.

The approval of a DMA (either to approve current zoning or to apply new non-residential zones) need not be coterminous with the approval of the Zoning Ordinance Rewrite. The effective date of the Zoning code could be whenever a DMA becomes effective.

Councilmembers Elrich and Floreen both indicated to staff their support for delaying the approval of a DMA by 6 months (or more). The Council could approve the Rewrite with an appropriate effective date provision (effective with the approval of the DMA), hold another public hearing on the map, amend the map as it sees appropriate, and thereafter approve the map. In this process, the Council would be limited in the zones it could apply in the DMA to the zones established or retained in the new code.

2) Retain zones

All non-residential zones

CBD and TSR zones

C1 – C5 zones

Building height too high

Residential addition undesirable

A number of people testified in support of retaining current non-residential zones. From the side of residents, it would retain all binding elements made in the course of local map amendments. To developers, it would delay the use of new zones. Councilmember Elrich addressed retaining more zones in the attached paper. The option could be accomplished by a vast increase to the size of Article 9, which already retains a number of floating zones. Land use tables would be unique for each zone. The development and design standards in the new code would not apply to retained zones. Currently, the parking standards relate to the new proposed land use categories. It would require work to figure out how the new parking rates would apply.

Positive attributes

- Binding elements from LMA approvals would have full force and effect. (See the section of this memorandum concerning grandfathering to consider an alternative means of accomplishing this attribute.)
- There would be no translation problems.
- The expansion of housing options would be removed.

Negative attributes

- The concept of mixed-use (housing with non-residential uses) in commercial areas would be postponed.
- The concept of simplifying the ordinance (reducing the number of zones and the number of processes and a single land use table) would be postponed.
- Staff would be responsible for knowing how retained zones and the new code works.

Currently, the CRN, CRT, and CR zones can only be applied when specifically recommended by an approved and adopted master or sector plan, and only by sectional map amendment.¹ This limitation on applying these zones is nowhere to be found in ZTA 13-04. The CR, CRN, and CRT zones would be used to replace: C-T, C-4, HM, RMX, MXTC, TOMX, TMX-2, TSR, TSM, MXN, MXPD and CBD zones. The family of CR zones would also substantially replace: O-M, C-1, and C-2 zones. In the absence of replacing these zones with a new zone on the County's zoning maps, all of these zones would have to be retained, along with their standards, definitions, land uses, and procedures.

¹ Sec. 59-C-15.13.

3) Zoning conversion issues

➤ C-1 zone

The Planning Board proposed that C-1 zoning be translated into several different zones, with maximum building height in excess of current provisions and greater use flexibility. Testimony was received to retain the zone, but this could be resolved by a less generous mapping conversion.

The C-1 zone allows a height of 45 feet along any side of a property, as long as the average height is 30 feet. The compatibility standards in the draft would require the height of the building along the property abutting an R-60 or R-90 zone to be 35 feet and only increase 1 foot in height for every additional foot of setback – up to 45 feet. Planning Staff discussed this conversion philosophy with the Committee; because the C-1 zone did allow a 45 foot height under certain circumstances, a majority of the Committee was satisfied with the change to 45 feet given that the proposed compatibility standards apply to all non-residential zones. The change from an average of 30 feet, and C-1 to NR with a height of 45 feet, was made by the Planning Board and was part of the District Map Amendment sent to the Council on May 2, 2013.

In light of the testimony regarding the proposed conversion, Planning Staff recommends the following modifications to conversion:

Convert all C-1 to NR with a height of 35 feet. Height is no higher than the lowest residential height, and the limited amount of residential use allowed must be developed as part of a commercial project, thereby removing any potential for commercial development to be replaced with only residential development. This is stricter than the current code, where a special exception approval can be obtained to develop a C-1 property entirely as housing.

➤ **Where buildings are currently taller than the zone proposed, zone to the existing height and density.**

Even though the grandfathering provision would allow reconstruction without a time limit, some property owners do not want their zoning to imply that they need to be covered by the grandfathering clause (2 Metro Plaza in Bethesda CBD, among others). In some cases, this is an issue where the building would not be allowed under the current zoning. Staff does not recommend the suggested change; however, the Council may wish to add flexibility to the master plan recommended height limits. Below, the Planning Board suggested the concept of height averaging. That is possible with changes to the definition of building height; currently it would only be measured from the front of the building. Where there are lots that slope to the rear of the property, average building height may result in a lower building.

The Planning Board recommendation for mapping was to map to the heights and densities specified in the current zoning ordinance. The recommendation from the PHED Committee is to map to the heights and densities specified in the master plan. In mapping to the master plan, there are several buildings whose height is taller than the master plan recommendation. These approvals occurred for a variety of reasons – mainly to ensure building design that was protective of neighboring properties by allowing slightly higher heights away from neighbors and lower heights along property lines abutting shorter

structures. Text that provides a modest amount of flexibility for siting buildings may be a useful feature to consider – such as allowing the Planning Board to approve a height on a portion of a building that exceeds the zoning limit so long as the average height of the building is no greater than the maximum allowed by the mapped zone. Such an allowance would require Planning Board approval and therefore a site plan. The conditions at site plan approval could provide the details necessary for DPS enforcement.

➤ **Where binding elements limit the current zoning, zone to the binding elements.**

This is not current practice. Binding elements may be approved with less height and density than the zone, but the zone may still allow more density or height. (See the discussion of binding elements.)

Staff would have to research every LMA to discover all binding elements in the County. Binding elements can be expressed as tightly as one hundredth of an FAR. FAR increment in the CR family of zones is .25 FAR. Unless the Council changes this aspect of CR zones, binding elements cannot be matched. Testimony would recommend rounding down rather than rounding up. Rounding down would subject existing buildings to the grandfather provision in the same manner as the issue preceding this. It would take a lot of research, but it can be done if the Council wants to do so.

4) Create a new limited LMA process to correct master plan errors in zoning.

The proposed new process would be for zoning that does not implement the master plan or property that does not meet the standards of the DMA imposed zoning classification (would not meet minimum lot size). The process would have the following attributes:

- a) Limited time for filing – within 6 months of DMA;
- b) Limited fees – 50 percent of regular LMA fees;
- c) Same procedure as LMA, except Planning Board record would go directly to Council if an aggrieved party declines to ask for a Hearing Examiner review.

This is a way to avoid a local map amendment application. Although the process is quasi-judicial, the hearing at the Planning Board does not raise to the level of quasi-judicial standards (no unlimited right of cross examination). The process may create a significant short-term workload for the Planning Board, Hearing Examiner, and Council. Whenever the Hearing Examiner is involved, the rationale for reduced fees is not apparent. Staff does not recommend this proposal.

5) Create a neighborhood protection overlay zone for particular Purple Line stops.

The community asserts that it was promised that zoning increases will not be approved due to a planned Purple Line Station. An overlay zone could accomplish that objective. Overlay zones are generally established by the recommendation of the master plan.

Any zoning change requires that the Council find the change to be in the public interest. If the Council believes that it would be tempted to rezone these stops in the middle of purely residential communities, then it might want to consider the proposal.

6) Expand Open Space

In the view of one person, the Zoning Rewrite does not live up to its potential to expand green space.

It is true that open space requirements are generally reduced in the new code; however, under the current code, open space is not required to be green – it can include plazas, walks, pathways, and arcades. In addition, the draft retains the restrictions on development in the agricultural reserve (with the exception of Agricultural Education) in current code. **There are currently 35,487 acres of County owned parks (excluding the C&O Cannal and WSSC-owned open space). There are another 12,083 acres in HOA open space. Staff does not recommend changes.**

7) Ripley Street district

The Ripley Street Overlay zone allows a building up to 200 feet tall, but the proposed zoning translation only allows 145 feet.

The Ripley Street Overlay zone does allow for a height of up to 200 feet for projects that provide ground floor retail. This provision of the overlay zone has been retained and will apply to all properties within the overlay. Properties within the overlay zone were not mapped to a height of 200 feet as the overlay states; ground floor retail must be provided. Retaining this provision in the overlay still allows the additional height while respecting the intent of the overlay.

8) Funeral homes in the AR Zone

Funeral homes require access to a road with 4 travel lanes. Previously, the requirement was for access to a road with an 80-foot right-of-way without regard to the number of lanes. A property owner with an expired special exception at 14321 Comus Road would like to have the rules changed.

Under current code, special exception language for Funeral homes is:

- (6) Frontage upon and access to a street or roadway having more than one through travel lane in each direction of travel.

This has been interpreted to mean a minimum of 3 lanes where a middle turn lane exists.

9) Country Inns

Some Country Inns were approved but are not operating, although the grandfathering provision respects their approval, testimony suggested modifying the “legally existing requirement to include approved but unbuilt”. They also want increased land uses (including office and retail less than 15,000 square feet).

To ensure development plan amendments for existing Country Inns are also grandfathered, staff will modify the limited use standards as follows:

2. Use Standards ...

a. Where a Country Inn is allowed as a limited use, it must satisfy the following standards:

- i. [It] The property on which the use is located must [be legally existing] have been in the Country Inn zone and be the subject of an approved development plan or development plan amendment before {insert date of adoption}, and must [fully comply with] satisfy the [schematic] development plan and any associated binding element or covenant applicable to the property as of {insert date of adoption of the map amendment}.

The increase in uses requested as part of the Country Inn use seems intensive and is a broader change to the zone than converting the current regulations of the Country Inn zone to a conditional use.

10) Property specific issues

➤ **I-3 property in and near the autopark proposed for EOF requested GR**

The default conversion for the I-3 zone is to the EOF zone. The only property for which an I-3 did not convert to the EOF zone was so that the zone translation could accommodate the residential development approval for the site (which was approved for more than the 30% residential cap in the EOF zone). Changing this I-3 zoned property to the GR zone is a zoning change that falls outside the confines of the zoning rewrite project; however, this does not prohibit the property owner from seeking a local map amendment to another zone.

➤ **Qiagen property – (split zoned property OM and I-1 Germantown) retain height and certain uses**

The I-1 zone is being converted to the IM zone with a height limitation to 50 feet. Under the current code, height can be increased to 120 feet for the development of an employment center as long as the master plan does not prohibit such a use. In mapping the I-1 in conversions, Planning Staff originally proposed a height of 120 feet given the current code allowance. Only one master plan prohibits such a use – for these specific properties, the 50 foot height was proposed; however, during further review it became apparent that several master plans did not prohibit the development of an employment center, but contained other language that contradicts the ability to do such development. The I-1 zone was instead translated to a height of 50 feet. The Qiagen property is zoned I-1 and has a building height of 79 feet. Planning Staff recommends rezoning the property to I-M with a height of 80 feet.

➤ **Resource recovery for prior RS zoned land should be retained**

Planning Staff recommends the following:

B. Recycling Collection and Processing

1. Defined ...

2. Use Standard

Where Recycling Collection and Processing is allowed as a limited use recycling of construction and demolition debris is prohibited unless the use was lawfully existing on {date of adoption minus one}.[, and] The recycling of automobiles is also prohibited.

- **R-40 property that satisfies R-60 standards should be zoned R-60 – prohibit future duplexes**

The R-40 zone, under both the current code and the proposed draft, allows for the construction of a detached house on a lot of at least 6,000 square feet. It is not necessary to rezone property in the R-40 zone that developed according to these standards to the R-60 zone.

- **Burtonsville property (40 acres) requests high density residential**

This issue was a master plan issue and the property owner’s request was rejected. Changing the zoning on this property would violate the master plan.

- **R-60 zone in Bethesda surrounded by CR should get CR zoning**

This property was zoned TSM prior to 2005. That rezoning was discovered to be a mistake, and a corrective map amendment in 2006 rezoned the property back to R60.

- **Prohibit retail on River Road quarry site (Stoneyhurst/Quarry Springs)**

The Stoneyhurst Quarry site is 13.3 acres and is located on the north side of River Road adjacent to the Cabin John fire station. The site is zoned RMX-1/TDR-6.

Testimony suggests the unsuitability of the CRT zone for the site because: (1) the translation of 60 feet in height does not give enough height to the property to match development approvals or the master plan; and (2) the CRT zone is a mixed-use zone which is incompatible with the master plan.

- **Height**

Despite the testimony that implies a master plan recommended 220 foot height limit, the Master Plan expresses the height limit in terms of stories.² The translation philosophy for converting a Master Plan recommendation of stories into feet is to multiply the number of stories times ten and then add 10 feet (for the base). With a master plan recommendation for 5 stories, the proposed DMA recommends a height limit of 60 feet for this site. That conforms directly to the Master Plan recommendation for height. The structures currently being developed on the site are limited to four stories in height as part of the development approval.

Building heights in the zoning ordinance are measured from the grade at the base of the structure, not mean sea level as implied by testimony. A building that was given a CRT height of 225 feet would extend at least 7 stories above the rim of the crater, which would not conform to the Master Plan.³

² page 62:

“Maximum height for any portion of building to be five stories.”

³ page 61:

“To enhance compatibility, new development should maintain vistas to rock formations, maintain wide wooded buffers along the site’s edges and provide green frontage with extensive planting and streetscaping. Building roof elevations must not exceed elevation 225 feet above sea level.”

➤ **Commercial Development**

The Master Plan does not recommend commercial development on the site.⁴ However, the Master Plan specifically recommended rezoning the site from R-200 to RMX-1/TDR. The RMX-1/TDR zone is a mixed-use zone, and commercial uses are permitted. The proposed District Map Amendment recommends rezoning the property CRT with a commercial FAR of 0.25. That is the lowest possible commercial density that can be mapped in the CRT zone. The Master Plan recommendation against commercial and other non-residential uses would still be in place. Additionally, because the site is already being developed, it is extremely unlikely that the property will be redeveloped in the future.

The recommendation in testimony that the property be rezoned to R-200 would make the current development in progress non-conforming.

➤ **Rockspring Drive and Rockledge Boulevard**

This I-3 site in North Bethesda (Rock Spring area) was approved and built to 0.84 FAR, but the DMA gives only 0.75. The Master Plan states an FAR of 1.0 for this site. As a result, staff is proposing increasing FAR to 1.0 to accommodate the approved/built density.

➤ **Democracy Plaza**

This I-3 site in North Bethesda (Rock Spring area) has Master Plan height recommendation of 10 stories and a recommended FAR of 1.0. As a result, staff is proposing increasing FAR and height to match the Master Plan recommendation.

➤ **Park Potomac**

This site was approved as part of the Park Potomac development, even though it's currently in a different zone. The owners have requested that this property be converted to the same conversion as the rest of the Park Potomac site, and staff agrees that this is appropriate.

➤ **Easter Seals**

A footnote in the current zoning ordinance permits additional commercial FAR in the CBD-R1 zone for a service organization under certain circumstances. The Easter Seals site in Silver Spring meets these criteria, and therefore qualifies for the additional commercial density.

➤ **GSSC Area**

This site is the BioMed Traville property in the MXN zone. It was approved for more commercial density than the standard MXN conversion allows. Therefore, staff is proposing to increase the commercial FAR to match the approvals.

⁴ page 57:

“Zone this site RMX-1/TDR-6 to create a residential community. Housing for the elderly is a suitable special exception use for the site. Development for transportation, communication and utilities, commercial, services, cultural, entertainment and recreational, and other non-residential uses would not be appropriate and are not recommended.”

➤ **2 Bethesda Metro Center**

This CBD-3 site in the Bethesda CBD is indicated for a limit of 143 feet in the Sector Plan. However, the Plan exempts the (at the time) approved project from these requirements, and the project was built to 187 feet. Because of the Master Plan, staff believes this project is not bound by the 143 foot height limit and should be granted the 200 foot statutory height in the CBD-3 zone.

➤ **Pearl Street and Montgomery Avenue**

This C-O site in the Bethesda CBD consists of 3 parcels. Two of the parcels were already zoned C-O at the time of the Sector Plan. The third was rezoned during the Plan. The Sector Plan recommends the density be limited to 1.5 FAR. Staff feels that this limitation only applies to the rezoned parcel, and therefore the other two parcels should be given an FAR of 3.0 as requested.

➤ **The Donohoe Companies - Woodmont Central Project**

This project takes advantage of the density transfer provisions of the CBD zones to achieve the approved densities. The Planning Department recognizes the concern about properties covered by an existing density transfer agreement, but does not support mapping the density transfers in a property's zoning because it is not in keeping with the nature of a density transfer, which is a function of Planning Board approval and recorded agreements, not of the zoning. The Planning Department will draft language for the Committee's second worksession that would permit a receiving site to exceed the allowed density to the extent allowed by an existing density transfer agreement, and prohibit a sending site from achieving the allowed density to the extent prohibited by a density transfer agreement.

11) Mapping corrections:

- **Park Potomac.** One parcel separated from the Park Potomac site by a wide right-of-way was inadvertently omitted from a change made (to match development approvals) in the last batch edit.
- **Bonifont and Dixon.** This parcel should have been given a higher commercial FAR in an earlier round of batch edits.
- **Park Potomac.** In the last batch edit, the DMA was changed to reflect development approvals. Specifically, the owners requested a commercial FAR of 0.5 and a residential FAR of 0.75. These were both granted, along with an overall FAR of 1.5. The issue, of course, is that 0.5 and 0.75 add up to only 1.25, not 1.5. This issue has been discussed with the owners, and they agree that the overall FAR should be 1.25.
- **Damascus Blvd and Woodfield Rd.** This parcel in Damascus was given too much commercial FAR in the original DMA. The Master Plan was somewhat vague about where the additional commercial FAR was appropriate, but upon further review, staff has determined that this property should not have gotten the additional FAR.
- **Cabin Branch.** In the initial DMA, a small sliver of this parcel was omitted from the TDR overlay zone. This change moves the boundary to the correct location.
- **Damascus Town Center.** In the initial DMA, a portion of the MXTC zoned area in the Damascus Town Center area was given a residential translation of 0.5 FAR. However, the Master Plan allows a density of 20 dwelling units per acre. This would not be achievable with a

mix of unit types at 0.5 FAR, so staff recommends increasing the residential FAR to 1.0. A commensurate increase of 0.5 FAR would put the overall FAR at 1.5.

- **Damascus Town Center.** In the initial DMA, a portion of the MXTC zoned area in the Damascus Town Center area was given a residential translation of 0.5 FAR. However, the Master Plan allows a density of 15 dwelling units per acre in this area. This would not be achievable with a mix of unit types at 0.5 FAR, so staff recommends increasing the residential FAR to 0.75. A commensurate increase of 0.25 FAR would put the overall FAR at 1.75.
- **Shady Grove Sector Plan Area.** There is one area that is in the TOMX-2 area, which the Sector Plan specifically calls out as inappropriate for residential uses. Staff had initially proposed that this site be converted to GR instead of the standard CRT. However, both GR and CRT allow residential uses, and the CRT uses better match the currently permitted uses. For that reason, staff is recommending that this site be converted to CRT instead of GR.
- **There are 20 proposed changes** to the RMX/TDR, TOMX-2/TDR, and MXTC/TDR zones to incorporate changes as a result of clarifying the TDR densities associated with these properties.

12) Other issues concerning zoning maps

Some testimony indicated a desire to have split zoned property rezoned to one zone; this would entail a conversion process that Planning Staff have not considered as part of this DMA.

8.5.2. Newspaper notice- Staff recommends splitting the noticing requirements for sectional map amendments and ZTAs. ZTA newspaper ads should provide a summary of the proposed amendment as required by the current code.

Staff recommends requiring physical copies of the electronic zoning map for DPS, Board of Appeals, and the Planning Staff when it is first approved and for every Council-approved zoning change thereafter. These copies will allow the detection of any tampering with the online maps.

Staff recommends adding zoning history to official zoning maps. This history exists on the current paper maps and should be part of the electronic maps for the convenience of users.

ALERT - The proposed Rewrite would change the zoning on rights-of way. Currently, rights-of-way are zoned to the least intensive zone of the properties on either side of the right-of-way. The proposed code would apply the zone on each side of the street to the mid-point of the right-of-way. There has been no testimony on this point. Staff has not raised this point to the Council in any prior memorandum.

This new rule would increase allowable density to the extent of a property's right-of-way dedication when the zoning on the opposite side of a street is different. There are Court cases that found that zoning cannot be withheld for the purpose of reducing the future cost of right-of-way to the County.⁵ Extending zoning to the middle of the street is in line with that case law, but there are no cases directly on point.

⁵ Hoyert v. Board of County Comm'rs, 262 Md. 667 (1971).

13) Disabled Persons definition different than Federal ADA definition

Federal laws define a person with a disability as:

Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

The proposed code retained the definition of disabled person in the current ordinance:

A person who is determined by a qualified medical authority to have a physical or mental impairment that: is expected to be of long, continued and indefinite duration; substantially impedes the ability to live independently; or is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

The federal definition does not require a determination by a qualified medical authority. The federal definition also allows people regarded as having an impairment to be considered disabled. The term “disabled person” is only used 2 places in the code: 1) to allow a group home, and 2) to allow access to accommodations that project into otherwise required setbacks.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. The definition is applied to group homes in which disabled persons are treated more favorably than non-disabled persons. (Only 5 unrelated non-disabled individuals may live together, but 8 disabled unrelated persons may live together.) The ability to build ramps and other access for disabled persons is also more favorable than for able-bodied persons.

Staff recommendation: Replace the proposed definition with the federal definition.

14) Land uses.

➤ Research and Development

One of the limited use standards for Research and Development limits the amount of GFA devoted to assembly, packaging, and servicing of resultant products to 30%. This is a footnote in the current code for other zones being translated into EOF. Under the Medical/Scientific Manufacturing and Production use, a permitted use in the EOF zone, these activities are allowed without the restriction on GFA. Testimony suggests adding language to the Research and Development use that the GFA is not restricted if the activities are part of the Medical/Scientific Manufacturing and Production use. This appears unnecessary, as the definition of Medical/Scientific Manufacturing and Production clearly allows these functions and is a permitted use in the zone.

➤ Storage facilities

Similar to the concern noted for Research and Development – storage facilities are limited in the EOF zone; however, storage of materials as part of a Medical/Scientific Manufacturing and Production use is allowed under the definition of the use and does not require a separate primary use to allow the ancillary storage of materials for Medical/Scientific Manufacturing and Production.

➤ **Office uses**

Office floor area is limited under the IM zone; currently, under the I-1 zone it is not. The existing office GFA will be grandfathered; the new building being planned is almost exclusively on the OM portion of the property and will therefore be allowed office as a permitted use.

➤ **Lawn care businesses**

Lawn care is allowed as a home occupation under the following conditions:

The use must be conducted within the dwelling unit or any accessory building and not in any open yard area, except for the loading and unloading of tools and equipment associated with a lawn maintenance service from not more than 2 single axle trailers or trucks. The use must be subordinate to the use of the dwelling for residential purposes and require no external modifications that detract from the residential appearance of the dwelling unit.

Typically, this is a registered home occupation under DPS regulations.⁶ The adequate enforcement of these provisions was raised as a problem. Testimony included the following comments:

Although currently considered a “registered home occupation” loosely regulated by DPS, these businesses should be specifically itemized as a use with standards. Lawn care operations are no longer a teen with a lawn mower. These businesses have multiple large trucks, equipment storage problems and often accumulate vegetative waste. Homes operating lawn care businesses can be very unsightly, disruptive to neighbors, and deserve a use category of their own. Emphasis on the need to meet residential standards is critical.

Staff would recommend a separate lawn care business line in the land use table so that it can be listed as a limited use with the conditions currently required for registration in residential zones.

➤ **Bed and Breakfast**

Testimony recommended requiring DHCA to inspect any Bed & Breakfast on a regular basis to insure that adequate living space is provided and maintained. Staff asked DHCA to respond. The Director does not have any knowledge of a problem requiring additional licensing and regulation and does not believe DHCA should be given this additional task.

⁶ LAWN MAINTENANCE SERVICE AS A REGISTERED HOME OCCUPATION (2/1/10)

The purpose of this regulation establishing the Lawn Maintenance Service is to allow small-scale lawn care operators as home based businesses permitted in residentially zoned areas. Lawn maintenance service is the business of cutting grass, raking leaves, snow removal and other activities associated with maintaining a yard. The use is regulated by the provisions of a registered home occupation.

The Lawn Maintenance Service must conform to the regulations of a Registered Home Occupation as stated in Section 59-A-6.1 of the Montgomery County Zoning Ordinance, which enforces the following instructions:

1. All storage and maintenance of tools and equipment must be inside the dwelling or existing accessory structure.
2. There are limitations on the number of commercial vehicles that can be parked at the property depending on the zone where the property is located.
3. No more than one (1) non-residential employee can be at the property for any length of time during a 24-hour day.
4. Employees are prohibited from using the property as a staging area for carpooling or picking up tools and equipment.
5. All lawn maintenance tools and equipment must be what is typically used for residential purposes.

➤ **Chickens – allowed as pets without restrictions**⁷

The Committee majority (Councilmember Elrich dissenting) recommended retaining the exclusion for pets. Whether an animal is a pet or not depends upon the relationship of the residents to the animal. This loophole could render the Committee recommendation on the setback for shelter meaningless. Those who testified in favor of chickens noted that their chickens could be pets. Those who testified against chickens opposed allowing chickens as pets.

Dr. Tillman offered the following on the “pet” question:

Unless one can verify where these birds come from and that they are healthy and have not been exposed to infected birds or droppings, whether poultry are for eggs/food or just as pets does not reduce the risk of salmonella to humans. If these poultry are properly handled from initial source and throughout ownership, the risks are reduced but I am unaware of safety inspections and tracking with strong consumer education to make this proposal a viable option.

There was a significant amount of testimony disputing the negative health effects of live chickens.⁹ Staff will not offer an independent judgment concerning the conflicting testimony. Staff does note that many jurisdictions are approving more lenient laws than the County’s law.

If the Council wants to keep a chicken coop 100 feet from a neighbor’s house, the provision for “pets” should be removed, although it is contained in the current code. The Council could, in the alternative, reduce setbacks from neighboring property owners below 100 feet.

➤ **Rabbits – allow more than 8 on any on lot**¹⁰

Only one person testified concerning rabbits. The complaint was that the maximum number of allowed rabbits (8) would be too few for breeding purposes. Staff has no opinion on changing the maximum number of allowed rabbits.

⁷ Animal Husbandry

Defined

Animal Husbandry means the practice of raising hens, ducks, miniature goats, rabbits, or bees.

Use Standards

Where Animal Husbandry is allowed as a limited use, it must satisfy the following standards:

Any accessory structure used to shelter hens, ducks, miniature goats, or rabbits must be set back a minimum of 25 feet from any lot line and 100 feet from a dwelling on another lot, unless the structure is used for a household pet.

Any accessory structure used to shelter hens, ducks, miniature goats, or rabbits must have a solid roof.

If hens, ducks, miniature goats, or rabbits are raised, the lot area behind the rear building line must be fenced.

One miniature goat may be kept for every 2,000 square feet of lot area and one hen, duck, or rabbit may be kept for every 1,000 square feet of lot area. A combined total of 8 animals is allowed per lot. When calculating the number of animals allowed per lot, the square footage designated for one animal cannot be used to satisfy the square footage requirement of another animal.

Roosters are prohibited.

In the CRN, CRT, CR, GR, NR, LSC, EOF, IL, IM, and IH zones, only bees are allowed.

⁹ A deep emotional attachment to chickens was also expressed in testimony. Staff notes that there was no testimony concerning any emotional attachment to land use attorneys, yet attorneys are allowed within 100 feet of neighboring houses.

¹⁰ Ibid.

Seattle limits single-family residential property to 3 small animals of any type. “An overabundance of animals in a residential area may adversely impact property and citizens alike.”¹¹ In Westchester County, New York, 24 small animals are allowed on minimum 8,500 square foot lots.

The Town of Hempstead, NY, Building Zone Ordinance states that in any use district, no premises may be used or occupied and no structure may be erected or maintained for the harboring of pigeons, poultry, fowls, ducks, geese, swine, goats, sheep, lambs, horses, ponies, donkeys, snakes, cattle, monkeys, rabbits, chinchillas, minks, skunks, or foxes, except when permitted as a special exception by the Board of Appeals.¹² This ordinance was upheld.¹³

15) AR zone issues

Opposition to Ag tourism/education addition without further conversation

Additional requests:

Weddings at wineries

Unlimited use of off-site produce for accessory agricultural production

Landscape contractors

More off-site produce allowed at farms markets

Allow agricultural vending at more locations (no minimum lot size – allow when abutting any 2 lane road (4 lanes now required))

Staff asked for the Executive’s recommendation on these Agricultural zone issues and has not received a reply. As a general matter, the Planning Board draft made only minor changes to the land uses in low density zones; amending the Agricultural zone as requested would mean more than minor amendments.

There has been a reoccurring issue concerning the legality or illegality of Calleva Farm’s operation. Calleva states their mission as primarily education. Based on Calleva Farm’s website, staff suspects that the vast majority of the income derived from Calleva Farm is not from products produced on the farm.¹⁴

There have been no reported problems with DPS’s administration of agricultural tourism aspects; DPS has not stopped any hayride, farm tours, Halloween events, corn mazes, or any other function that is accessory to the farm. The PHED recommended changes were viewed in testimony as problematic because of the concern with educational facilities. The Council prohibited large institutional uses in the Agricultural Reserve in 2008. This would reverse that past decision. If places of worship are treated less favorably than other places of assembly, the County can expect future court claims.

¹¹ Ramm v. Seattle, 830 P.2d 395 (1992).

¹² Article 14, § G-5.0.

¹³ New York v. Bannett, 243 N.Y.S.2d 131 (1963).

¹⁴ The Calleva website provides the following information:

Calleva Farm: 19120 Martinsburg Rd. Dickerson MD 20842

Calleva Farm is a 165-acre working farm just outside of Poolesville. Using sustainable methods (no pesticides/no fertilizers), we grow produce, raise cows, pigs, chickens & turkeys for meat, pasture 20+ horses, and have 8 bee hives. We also grow enough hay to feed our animals through the winter. All of our farming is done on a small scale and is tied to our educational mission. In addition, our farm is home to:

the one and only MARKOFF'S HAUNTED FOREST,

year-round Calleva Equestrian Education Program (CEEP) – horseback riding lessons & boarding
outdoor & environmental education and teambuilding programs

In prior years, a ZTA was proposed by Calleva's representative to expand Calleva's teambuilding program with buildings and structures for rope climbing. That proposed ZTA did not get Councilmember sponsors.

Staff supports the recommendation made in testimony to not change any land uses in the Agricultural zone (remove the Agricultural Education use inserted by the Committee) and form a group of stakeholders to resolve these issues in a holistic manner; however, the issue of weddings at wineries is a current problem and can easily be addressed within wineries' currently allowed number of public events.¹⁵

16) Combination Retail

Testimony received indicated a concern that grocery stores with pharmacies could be considered combination retail and be subject to the use standards associated with this use. There was also concern in testimony about changing the size of a combination retail store from 120,000 square feet to 85,000 square feet.

Staff recommends adding to the definition of grocery store the clarification that a grocery store is not a combination retail use. The smaller square footage reflects the current trend in the combination retail store business, and was modified by the PHED Committee during earlier worksessions.

17) Small cell antenna – add special rules

Apparently there is a new small (3 foot by 2 foot) low power (5 watts or less) antenna that the telecommunication industry is going to be using to be able to accommodate increased data transmission needs. These antennas operate at much lower heights. At least one representative from Verizon thought that the new code should more clearly accommodate these new products.

Prince George's County changed their code to exclude minor antennas from the review of their Tower Commission but they did not exempt them from zoning. The text proposed by Verizon would create a separate zoning use for minor antennas, would allow the use on all residential building including single-family houses, would allow them at any height, and would allow rooftop installation to be exempt from height limits.

The following comment was received from Bob Hunnicutt, who is employed by the Tower Commission:

In any event, a three-foot by two-foot antenna is beyond "minor" and I do not see the need for such a large antenna. Attached are the specifications for the antennas Verizon Wireless is

¹⁵ Section 3.2.10. Winery

B. Use Standards

1. Where a Winery is allowed as a limited use, it must satisfy the following standards:

a. In the AR zone:

- i. A maximum of 9 days of events. These events may include weddings or any other events that require an entrance ticket or a cover charge is allowed each calendar year. Additional events require conditional use approval by the Hearing Examiner [Board of Appeals] under Section [Sec.] 8.3.1.

deploying in Prince George's and Montgomery counties, and the section from the Prince George's code with their minor antenna definition. It seems to be working there.

He recommends sending the minor antenna definition along to Cliff Royalty for consideration as a revision to 2.58E of the Code.

18) Car showrooms indoor and outdoor – allow major repair and car storage

There are 2 showroom categories -- indoor and outdoor. Light Vehicle Sales and Rental (Indoor) is a permitted use in the CR, GR, IL, and IM zones and is a limited use in the CRT zone. Light Vehicle Sales and Rental (outdoor) is a permitted use in CR, IL, and IM zones; a limited use in the CRT and GR zones; and a conditional use in the NR zone. Repair (major), where general vehicle repair and service is conducted, is a separate land use. Major repair is prohibited in the NR zone; is a conditional use in the CR, CRT, and LSC zones; and is a limited use in the GR zones. If general repair were not a separate land use, it would be an accessory use to “light vehicle sales”; most auto sales also have service facilities. Because it is a separate land use and the use would be excluded from the definition of “light vehicle sales”, it is considered under its own terms (as a conditional use) and not as an accessory land use.

The Washington Area New Automobile Dealers Association recommended allowing major repair as a permitted use whenever light vehicle sales are allowed. In their view, it is an incidental use to new sales (even if the size of the repair facility greatly exceeds the size of the showroom).

If the Council agrees with the Dealer Association on this point, the proposed draft should be amended as follows:

Light Vehicle Sales and Rental (Outdoor) [is] means the [outdoor] sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving, outside of a building. Light Vehicle Sales and Rental (Outdoor) includes the [minor] repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Outdoor) includes an accessory car wash for vehicles and equipment for sale, rent, or lease.

Vehicle storage is also something associated with outdoor vehicle sales. It too is a separate land use but the use is only for the storage of towed cars. It is not a limitation on storage for sale. The Association wanted assurance that vehicle storage for car sales is an allowed use where outdoor sales are allowed.

Additional language could be added to both Light Vehicle Sales and Rental (Indoor) and Light Vehicle Sales and Rental (Outdoor) to clarify that storage of vehicles for sale is incidental to the use.

Light Vehicle Sales and Rental (Indoor) [is] means a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes the [minor] repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes indoor storage of vehicles for sale, and an accessory car wash for vehicles and equipment for sale, rent, or lease.

Light Vehicle Sales and Rental (Outdoor) [is] means the [outdoor] sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving, outside of a building. Light Vehicle Sales and Rental (Outdoor) includes the [minor] repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Outdoor) includes outdoor storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.

19) Drive-through restaurants – remove “need” finding

The Committee recommended retaining a need requirement. A provision for a site plan finding for a drive-through was added because a restaurant drive-through would not require a special exception under the proposed code. The added provision reads:

To approve a site plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.¹⁶

A finding of neighborhood need is currently required for special exceptions for: gas station, motor car sales, vehicle rental lots, and swimming pools. A finding of County need is required for drive-in restaurants, funeral parlors, hotels, shooting ranges, solid waste facilities, and conference centers. Need is a tricky concept when Maryland courts have determined that it is illegal (beyond the scope of police power) to refuse zoning for the sole purpose of avoiding competition.¹⁷ A finding of need is fundamentally the economic judgment of the applicant in a free market economy. The proposed code as recommended by the Committee would retain the finding of need for those uses where a finding of need is currently required. Proof of need has been a way to avoid a perceived over-proliferation of a use.

Testimony requests that all drive-thru restaurants only be allowed as a conditional use. The Committee previously rejected this idea.

➤ Revise design guidelines

Testimony from McDonald’s suggested that the design guidelines are not appropriate. To address some of the design issues that were raised in testimony, Planning Staff recommends modifying the limited use standards below, and allowing a Drive-Thru that cannot meet the limited use standards to apply for a conditional use approval.

Sec. 3.5.14.E. Drive-Thru

1. Defined

A Drive-Thru means a facility where the customer is served while sitting in a vehicle. Drive-Thru includes drive-thru restaurants, banks, and pharmacies, but does not include Filling Station.

2. Use Standards

a. Where a Drive-Thru is allowed as a limited use, it must satisfy the following standards:

¹⁶ Section 8.3.4.E.3.

¹⁷ Aspen Hill Venture v. Montgomery County Council, 265 Md. 303 (1972).

1. A Drive-Thru, including the queuing area, must be located a minimum of 100 feet from any property in the Agricultural, Rural Residential, or Residential detached zones.
 2. A drive-thru service window, drive aisle, or queuing area located between the street and the front main wall of the main building is prohibited.
 3. A drive-thru service window, drive aisle, or stacking area may be located between the street and the side wall of the main building on a corner lot if permanently screened from any street by a minimum 53 foot high wall or fence.
 4. A conditional use application for a Drive-Thru may be filed with the Hearing Examiner if the limited use standards under Section 3.5.14.E.2.a.1 through Section 3.5.14.E.2.a.3 cannot be met.
 5. Site plan approval is required under Section 8.3.4.
- b. Where a Drive-Thru is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 8.3.1, Conditional Use, and the following standards:
1. The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads and intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.
 2. The use of the proposed location will not preempt frontage on any highway or public road that reduces the visibility and accessibility of an interior commercial area zoned or proposed for Commercial use which is oriented to the same highway or public road.
 3. Product displays, parked vehicles, and other obstructions which adversely affect visibility at intersections, or at entrances and exits to and from such use are prohibited.
 4. When a Drive-Thru occupies a corner lot, the ingress or egress driveways must be located a minimum of 20 feet from the intersection of the front and side street lines of the lot, and such driveways must not exceed 25 feet in width. In areas where no master plan of highways has been adopted, the street line must be considered to be a minimum of 60 feet from the centerline of any abutting street or highway.
 5. The Hearing Examiner must find that a need exists for the Drive-Thru due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.

Other design related standards are specified under Article 59-4. Testimony indicated that satisfying the transparency requirement for the side and rear façade may be difficult.

Planning Staff recommends exempting the rear façade transparency requirement for through lots – and specifying that the area for which the percentage transparency requirement applies is the area between 3 and 8 feet high across the façade.

20) Christmas tree sales resolution

Planning Staff recommends the following text changes to reflect the compromise:

B. Seasonal Outdoor Sales

1. Defined

Seasonal Outdoor Sales [is] means the temporary sales of seasonal farm products offered annually for a limited period of time, such as the sale of pumpkins and evergreen trees.

2. Use Standards

Where Seasonal Outdoor Sales is allowed as a limited use, it must satisfy the following standards:

- a. A temporary use permit from DPS is required. Temporary use permit duration is a maximum of 45 days. A maximum of 2 temporary permits can be issued per site annually.
- b. A plan must be submitted by the applicant demonstrating adequate vehicular circulation, parking, and queuing.
- c. Any obstruction that adversely affects visibility at an intersection or to any Seasonal Outdoor Sales driveway is prohibited.
- d. In the Agricultural, Rural Residential, Residential, LSC, and EOF zones:
 - i. The property must be vacant or used for nonresidential purposes.
 - ii. Except where Seasonal Outdoor Sales occur on the site of a Religious Assembly use, the site must front on and have access to a road built to primary or higher standards.
- e. Evergreen trees may only be sold beginning the first Saturday following Thanksgiving Day through December 24th, and are exempt from Section 3.2.12.B.2.b and Section 3.2.12.B.2.d.ii.

21) Parking

➤ **Reduction for government employees**

Currently, there is an allowance for a building with a long-term federal lease to provide less parking in the TMX-2 zone than would otherwise be required. The beneficiary of that provision requested a similar parking reduction in the new code.

Government workers are different from other employees. Employees get transit incentives and stay with their employers for long durations. If the County wants to compete for federal employees, it must allow building to provide as little parking as the Government Services Administration thinks they need.

Staff recommends modification to Section 7.2.3.H, Adjustments to Vehicle Parking, to establish the minimum parking for office space used by government tenants under a long term lease to 1.5 spaces per 1,000 square feet of office gross floor area.

➤ **Residential Parking (temporary)**

Section 7.2.5.L.6 as drafted could lead to washing and servicing heavy commercial vehicles, in the opinion of testimony received by Council. It now reads as follows:

6. Temporary parking for visitors, loading, unloading, or cleaning vehicles or trailers is permitted on any area for a maximum of 12 days per year.

Staff recommends revising the provision to guard against abuse as follows:

6. Temporary parking for visitors, loading, or unloading, [or cleaning vehicles or trailers] is permitted on any area for a maximum of 12 days per year. Temporary parking may also be permitted for cleaning vehicles and trailers if the vehicles are not heavy commercial vehicles.
7. Servicing a heavy commercial vehicle is prohibited.

22) Floating zones

Concern has been raised about the potential for floating zones to locate within established detached house neighborhoods. Councilmember Elrich addresses this issue in the attached comments (© 1-4).

To address this concern, Planning Staff recommends requiring townhouse floating zones to meet the same locational requirements as the Apartment Floating and Commercial/Residential Neighborhood Floating zones. This would require the property to front on a non-residential street, or abut or confront property in a transitional or non-residential zone. The property must also meet 6 of the 15 prerequisites. A previously approved floating zone does not qualify as one of these transitional or non-residential zones – thus avoiding the “creeping” of floating zones into established neighborhoods. In addition, the following language proposes that for property with a residential base zone, an Industrial Floating zone may only be applied for if the property abuts an existing industrial zone and meets 6 of the 15 prerequisites.

Planning Staff recommends the following changes:

Section 5.1.2. [5.1.3.] Applicability [and Approval Required]...

C. If a Floating zone is not recommended in a master plan, [prerequisites apply as follows] the following apply:...

2. Residential Base Zone

a. When requesting a Residential Detached Floating (RDF) zone [or Residential Townhouse Floating (TF) zone]for a property with a Residential base zone:

- i. [a] If [no] neither commercial uses [are requested and no] nor any increase in density above that allowed by the base zone is requested, there are no prerequisites for an application;
- ii. [b] If a commercial use or an increase in density above that allowed by the base zone is requested, the application must satisfy [at least] a minimum of 2 [of the] prerequisites for each of the [following] categories under Section 5.1.2.D.[:]

b. When requesting a[n] Townhouse Floating (TF) zone, Apartment Floating (AF) zone or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone:

- i. The property must front on a nonresidential street or must confront or abut a property that is [not] in a[n] Residential Townhouse, Residential Multi-Unit Commercial/Residential, Employment or Industrial [Agricultural, Rural Residential, or Residential Detached] zone; and
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.2.D.

- c. When requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF)[, or any Industrial Floating zone (ILF or IMF) zone] for a property with a Residential base zone:
 - i. The property must front on a nonresidential street or must confront or abut a property that is [not] in a[n] Commercial/Residential, Employment or Industrial [Agricultural, Rural Residential, or Residential]zone; and
 - ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.2.D.
- d. When requesting any Industrial Floating (IIF or IMF) zone, for a property with a Residential base zone:
 - i. The property must abut a property in an Industrial zone; and
 - ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.2.D.

These changes ensure that all but the detached house floating zone requires a location that fronts on a non-residential street, or abuts or confronts property in a transitional or non-residential zone. It does not allow a previously approved floating zone to qualify as one of these transitional or nonresidential zones – thus avoiding the “creeping” of floating zones into established neighborhoods. The changes above also limit the application for an industrial floating zone to property that abuts an existing industrial zone.

23) R-10 zones

The R-10 zone has height and open space requirements that at least one property believes are out of date to allowing smart growth. They would want the new code to relieve them of these restrictions.

The Planning Board pledged to make few changes to the residential zones. The height and open space requirements are maintained from the current ordinance with this in mind. The height of an apartment building in the R-10 zone is 100 feet, and the open space requirement is 50% of the site.

24) CR zone issues

Density transfer

Allow transfers without limits when confronting residential zones and without additional public benefit points

Prohibit density transfers in the CRN zone

The TOMX, TMX, and current CR zones do not allow the transfer of density to properties that abut or confront a residential zone. The CBD zones allow the transfer of density between adjacent parcels (separated only by a public right-of-way) regardless of whether the property is abutting or confronting a residential zone, unless the property is located in a density transfer area.

Planning staff does not recommend changing the proposed density averaging provisions to allow all current CR, TMX, TOMX, and future CR zones the ability to transfer density to a property that abuts or confronts a residential zone.

In maintaining current rights under the CBD zones, the “T” language related to zone conversion for the CBDs could add the following provision:

Section 2.1.6.A.6.b.iii.

Property within a designated central business district and located in a designated density transfer area, is exempt from Section 4.5.1.B.2.d.

Or, we can maintain the more restrictive rule moving forward, recognizing that properties developed under the current CBD zone rules are covered by the grandfathering provisions.

As for the public benefit points, these are based on the sum of the densities allowed on each property, not on the density developed on each independently. Because two non-contiguous properties are typically not allowed to develop under one sketch plan and would have to provide public benefits independently (up to 125 for large projects), the requirement for 150% reflects the increased flexibility provided to these properties. Since the current Density Transfer Areas allow the transfer of density between non-contiguous properties, staff recommends that these areas could be exempt from this provision, in keeping with the current code.

MPDU issues

15% minimum MPDU for optional method projects

Don't count any MPDU square footage against FAR

Allow height to be exceeded for all MPDUs

Grant 12 public benefit points for every 1 percent of MPDU above 15 percent

Allow development that provides at least 15% MPDUs to satisfy fewer benefit categories

Allow any incentive for MPDUs only where there is a shortage of affordable housing

MPDU issues should be address in chapter 25A as well as in the zoning code. These issues are addressed in the attached memorandum from Senior Legislative Analyst Linda McMillan (© 5 - 81).

➤ **Opposition and support for reduced set of public benefit points**

A solution that may satisfy Kensington and Takoma Park would be to only use the reduced set of points for new CR optional method projects. Property owners in CR zones object to the approval of new rules for them, too. And there are several very small properties zoned CR in Wheaton, Glenmont, and the Great Seneca Science Corridor, for example, and other areas that will be adversely affected by the reduction in benefit categories.

➤ **Opposition to increased public benefit points for larger projects**

As proposed, larger-sized projects will be required to have more amenity points. Even though approved projects would be grandfathered, the ability of those projects to amend their approved projects under current requirements would be limited to a time certain.

The advantage of the new rules is that they provide a more proportional benefit requirement where the benefits granted (increased floor area) are comparable to the public benefits required.

- **Request to clarify that the Planning Board consideration of public benefits is listed in priority order in the code. Change language to read:**

B. General Public Benefit Considerations

Granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited. In approving any incentive FAR based on the provision of public benefits, the Planning Board must consider **in priority order**:

1. the recommendations and objectives of the applicable master plan; ...

- **Require minimum retail space**

In areas where mixed-use is desired, the maximum density can only be reached by providing mixed-use. Requiring a minimum amount of retail will prevent housing if the required retail cannot be supported by the market.

- **Respect solar rights**

Respecting solar rights would mean that neighboring properties could not shade one another. It would be a major infringement of the ability to build any substantial density. The taller the building, the greater the required setback. Staff does not recommend this change at this time.

25) Grandfathering

- **Retain current binding elements where applicable**

Many floating zones approved by the Council have binding elements that limit the allowed development more than the approved zoning (e.g., lower height, greater setbacks, less floor area, increased screening). All binding elements included in a development plan or schematic development plan must be satisfied in any subsequent sketch plan approval (see 8.3.3.E.3 – page 8-24) and must be satisfied to approve a subsequent site plan.

Under the findings required for site plan approval, the proposed draft states:

To approve a site plan, the Planning Board must find that the proposed development:

- a. satisfies any previous approval that applies to the site, including any development plan in effect on {effective date minus one};

This will ensure that for any property with a development plan, site plan approval requires that the project satisfy all binding elements that apply to the site prior to adoption of the new code.

Under any other circumstance where a development does not need a sketch plan or a site plan, Staff would propose the following:

Any development allowed on land subject to the binding elements of a Council approved development plan on {effective date minus one} must satisfy those binding elements until the land is subject to a Sectional Map Amendment that implements a master plan approved after {effective date} or is rezoned by Local Map Amendment.

An alternative addition to the grandfathering provision would be to require all development on property with binding elements to go through site plan (amend the site plan applicability requirements).

➤ **Extend period in which a plan may be amended under the current code**

As drafted, the grandfathering provision would allow an existing building to be rebuilt ANY time in the future. Any approved plan may proceed to construction any time in the future, so long as the plan does not expire. Johns Hopkins, for example, may rely on its approved concept plan for the next 30 years or more. Lastly, any approved plan may be **amended** under the old code for 10 years after the effective date of the new code.

Developers with long term plans want to expand the life of the old code and their rights to get amendments under the old code for 20 to 25 years. The Barnesville School requested an unlimited ability to amend their approval for an unlimited amount of floor area. *If the Council wants to preserve all aspects of the current code for 20 years, staff does not recommend approving the new code.*

Currently, the Planning Board may grant APF approval for as long as 12 years. If the Council wanted to make some accommodation to testimony, it could make the right to amend for the same duration as the project's APF approval.

➤ **Modify the amount of floor area allowed under grandfathering**

Currently, the CR zones allow additions of 10 percent of the existing floor area up to 30,000 square feet under the land's prior zoning. The development community, pressed by gas station owners, would like to be able to expand by a minimum of 1,500 square feet of gross floor area without regard to any percentage limitation. All properties with less than 15,000 square feet of floor area would be allowed to expand by more than 10 percent.

Planning Staff suggests a compromise for very small development to "allow additions of 10% of the existing floor area up to 30,000 square feet under the land's prior zoning except for properties with 2,000 square feet or less of floor area, which may expand up to 30% of existing floor area".

➤ **For single-family zones, allow development on land that was created as part of a lot before 1958 and footprints that satisfy the new zone**

Staff agrees.

➤ **Pre-1958 Parcel**

A detached house on a parcel or part of a lot that has not changed in size or shape since June 1, 1958, exclusive of changes due to public acquisition, may be constructed under its current zoning without regard to the minimum lot width at the front lot line or may be reconstructed either on its current footprint and up to its current maximum building height or in a manner that satisfies the setback, side yard, and height requirements of its current zoning.

➤ **Retain current flexibility for property previously zoned apartment/hotel**

An apartment/hotel is any building or portion thereof originally designed for or containing individual guest rooms or suites of rooms and dwelling units, and lawfully existing before April 26, 1966. There were 2 specific requests from the owners of apartment hotel buildings: 1) allow up to 45 percent of the units to be guest rooms with special exception approval;¹⁸ and 2) allow the prior flexibility to expand up to 500 feet.¹⁹

No changes are required to accomplish these objectives. The proposed code makes hotels a permitted use in CR zones; no special exception would be required. The percentage of guest rooms is not an issue under the proposed code. The measure of density in the CR zones is floor area and not units. A 10 percent expansion of existing building would be allowed; it would not be limited to a maximum of 500 feet if allowed by the density of the current zone.

The last apartment/hotel in the County was allowed in 1966. Staff does not know if any property owner has taken advantage of this provision in the past 46 years.²⁰ Staff does not recommend this change; if new codes are in the public interest, then at some point the new code should apply. If the Council still wants these places to be allowed with a 500 square foot expansion above their allowed zoning density, staff can draft that amendment.

➤ **Respect “Remes” decision (merger of lots in common ownership to a single lot)**

The Remes decision applied the concept of merger of lots without a subdivision when lots were in common ownership and zone required zoning requirements (setback and use could not be satisfied without considering the lots as merged together into a single lot.)²¹ In the Remes case, the side yard setback was not satisfied and there was a use that was accessory to the principle dwelling (a swimming pool) on the second lot. When this occurs, the owner is barred from constructing a second house on the

¹⁸ Currently, apartment/hotels is listed in the land use table for commercial zones and CBD zones with the following footnote:

If lawfully existing prior to April 26, 1966. They shall not be regarded as nonconforming uses and may be continued, repaired, reconstructed, structurally altered or enlarged. An apartment hotel meeting the above requirements is not required to maintain any guest rooms. No more than 20 percent of the total units contained in any apartment hotel may be guest rooms, except that any apartment hotel with more than 20 percent of its units already used or being converted to guest room use on March 30, 1982, may continue to use that proportion, up to a maximum of 45 percent. After March 30, 1982, an apartment hotel may increase the number or proportion of guest rooms above 20 percent, but not above 45 percent of its total dwelling units upon approval by the board of appeals pursuant to the provisions for granting special exceptions and under the terms of the hotel-motel special exception.

¹⁹ 59-C-6.24. Existing buildings and building permits.

(a) Any building or structure for which a building permit was issued and any use which was instituted, after December 31, 1958, shall not be regarded as a nonconforming use and may be structurally altered, repaired or enlarged in conformance with the requirements of the CBD zone in which it is located, so long as it remains an otherwise lawful use as previously allowed.

* * *

(f) Notwithstanding any limitation or restriction established under subsection (a) above or under the development standards of the applicable CBD zone;

(i) An existing building may convert in whole or in part to a residential use.

(ii) Any building regulated under subsection (a) above that exceeds the development standards of the existing CBD zone may make facade improvements and expand lobby and public waiting areas so long as the gross floor area does not increase by more than 10 percent or 500 square feet, whichever is less.

(iii) Minor additions to a building may be permitted for purposes of meeting building and fire code requirements, so long as the addition is the minimum required to meet the code requirements as determined by the Director.

²⁰ More than 60 percent of the population of Maryland was born after 1966.

²¹ Remes v. Montgomery County, 387 Md. 52 (2005).

second lot. Merger is an equitable doctrine that seeks to prevent lots from being broken up in such a way as to create zoning violations. Respecting Remes would require the following change to the grandfathering provision:

Section 8.7.1.D.1.

Residential Lots and Parcels

Residential Lot

Unless adjoining lots have merged by virtue of ownership and zoning requirements, DPS may issue a building permit for a detached house on any Residential or Rural Residential zoned lot identified on a plat recorded before {effective date} without regard to the street frontage and lot size requirements of its zoning, except as provided in Section 8.7.1.D.3.b.

- **Allow reduction in the number of parking spaces for CBD approved projects as a site plan amendment only**

If the code is right sizing the number of required parking spaces, it should accept revisions to current approved plans without a burdensome process. Staff does not object to the change. The draft would be modified as follows:

The Planning Director may approve a minor amendment to an approved site plan. A minor amendment includes any change that does not increase density or height; decrease a setback abutting a detached residential use; or alter the intent, objectives, or requirements of the Planning Board in approving the site plan. A minor amendment may also be approved to reduce the approved parking to comply with Article 59-7.

- **Should pending local map amendments be grandfathered?**

Currently, the list of applications that may proceed through development does not include pending local map amendments.²² This would avoid a last-minute rush of applications. Testimony suggested allowing all pending local map amendments to proceed under the current code.

26) Create “moderately priced commercial rent areas” for neighborhood business

The County does not control rents, except for MPDUs and Workforce housing. The controls for rents are not found in the zoning ordinance; it is found in housing code. If the Council wants to pursue this idea, the basic elements should be drafted as a Bill.

27) Create enforceable deadlines in the development process

Do not re-start the clock each time a resubmission is made by the applicant

²² Application in Progress before {effective date}

Any development plan, schematic development plan, diagrammatic plan, concept plan, project plan, sketch plan, preliminary plan, record plat, site plan, special exception, variance, or building permit filed or approved before {effective date} must be reviewed under the standards and procedures of the Zoning Ordinance in effect {one day before the effective date}. The approval of any of these applications will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of the Zoning Ordinance in effect {one day before the effective date}.

Return of Fees

Allow additional fees to assure time to hearing certainty??

Staff agrees with these ideas unless the delay is due to the developer's inaction or request to postpone. Given sufficient delay, the clock should be restarted. Staff has no objections to restating deadlines to "within X days" instead of "actions no later than X days"

28) Do not decrease the role of the Board of Appeals

Staff does not believe the Board of Appeal's has been diminished. They will make the final call in any special exception that has the slightest controversy. The proposed draft allows any party of record or any aggrieved party to file an appeal of a decision by the Hearing Examiner with the Board of Appeals within 30 days of the decision. In cases where there is no opposition to the Hearing Examiner's decision, the modification allows for a more streamlined process while not prohibiting the potential for review before the Board of Appeals, if there is controversy or disagreement.

29) Limit recycling facilities to the IM zone or require recycling facilities in the IL or IM zone to be indoors

Under the current and proposed codes, recycling facilities are allowed as a permitted use in the I-1 (IM) and I-4 (IL) zones with only one restriction – that the recycling of construction debris be prohibited. This restriction has been retained. Due to the limited amount of industrial land available for such activities, and the importance of recycling for our environment, staff does not recommend added restrictions that may deter the establishment of recycling facilities in our industrial zones.

30) TDR Language

After further examination of the TDR conversion for mixed-use zones, RMX/TDR, MXTC/TDR, and TOMX/TDR, Planning Staff discovered the need to clarify TDR density calculations and language. The following text clarifies the maximum number of TDRs that may be purchased in order to increase residential density within designated TDR Overlay zones.

Div.6.3. Transferable Development Rights (TDR) Overlay

Section 6.3.1. In General...

D. Density Designation ...

2. [Commercial/Residential and Employment Zones:

a. Optional method development in a TDR Overlay zone must use TDRs. TDRs must be purchased as recommended by the master plan or, if no recommendation is made, at least 5 public benefit points must be provided through the purchase of TDRs, under [Div.] Division 6.6.

b. TDR Overlay zones are shown on the zoning map with the symbol (TDR) followed by the TDR density designation (1 through 100, including fractions), (TDR-#).]

Commercial/Residential and Employment Zones:

a. Land in a TDR Overlay zone is assigned the maximum total number of TDRs per acre that may be purchased.

b. TDR Overlay zones are shown on the zoning map with the symbol (TDR) followed by the TDR density designation in TDRs/acre (1 through 100, including fractions), (TDR-#).

E. Calculation of TDRs Required in the Rural Residential or Residential Zones ...

[Insert new F.]

F. Calculation of TDRs Required in the Commercial/Residential and Employment Zones

1. TDRs may be purchased up to the number designated on the zoning map multiplied by the gross tract area (GTA) in acres. [example: TDR-12 on 7.25 acres = 87 TDRs]
2. Each TDR purchased allows the construction of 2,400 square feet of residential density in addition to the total density and residential density mapped for the base zone. In Metro Station Policy Areas, and Transit Station Development Areas, each TDR purchased allows the construction of 4,400 square feet of residential density in addition to the total density and residential density mapped for the base zone.
3. For optional method development, the Planning Board may grant a maximum of 20 public benefit points for TDRs under Section 6.6.3.F.3.

Division 6.6.3.F.3

Replace with:

Transferable Development Right: Up to 20 points for the purchase of TDRs. Every TDR purchased is worth 1 point. If a site is within a TDR Overlay zone, TDRs may be purchased under Division 6.3.

31) Repeated testimony

- Delay/postpone DPA
- Apply CR Zones only with a specific master plan recommendation
- Remove general building from residential zones
- Prohibit or further restrict floating zones on single family zones
- Chickens are our friends
- Make drive-through restaurants a conditional use
- The number of parking spaces required is too low for car dependent suburbs
- Do not have parking minimums, at least in CR zones
- Revise Grandfather provisions
 - Extend the time allowed for amendment to plans under the new code
 - Allow the greater of a 10% addition or 1,500 square feet
- Rezone specific I-4 properties near airpark to NR (not IL)
- Retain the role of Master Plans in being a predicate to zoning
- Require conformance, not substantial conformance, to Master Plans
- Next to single-family homes do not allow a limited use in what today requires a special exception
- Rezone the two I-4 lots near the Airpark to NR

This packet also contains

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**Comments on Zoning Rewrite
For PHED Committee Discussion
From Councilmember Marc Elrich
11/25/13**

These comments reflect my observations and thinking on some of the concerns raised in the public hearing testimony on November 12th and 14th.

The District Map Amendment (DMA)

There were many people who testified about a variety of concerns with the proposed DMA. Some were concerned about the zone conversions and/or grandfathering; others requested that certain zones (commercial zones, CBDs, R-40, etc) be retained. Those testifying in opposition to adopting the proposed DMA as is and in conjunction with adopting the ZTA included lawyers, property owners, and citizen groups:

Lawyers/Professionals

- William Kominers
- Robert Dalrymple
- Heather Dlhopsky
- Steve Orens
- Jennifer Russel
- Stacy Silber
- MNCBIA
- Julie Davis

Community

- Montgomery County Civic Federation
- Chevy Chase Section III
- Woodmoor Pinecrest Citizens
- Indian Springs Community
- Chevy Chase West
- Seven Oaks Evanswood
- Neighborhood Montgomery
- Chevy Chase Village
- Greater Lyttonsville Community Coalition
- Town of Kensington
- Citizens Coordinating Committee on Friendship Heights
- Cloverly Civic Association

Property Owners

- Mid Atlantic Companies
- Montgomery Scrap
- Casey Cinner on behalf of three recycling/ excavating businesses
- Potomac Energy Holdings
- Aldon Management
- Washington Area New Automobiles Dealers Association

Given these concerns, we need further discussion of how best to implement the zoning rewrite. Here are some options I would like to explore:

1. Delay approval of the DMA to review/resolve concerns and mapping issues. The advantages would be that the DMA could be approved all at once after review, and only one ordinance would be in effect.
2. Stage the DMA by approving the mapping for zones that are being confirmed, and then proceed to an analysis of the zones recommended for conversion. This would require that, for a short time period, two ordinances would be in effect.

In either case, the DMA process should be completed by November 1, 2014.

Delaying the DMA will give us time to address three areas at issue, as reflected in the public hearing testimony:

- 1) Conversion of the Euclidean Commercial Zones
- 2) Grandfathering
- 3) Approved floating zones with binding elements that would disappear under the conversion/renaming.

Conversion of Euclidean Commercial Zones:

The C-1, C-2 and, possibly C-4, give the residents the most trouble because the proposed zone conversions (to CR, NR, or GR) introduce residential components not reviewed or discussed in their relevant master plans. Therefore, there is a conflict between the intent of master plan, which had buy-in from the community, and the proposed conversions. Their contention is that not every single piece of local-serving commercially zoned property is appropriate for mixed use development. How can we address these concerns?

Fix 1:

Retain these zones as is and add the existing ordinance text pertaining to these zones to the Rewrite, specifying that the uses in existing ordinance rule. Any site plan review process would be conducted under the new ordinance.

Fix 2:

Do a detailed analysis of the proposed conversions to determine if the conversions are appropriate. For example, how was it determined which C-1 should be a mixed use zone (CR) or neighborhood retail (NR) zone, both of which allow for residential? What is the basis for encouraging/allowing residential in all C-1 zones – are there instances where existing C-1 better suits the market and community? Have we given adequate consideration to the outcomes of converting CBD zones to CR zones in terms of the height and density transferability issues raised in testimony?

Grandfathering:

We should define the nature of the grandfathering necessary for the existing CR Zones, CBD Zones and any other optional method, such as all the floating zones, that would be necessary to offset or anticipate problems.

Planning staff could be asked to run a series of sorts on the GIS zoning layer to define how many properties are affected. This would also help with the issue of the floating zones that are converting to Euclidean zones and losing binding elements, an important issue highlighted in great detail in Pat Baptiste's testimony (see below).

Problems with Converting Floating Zones to Euclidean Zones:

Pat Baptiste's testimony describes a series of binding elements that are an integral part of the development plan for a TSM (floating zone) property abutting Chevy Chase Village to the west. In this case, the binding elements that would disappear under the proposed conversion to a CR zone include the density limit, the development and maintenance of a green buffer, requirements for a park, and building width and height limits, all of which were included in the development plan as trade-offs to offset community and public facility impacts. If we remap this and other properties from floating zones adopted through LMAs to a Euclidean zone, the binding elements will be lost.

Fix 1: Add a grandfathering clause that requires binding elements to remain in effect and identify all the cases where this situation exists.

Fix 2: Do an analysis of all the LMAs and binding elements for the properties that are having the zoning converted and amend the conversion accordingly.

Floating Zones in General

There was considerable testimony regarding the potential for allowing local map applications for non-residential floating zones in residential areas. This is a philosophical change from the current ordinance.

The vast majority of the floating zones today that can be requested in a residential area are residential in nature (and recommended more often than not in a master plan, although they don't have to be). The rewrite expands the nature of a floating zone and where it can be requested, allowing applications for mixed use, industrial and employment floating zones on land that is currently zoned residential or in the words of the rewrite on a "property with a residential base zone." The prerequisites do not provide adequate protection against the erosion of the edges of residential neighborhoods.

Non-residential buildings

There is lack of clarity on this topic despite PHED Committee efforts to deal with this issue, partly because there is a philosophical shift in the proposed zoning ordinance to define building form and use. The issue for the community seems to be the possibility of creeping commercial uses in residential areas by clearly allowing uses, previously required to be in a dwelling unit by special exception, in a non-residential building, which means that the scale of use is not limited to the size of a typical house in the neighborhood.

Planning Staff states that the proposed ordinance contains better controls to ensure that the non-residential buildings in residential zones would be more compatible. This point has not been supported very well by Planning staff. The setbacks, for instance, are not that much greater – 1.5 times the existing setbacks, e.g. 8 feet would be 12. Is that a big improvement? Maybe compared to the existing standards, but does that compensate adequately for the introduction of more non-residential uses housed in non-residential buildings with parking lots, etc.? People have long accepted the public and private permitted uses, such as schools, libraries, recreation centers, churches, etc. but do not want to see these building types extended to house other uses now limited to the predominant building type in residential neighborhoods, i.e., a detached dwelling.

As an example, compare the definition of “office” in the existing ordinance and in the rewrite. The expanded definition in the rewrite offers a greater potential for introducing non-residential uses in residential neighborhoods.

Existing Definition

Office, professional, nonresidential: An existing single-family structure used for professional office purposes by any member or members of a recognized profession, such as, but not limited to, doctors, lawyers, architects, accountants, engineers and veterinarians, but not including medical, dental or veterinarian clinics or inpatient treatment facilities. Professional offices do not include general business offices, such as the offices of insurance companies, trade associations, manufacturing companies, investment concerns, banks or real estate companies.

Proposed Definition

B. Office 1. Defined

An Office [is] means a room, set of rooms, or a building where the business of a commercial or industrial organization or of a professional person is conducted. Office includes a chancery, but does not include medical or dental services (see Section [Sec.] 3.5.7, Medical and Dental) or Veterinary Office/Hospital (see Section [Sec.] 3.5.1.C, Veterinary Office/Hospital).

How do we correct mapping when we discover “unintended consequences” after we adopt the DMA?

We need to define the appropriate correction process for the inevitable mapping issues that will arise after approval of the DMA (even after additional review and analysis). Steve Orens’ testimony suggested a Limited Local Map Amendment process; or should it be done through the Sectional Map Amendment (SMA) or Corrective Amendment process?

One final issue

I am still troubled by the fact that over the course of the last three years as we debated and adopted the CR zones we promised the communities that CR zoning would apply only where recommended by a master or sector plan. A DMA that converts existing zoning to CR zones reneges on that promise. I don’t know how we can square those two facts; however, by delaying implementation of the DMA at least we give everyone additional time to look at the conversions and let us know whether they believe the conversions are appropriate.

MEMORANDUM

November 27, 2013

TO: Planning, Housing, and Economic Development Committee
FROM: Linda McMillan, Senior Legislative Analyst 
SUBJECT: **Affordable Housing in the Zoning Re-Write**

Draft Housing Policy

The PHED Committee held worksessions on the Draft Housing Policy from January through March 2013. The Draft Housing Policy contains several action items related to the Zoning Re-Write which the PHED Committee agreed would best be addressed in the worksessions on the proposed Zoning Code. They include:

From Chapter II, *Establishing Responsive Policies and Action Plans*

- Concentrate and promote housing in high-density, mixed –use, transit-oriented areas and seek to develop new zones that allow for mixed uses, provide increased opportunities for residential development, and encourage sound infill development. (Draft Policy, page 7)
- Aid the construction of new affordable housing throughout the County by making sure the Zoning Ordinance allows for it, providing innovative financing, and including affordable housing goals in master plans. (Draft Policy, page 8)
- Reduce disincentives that limit the development of affordable dwelling units and increase incentives for the production of MPDUs above the statutory requirements. (Draft Policy page 8)
- Analyze, and if necessary, increase incentives for MPDU production in high-rise developments. (Draft Policy page 9)

- Ensure that the Zoning Ordinance facilitates adaptive reuse by providing commercial, residential and mixed-use zones that allow a mix of commercial and residential development. Evaluate and consider implementing various incentives such as waiving density restrictions, allowing reduced parking requirements, allowing mezzanines and other space to be added in the building without considering the added space as new floor area, and grandfathering-in non-conforming floor areas, setbacks, and heights. (Draft Policy page 9)
- Encourage revisions to the Zoning Ordinance that award points to adaptive reuse optional method development projects. In addition, proposals such as reduced parking requirements assist adaptive reuse efforts. Revisions will need to take care to provide neighborhood compatibility guidelines for residential infill projects. (Draft Policy page 10)
- Explore incentives, such as density bonuses, to developers who provide special needs housing. As the Zoning Ordinance is revised, make sure that all special needs housing and elderly housing continue to be available options in all locations. (Draft Policy page 13)
- Explore zoning and regulatory changes to ease approval of elderly housing development. As the Zoning Ordinance is being rewritten, make sure to retain a use that is similar to the current Special Exception for Housing and Related Facilities for Senior Adults and Persons with Disabilities. Develop standard compatibility criteria for elderly housing and study ways to make the special exception approval process more cost effective and responsive. (Draft Policy page 14)
- During the Zoning Ordinance Revision process, evaluate the Zoning Ordinance and other development regulations to make sure they reflect the goals of providing housing near transit, jobs, and services. (Draft Policy page 19)
- Consider incentives (for providing more than the minimum MPDUs) such as increased heights, additional density, and waiver of transportation and school construction impact taxes, fees from the Washington Suburban Sanitary Commission (WSSC), and other fees and taxes that contribute to the increased costs of developing affordable housing. (Draft Policy page 20).
- Assess the effect on affordable housing of converting areas from the current high-density zones such as the Central Business District and Transit Station zones, to new zones under consideration or revisions being contemplated through the Zoning Ordinance revision process. Make sure these changes provide incentives for providing housing, and especially affordable housing, in transit-oriented areas. (Draft Policy page 21)

The Draft Housing Policy also includes several items that are specific to the MPDU Program, some are:

- Provide additional incentives for projects in the Commercial/Residential (CR) zone, and other similar zones that award points for providing certain public benefits, to developments that will have more MPDUs than required, and for projects having more units with 3-or-more bedrooms. (Draft Policy page 28)
- Evaluate existing and proposed zoning regulations to make sure that the overall goal of the MPDU program to disperse affordable housing is maintained. Avoid an over-concentration of too many MPDUs in one building or one section of a community. Subdivisions that contain a mix of housing types need to have affordable units that are well-designed and place in locations that bring about enhanced community cohesiveness. (Draft Policy page 30)
- When preparing master plan and zoning changes, understand the impact of height and density restrictions on the financial feasibility of the construction of MPDUs, especially in high-rise construction. Take into consider the impact and provide increased height, increased density, or other considerations for projects including MPDUs and other affordable housing options. (Draft Policy page 30)
- While undertaking the Zoning Ordinance Revision, evaluate how well current provisions of the MPDU law apply in more urban and rural areas. New challenges have emerged in implementing the MPDU program in urban areas, CBDs, transit centers, and large lot zones in rural areas, largely in the areas of lot size, setback, amenity requirements, and green space requirements for MPDU developments in most suburban zones. (Draft Policy page 30)

PHED Discussion of the Impact of Zoning Re-Write on MPDUs

The impacts of the Zoning Re-Write on affordable housing (specifically MPDU production) has been discussed by the PHED Committee and has been the subject of public testimony and correspondence. In particular, concerns have been raised that the conversion of the CBD zones to CR Zones will impact the number of developments that provide 15% MPDUs. Some of this concern was in response to the lack of new projects in the CR Zones proposing to build 15% MPDUs compared to the percentage of projects in the CBD zones providing 15% MPDUs.

Since the PHED Committee started meeting on the Zoning Re-Write, two meetings have been organized by the Affordable Housing Conference at which Park and Planning staff provided information and where there was open discussion about ideas to increase the number of projects in the CR Zones with more than 12.5% MPDUs. Presentation slides from the October 7, 2013 session are attached at © 24-51. The background presentation shows (© 31-33) that since 2005, 11 of 32 (34%) projects provided more than 12.5% MPDUs, and 10 of those projects provided 15%. It also notes

that 2 of 9 (22%) residential projects in the CR Zone are providing more than 13.5% MPDUs. Importantly, these 2 projects came after the October 2011 ZTA that increased the public benefit points for affordable housing from 30 to 40 points. At the November 6th discussion held at Park and Planning, a variety of options were discussed to increase the likelihood of residential developments in the CR Zones providing 15% (or more) MPDUs.

As follow-up, Planning Board Chair Carrier sent a November 8th memo (©17-18) reviewing elements of the PHED Committee Draft and proposing four amendments. Also attached are an October 9th memo Planning Deputy Director Krasnow that summarizes the October 7th discussion (©19-21) and July 9th memo discussing how the proposed Zoning Re-Write preserves and expands affordable housing (©22-23). Highlights from the recent public hearing testimony are attached at ©57-81 (highlights attached ©57-60 and testimony attached ©61-81).

Zoning Ordinance – Preliminary PHED Committee Draft

The Preliminary PHED Committee Draft contains several amendments made to address concerns about incentives for affordable housing.

The Preliminary PHED Committee Draft includes provisions to continue the density bonus for providing more than 12.5% MPDUs for the properties that are being rezoned to a CR or Employment Zone through the District Map Amendment translation (“T” Zones). The language was added to continue to provide the incentive to developers to build the maximum 15% MPDUS.

Special Provision in the “T” Zones (CR Zones and Employment Zones translated from existing zones) (see pages 2-5 and 2-7)

- i. Residential Density may be increased above the number following the R on the zoning map for providing more than 12.5% of the residential units as Moderately Priced Dwelling Units (MPDUs) under Chapter 25A except as follows:
 - a. The FAR for MPDUs provided over 12.5% of the residential units is not included in the calculation of gross floor area. This FAR must be subtracted from the Achieved Density Bonus listed in the table in Chapter 25A (Section 25A-5(c)(3)) resulting in a maximum bonus density of 19.5% FAR for providing 15% of the total number of units as MPDUs. For purposes of calculating the density bonus, the density bonuses in Chapter 25A indicate the percentage increase in residential FAR.
 - b. Total density may be increased above the number following the zoning classification on the zoning map by an amount equal to the residential bonus achieved.

- c. In any case, to achieve a density bonus under this Section, at least one more MPDU than would be required at 12.5% must be provided.

The following table shows the current table and the density for the “T” zones

MPDUs Required to achieve density	Achieved Density Bonus – Current Chapter 25A	Density Bonus for “T” zones translated from existing zones
12.5%	0%	0%
12.6%	1%	0.9%
12.7%	2%	1.8%
12.8%	3%	2.7%
12.9%	4%	3.6%
13.0%	5%	4.5%
13.1%	6%	5.4%
13.2%	7%	6.3%
13.3%	8%	7.2%
13.4%	9%	8.1%
13.5%	10%	9.0%
13.6%	11%	9.9%
13.7%	12%	10.8%
13.8%	13%	11.7%
13.9%	14%	12.6%
14.0%	15%	13.5%
14.1%	16%	14.4%
14.2%	17%	15.3%
14.3%	18%	16.2%
14.4%	19%	17.1%
14.5%	20%	18.0%
15.0%	22%	19.5%

Also, for existing zones being translated to the CR Zones (“T” zones); additional height is allowed as follows. (see page 2-5).

- ii. On a property within a designated central business district mapped at a height of up to 145 feet, height may be increased above the number following the H on the zoning map by up to 1.5 times if:
 - a. the height is the minimum necessary for any workforce housing units provided based on the floor area provided for workforce housing units divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet, or
 - b. additional height is specifically recommended for the provision of MPDUs above the 12.5% in an applicable master plan.

For properties that are zoned CR and CRT (but not through a translation), the incentive for providing more than 12.5% is by public benefit points. The following applies. (see pages 6-24 and 6-25)

4. Moderately Priced Dwelling Units

(a) Up to 40 points for providing MPDUs greater than the 12.5% minimum required under Chapter 25A

(b) Points are calculated as follows:

- i. 12 points are granted for every 1% of MPDUs greater than 12.5%. Any fraction of the 1% increase in MPDUs entitles the applicant to an equal fraction of 12 points.
- ii. Above 15% of MPDUs, each 1% of additional MPDUs entitles the applicant to an additional 2 benefits points. Any fraction of 1% increase in MPDUs entitles the applicant to an equal fraction of 2 points.
- iii. In any case, for density and points to be awarded, at least one more MPDU than would be required at the 12.5% must be provided to take advantage of the MPDU optional method or points in any zone.

(c) The gross floor area of any MPDUs provided above 12.5% is exempt from the calculation of FAR

The PHED Committee also recommended changing the public benefit point system for the CR Zones reducing the categories and, in some cases, reducing the points. While, this does not require additional MPDUs be a part of the public benefit package, it reduces other options that are available in order to achieve full density, making it more likely that affordable housing will be included.

Changes Suggested at Public Hearing

Changes Recommended in November 8 Memo from Planning Board Chair

The following suggestions were made at the Council's recent public hearings:

1. Require 15% MPDUs in CR and CRT Zone when optional method development is used.
2. Do not count bonus MPDUs toward FAR limit.
3. Do not count FAR for all MPDUs when bonus MPDUs are provided.
4. Consider payments-in-lieu for MPDUs above 12.5% and include language in Zoning code that does not exempt a development from using bonus density if payment-in-lieu is made for additional MPDUs.

5. Allow increases in height above the zone and master plan to accommodate square footage needed for 15% MPDUs on site.
6. For developments providing more than 15% MPDUs reduce the number of public benefit categories required.
7. Revised incentive to providing more than 15% MPDUs so it is equal to incentive for providing between 12.5% and 15% MPDUs.
8. Streamline public benefit point system to reduce or eliminate points for benefits that have minimal or no cost or are covered by other County regulations.
9. Incentives for production of MPDUs should be targeted to areas lacking significant amounts of affordable housing and could be tied to challenges in local schools.
10. Implement an option for a commercial development payment to earn public benefit points.
11. Require developers of commercial projects that do not have a housing component to contribute to an affordable housing fund.

In her November 8th memo, Planning Board Chair Carrier provided four recommended amendments. The first three focus on developments providing **15% or more** MPDUs.

1. Exclude the square footage of all MPDUs (including the required 12.5%) from the calculation of gross floor area **if at least** 15% MPDUs are provided. Because MPDUs tend to be slightly smaller, the increase in FAR would be approximately 13.5% for 15% MPDUs. This would only be applicable to properties that do not retain the density bonus under Chapter 25A.
2. For developments providing more than 15% MPDUs, relax the requirement for points from 3 or 4 categories by reducing the number of required categories by one.
3. For developments providing more than 15% MPDUs, revise the point system for the public benefits in the CR and CRT zones to award 5 points for every 1% of additional affordable housing units built above 15%; the total number of points for this category should be capped at 45 points.
4. Allow a greater height when bonus MPDUs are being provided. Height may be increased above the number following the H on the zoning map by the minimum amount necessary for the provision of Moderately Priced Dwelling Units in excess of the required 12.5%.

Discussion

The public hearing testimony and discussions held at Park and Planning have put forward several proposals for increasing MPDUs and alternate funding for affordable housing. There is limited time before PHED Committee concludes its sessions. This

does not mean that changes cannot be made later if there is agreement on additional ways to increase affordable housing. Council staff believes that the following suggestions need more analysis and refinement than can be provided in the next two weeks:

- Requiring 15% MPDUs in the CR and CRT Zones when optional development is used. This is a significant change. While there has been discussion that 15% is required for optional method development in the CBD Zones, Planning staff has pointed out that the 15% was not required for optional method but for the density bonus.
- The actual calculation for alternative payments for MPDUs above 12.5% or for a full 15% MPDUs, if Council action is needed. Chapter 25A allows alternative payments with certain conditions. Previously the PHED Committee had considered legislative changes to clarify when alternative payments would be allowed and the formula for the amount of the payment.
- A commercial development payment that would equate to public benefit points.
- A commercial development payment for developments that have no residential component.
- Targeting of MPDU incentives to specific areas of the County. The PHED Committee has asked for more discussion of how affordable housing needs are analyzed in master/sector plans.

Amendments to Consider

1. Exclude FAR for all MPDUs when at least 15% MPDUs are provided (does not apply to CR Zones with a “T”)

Under this proposal all FAR associated with MPDUs would be excluded and therefore available to the developer for market rate development/uses (with the caveat that MPDUs must continue to be at least 15%). This would be a substantial incentive to provide at least 15% MPDUs. The current draft only excludes the FAR associated with MPDUs above 12.5%.

2. Reduce the number of required categories by one for providing at least 15% MPDUs

The CRT zone requires a development to have public benefit points from two to four categories (categories attached at © 52-53), depending on size/FAR, the CR Zone requires from three to five categories and the CRT Zone from two to four. A developer providing more than 12.5% MPDUs will be satisfying one category. The obligation for achieving points in other categories would be reduced which could help to offset the cost of the additional MPDUs.

3. Revise benefit points allowed for providing more than 15% MPDUs

The current benefit point structure allows up to 40 points for providing more than 12.5% MPDUs. Between 12.5% and 15% MPDUs, 12 points are awarded for each 1% increase. After 15%, 2 points are awarded for each 1% increase in MPDUs.

The Planning Board is recommending that above 15%, 5 benefit points be provided for each 1% increase in MPDUs and that the total points for MPDUs be capped at 45.

The Planning Board proposal provides more incentive for providing more than 15% MPDUs, but because the total points are not increased at the same rate, it would lower the maximum percent of MPDUs likely to be built. Using the example in the CR Zones implementation guidelines, in a 100 unit building providing 15 MPDUs instead of the required 13 is a 2% increase resulting in 24 points. If the developer wanted to provide 20% MPDUs at 2 points per 1% increase they would build an additional 5 MPDUs and receive 10 points. This total of 34 points is within the maximum 40 allowed. If the allowance is increased to 5 points per 1%, then 25 points would be awarded but the 24 + 25 would be 49 total points, more than the 45 points proposed by the Planning Board. **If the PHED Committee wants an incentive to build up to 20% MPDUs and agrees with the 5 points suggested by the Planning Board, then the maximum points should be raised to 50.**

At the public hearing it was suggested that the same amount of points (12) should be awarded for each percent increase over 15% that are awarded for providing between 12.5% and 15% MPDUs. In this case, a 5% increase would be worth 60 points. This would award a total of 84 points for building 20% MPDUs. This is more points than the total required in the CRT Zone and would be most of the points required in the two higher tiers in the CR Zone. One alternative would be to provide a 12 point incentive for up to 16% MPDUs (36 points) an additional 5 points for each additional 1% MPDUs, and capping the total points at 60.

4. Allow a greater height for providing more than 12.5% MPDUs.

In the CR Zones height would be increased above the "H" as needed to provide for the MPDUs above the 12.5% requirement. The developer would have to show that additional height is needed to accommodate the MPDUs. While the language in the November 8th memo says "bonus" MPDUs, Council staff understands that this provision would not be limited to the "T" Zones where there is still a "density bonus."

5. Consider language that would not preclude an alternative payment for MPDUs

One suggestion at the public hearing was to make sure that the language in the Zoning Re-write does not preclude implementing an alternative payment for "bonus"

MPDUs. Chapter 25A currently allows the Director of DHCA to approve an alternative payment under specific circumstances but says that any subdivision for which an alternative payment is made is not eligible for a density bonus for which it would otherwise be eligible under Chapter 59. As previously noted, for CR Zone properties with a “T” the term “density bonus” is still used for the FAR associated with MPDUs above 12.5% and up to 15%. If there is another way to now view this FAR and language changed so that it is not longer a “density bonus” then DHCA would not be limited in considering properties with a “T” designation.

For example, could the current language for the “T” Zone (©8-9) be written without the term “bonus”?

- b. Total density may be increased above the number following the zoning classification on the zoning map by an amount equal to the residential density increase achieved.
- c. In any case, to achieve an increase in density, at least one more MPDU than would be required at 12.5% must be provided.

6. Consider benefit points for providing MPDUs with more bedrooms

Chapter 25A says that in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio of market rate and one-bedroom units. It does not speak to requirements above one bedroom units and it is not clear that a three-bedroom unit can be required in a multi-family building.

As previously noted, the Draft Housing Policy calls for incentives for providing more MPDUs than required and for projects having more units with 3-or-more bedrooms. The PHED Committee has previously discussed the shortage of larger MPDUs that are needed to house families. The current draft allows up to 5 points for integrating a mix of residential market-rate unit types with at least 7.5% efficiency units, 8% one- and two-bedroom units and 5% three- or more bedroom units (the proportional number of each unit type must satisfy Chapter 25A.) In this instance, if a 100 unit building had 5 three-bedroom units, one would have to be a MPDU if the language is clarified so that all bedroom sizes must be proportional.

Should there be additional public benefit points associated with providing a higher percentage of MPDUs with two or more bedrooms – for example replacing an efficiency with a two-bedroom unit or a one-bedroom unit with a three-bedroom unit? Creating more larger-bedroom MPDUs may as important to filling gaps in affordable housing than increasing the number of efficiency units.

Productivity Housing

The current Zoning Ordinance provides that dwellings in a commercial or industrial district meet certain standards. The base residential density is 6.0 units per acre, which may be increased up to 21.5 units per acre if at least 35 percent of the units are **productivity housing** for households with incomes at and below the area wide median income, as provided for in Chapter 25B of the County Code. Productivity Housing is approved through the Special Exception process. Productivity Housing was enacted by the Council in 1996. There was a development approved in 2001 and recently a second development was approved. An information sheet is attached at ©54-56.

Productivity Housing is not included in the Zoning Code Re-Write. The Re-Write now provides opportunities for developing housing on properties that transition from a commercial zone to a CR Zone. Multi-family residential is a limited use in the Employment zones. It is not allowed in the Industrial Zones. Multi-family residential must comply with MPDU requirements and may provide Workforce Housing.

- The control period for a for-sale Productivity Housing unit is 10 years after the original date of sale.
- The control period for a rental Productivity Housing unit is 20 years after the date of original rental.
- The Productivity Housing law says that the units are for households at or below area median income (AMI). Current regulations price Productivity Housing to serves households at 75% of AMI.
- Prices for Productivity Housing unit must not exceed 175% of the sale price for comparable MPDUs.

Council staff recommends that the Zoning Code re-write not be amended to add Productivity Housing and that the PHED Committee consider sponsoring legislation to remove this program. The control periods for this program are much less than for Workforce Housing (20 years for for-sale units and 99 years for rental units) and Workforce Housing can target the same income range as this program. If the PHED Committee thinks there should be an option for Housing in the Industrial Zones, it should consider how it would allow this using either the MPDU program or the Workforce Housing program.

Workforce Housing

As previously noted, the Zoning Re-Write allows an increase in height needed for Workforce Housing units that are provided in a Central Business District. The current Zoning Code allows Workforce Housing in any subdivision that would contain 35 or more market dwelling units in a zone with a maximum permitted residential density at or above 40 dwelling units per acre and in a Metro Station Policy area. While Workforce Housing is now a voluntary program, the original focus was Metro Station Policy areas

and not just central business districts. Council staff will ask Planning staff if any amendments are needed to make sure all areas of the County are appropriately covered.

For example, language in the current Zoning Ordinance (not the Re-Write) for Workforce Housing in the LSC Zone:

(1) Workforce housing units are allowed at the option of the applicant under Chapter 25B.

(2) To allow the construction of all workforce housing units on site, the Planning Board must permit:

(A) Any residential density or residential FAR limit of the applicable zone to be exceeded to the extent required for the number of workforce housing units that are constructed but not by more than 5 percent;

(B) Any residential density or residential FAR limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not more than the maximum density and FAR of the zone, except as provided in paragraph (2)(A); and

(C) Any building height limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not more than the maximum height of the zone



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

November 8, 2013

MEMORANDUM

To: The Honorable Nancy Floreen
Chair, PHED Committee

From: Francoise M. Carrier *FMC*
Chair, Montgomery County Planning Board

Re: Existing Zoning Rewrite Provisions that Support Affordable Housing and Potential Revisions to Increase Affordable Housing Incentives

Elements of the PHED Committee Draft that support the provision of affordable housing:

- 1) The proposed zoning draft defines gross floor area such that it excludes the floor area for any MPDU provided above the 12.5% required. Because more market rate units can be built, this exemption allows a developer to recoup some of the costs associated with providing extra MPDUs.
- 2) The proposed zone translations (e.g. CBD to CR) preserve the current density bonus allowed when a development provides greater than the required 12.5% of units as Moderately Priced Dwelling Units (MPDUs) for properties that are rezoned under the District Map Amendment (DMA) that will follow adoption of the zoning rewrite. Zones that translate under these provisions include a 'T' after the C/R zone formula.
- 3) The proposed code requires at least one additional MPDU be provided in exchange for the bonus or incentive density, as applicable. This eliminates the possibility of additional density being awarded without the provision of an additional unit due to rounding.
- 4) Currently, properties in a CBD zone may seek approval for additional height for workforce housing. The proposed translation to CR will preserve this allowance for properties that are rezoned under the DMA. Zones that translate under these provisions include a 'T' after the C/R zone formula.
- 5) More housing equals more opportunities for affordability and MPDUS. The proposed zone translation has the potential to increase the housing supply in the County because housing will be allowed in commercial zones where it is currently allowed only under very limited circumstances or special exception review. By increasing the overall number of units in the County, it follows that the total number of MPDUs will also increase.
- 6) Although one criticism of the proposed zone translation is that multi-family housing will be allowed in locations inaccessible to transit, which has been called "un-smart growth," many of

The Honorable Nancy Floreen

Re: Existing Zoning Rewrite Provisions that Support Affordable Housing
and Potential Revisions to Increase Affordable Housing Incentives

November 8, 2013

the places where housing is being introduced as a permitted or limited use are on MetroBus routes with frequent service. Furthermore, land is typically less expensive in these areas so the cost of developing new housing should be less expensive - thus providing more market-rate affordable housing, and for projects building more than 20 units, 12.5% MPDUs.

- 7) The draft provides greater flexibility in housing construction. Introducing building types across all zones allows for development of small detached houses on small lots in areas zoned for mixed-use, townhouse or multi-family units. This does not increase the density within these zones but allows for a smaller scale, detached house – a housing type not seen much within the County, but becoming more popular with older adults and young couples since these units are typically more affordable.
- 8) In a similar fashion, for MPDU optional method development in the Rural Residential and Residential zones, the minimum lot size per unit has been slightly reduced while the percentage of open space required has been increased. The density of such development has not changed, but the reduced lot size allows for greater flexibility in siting and construction while the increase in open space allows for a greater buffer area around new development.

Additional suggested revisions to the draft to incentivize affordable housing:

- 1) Exclude the square footage of all MPDUs (including the required 12.5%) from the calculation of gross floor area **if at least** 15% MPDUs are provided. Because MPDUs tend to be slightly smaller, the increase in FAR would be approximately 13.5% for 15% MPDUs. This would only be applicable to properties that do not retain the density bonus under Chapter 25A.
- 2) For developments providing more than 15% MPDUs, relax the requirement for points from 3 or 4 categories by reducing the number of required categories by one.
- 3) For developments providing more than 15% MPDUs, revise the point system for the public benefits in the CR and CRT zones to award 5 points for every 1% of additional affordable housing units built above 15%; the total number of points for this category should be capped at 45 points.
- 4) Allow a greater height when bonus MPDUs are being provided. Height may be increased above the number following the H on the zoning map by the minimum amount necessary for the provision of Moderately Priced Dwelling Units in excess of the required 12.5%.

cc: The Honorable Marc Elrich, PHED Committee

The Honorable George Leventhal, PHED Committee

Jeff Zyontz, Montgomery County Council Staff

Rose Krasnow, Deputy Director, Montgomery County Planning Department

Pamela Dunn, Montgomery County Planning Department



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

October 9, 2013

The Honorable Nancy Navarro, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Dear Ms. Navarro and Councilmembers:

On Monday morning, October 7th, The Affordable Housing Conference of Montgomery County, organized and coordinated a meeting held at our office to address many of the questions and information, accurate as well as inaccurate, about the zoning code rewrite's impact on affordable housing. The goal was to present the basic facts and figures in a way that would assist affordable housing advocates and others in understanding and engaging in dialogue about this very important issue. We believe we were successful in conveying the information and responding to the multitude of questions that were raised. In fact, we are going to consider possible modifications to the draft code as a result of several of the suggestions that were made in our session.

In preparing for this meeting, Planning Staff put together a presentation that looks at the number of bonus MPDU's provided in mixed-use and commercial areas prior to the adoption of the CR zone and afterwards. This is important because the only way that developers could get bonus density prior to the CR zone was by providing more MPDUs. Now, with the CR zone, they can get additional density by providing other public amenities. This has led to a concern that the number of MPDUs being provided would drop. However, results to date do not bear this out. The fact of the matter is that the 12.5% requirement produces hundreds of affordable units, but very few developers have availed themselves of the density bonus available to them if they provide up to 15% MPDU's. Since 2005, the County has been getting on average only 15 bonus MPDUs per year, and the results are similar from projects being done under CR zoning. However, as part of the rewrite, additional incentives have been added in an effort to encourage developers to make use of the provision for bonus MPDUs. For example, the floor area of any bonus density MPDUs would be excluded from the calculation of gross floor area, so developers would be able to develop additional market rate floor area. The new code also allows more flexibility with respect to lot standards for all high-density residential and mixed use zones, as well as new floating zones that will provide new development options in limited areas. Most importantly, simply allowing more mixed use projects in former commercial-only areas will lead to the production of more workforce housing: MPDUs and affordable housing for teachers, emergency responders, and small business owners who work throughout our community, not only in our "employment centers".

We made it clear that we were very open to additional modifications to the proposed draft assuming it would help increase the number of affordable units. Some of the ideas we proposed for debate included the following:

- 1) Current BLTs are required for CR optional method properties in certain areas. What if we dropped the BLT requirement for properties located 3 miles or less from level 1 transit (a basic area considered for multi-modal use of transit) and, instead, required 30 points for bonus MPDUs. Beyond that 3 mile ring, the current formula for required BLTs would remain. This would accomplish two goals: it would (1) provide additional MPDUs where transit is available - addressing the second highest household expense, and (2) tie BLTs closer to areas away from transit where a greater nexus with the agricultural reserve is apparent.
- 2) The MPDU optional method in our residential zones allows more flexible development standards but does not necessarily lead to the provision of more units, and hence more MPDUs. We could recalculate optional method density for projects that provide bonus MPDUs to reflect the bonus densities allowed under Chapter 25A. Although this would result in an allowance of only 0.1 to 1.6 more units per acre, it would provide more MPDUs.
- 3) Staff also proposed that a new Functional Master Plan for Affordable Housing be initiated if such a proposal is approved in the FY '15 budget.

Staff pointed out that the zoning code rewrite was probably not the best tool to use to reach more lofty affordable housing goals. Rather modifications to Chapter 25A and other sections of the County Code should be considered; the Functional Master Plan for Affordable Housing would provide an excellent forum for this larger debate.

After the presentation, Staff mentioned a more sweeping suggestion that we feel is worthy of public vetting: We could allow projects providing at least 25% affordable units to skip sketch plan and go straight to site plan, because doing so would greatly streamline the review process for these projects, and time is money. If the basic function of a sketch plan is to ensure that benefits are being provided that support the requested density, a set of pre-determined benefits can be established to allow for a streamlined review of projects with a significant number of affordable units.

The attendees put forth several additional suggestions. These included the following:

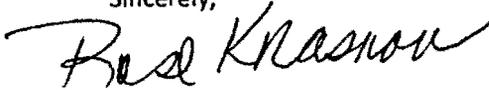
- 1) Increase the number of public benefit points that can be attained by providing more than 12.5% MPDUs. For example, give 12 points for each percentage point of additional MPDUs from 15% to 18%.
- 2) Reduce the requirement that public benefit points have to come from so many different categories when more than 15% MPDUs are provided.
- 3) Exclude the square footage of all MPDUs (including the required 12.5%) from the calculation of gross floor area if bonus MPDUs are provided.
- 4) Allow administrative site plan review for projects providing more than 35% MPDUs.

- 5) Allow a greater height when bonus MPDUs are being provided. This would be similar to the extra height that is allowed for Work Force Housing Units.

Staff and many attendees expressed delight with the meeting and seem to think such constructive dialogue was the key to success for this important topic. In fact, it was agreed that this group would continue to meet at regular intervals to continue the conversation and begin putting together "actionable" proposals, with The Affordable Housing Conference continuing to be the central clearing house for this effort to bring together those interested in supporting affordable housing. The next meeting will be held in two weeks, prior to the next County Council public hearing on the zoning code rewrite.

Please feel free to contact Josh Sloan, Pam Dunn or me if you have additional questions.

Sincerely,



Rose Krasnow
Acting Deputy Director
Montgomery County Planning Department

Memorandum

To: Nancy Floreen
From: Zoning Rewrite Team, Planning Department
Date: 7/9/2013
Re: Affordable Housing in the Revised Zoning Code

The proposed zoning ordinance and zoning map include several elements that will preserve and expand the County's affordable housing goals. These elements are described below.

Zones that currently allow density bonuses for MPDUs will continue to allow them.

The proposed zone translations (e.g. CBD to CR) preserve the current density bonus allowed when a development provides greater than the required 12.5% of units as Moderately Priced Dwelling Units (MPDUs). In addition, the proposed code requires at least one additional MPDU be provided in exchange for the bonus density. This eliminates the possibility of additional density being awarded without the provision of an additional unit due to rounding.

Also, zones that currently allow additional height for workforce housing will continue to allow it. Zones that translate under these provisions include a 'T' after the C/R zone formula.

The zoning rewrite introduces a new incentive for providing MPDUs and Workforce Housing.

Existing C/R zones will have an added incentive to provide more than the required 12.5% of units as MPDUs- the gross floor area of any MPDUs provided above 12.5% is exempt from the calculation of FAR. Because more market rate units can be built, this exemption allows a developer to recoup some of the costs associated with providing extra MPDUs.

The proposed zoning ordinance introduces Workforce Housing as an optional public benefit in the C/R and Employment zones.

More housing equals more opportunities for affordability and MPDUS.

The proposed zone translation has the potential to increase the housing supply in the County because housing will be allowed in commercial zones where it is currently prohibited or allowed only under very limited circumstances. By increasing the overall number of units in the County, it follows that the total number of MPDUs will also increase.

One criticism of the proposed zone translation is that multi-family housing will be allowed in locations inaccessible to transit, allowing for "un-smart growth." While many of the places where housing is being introduced as a permitted or limited use are not adjacent to metro stations, they are often on metrobus routes with frequent service. Furthermore, the land is typically less expensive in these areas and the cost of developing new housing could be less expensive- thus providing more market-rate affordable housing, and for projects building more than 20 units, 12.5% of construction will be MPDUs.

Greater zoning flexibility allows for more housing options.

Introducing building types across all zones allows for development of small detached houses on small lots in areas zoned for mixed-use, townhouse or multi-family units. This does not increase the density within these zones but allows for a smaller scale detached house – a housing type not seen much within the County but becoming more popular with older adults and young couples as these units are typically more affordable.

In a similar fashion, for MPDU optional method development in the Rural Residential and Residential zones, the minimum lot size per unit has been slightly reduced while the percentage of open space required has been increased. The density of such development has not changed, but the reduced lot size allows for greater flexibility in siting and construction while the increase in open space allows for a greater buffer area around new development.

Affordable Housing Presentation

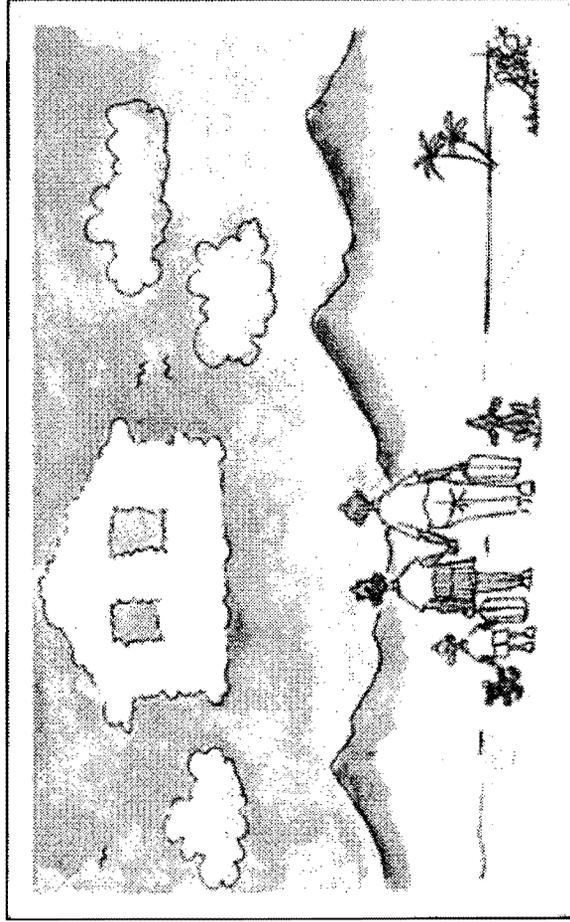
Current & Future Zoning
Challenges & Opportunities
October 7, 2013

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Overview

- Current Mixed Use & Commercial Zoning
- How are we doing so far?
- Translation of Zones to C/R & E
- Changes in the Rewrite
- New Ideas
- Functional Master Plan for Housing

- Current Mixed Use & Commercial Zoning

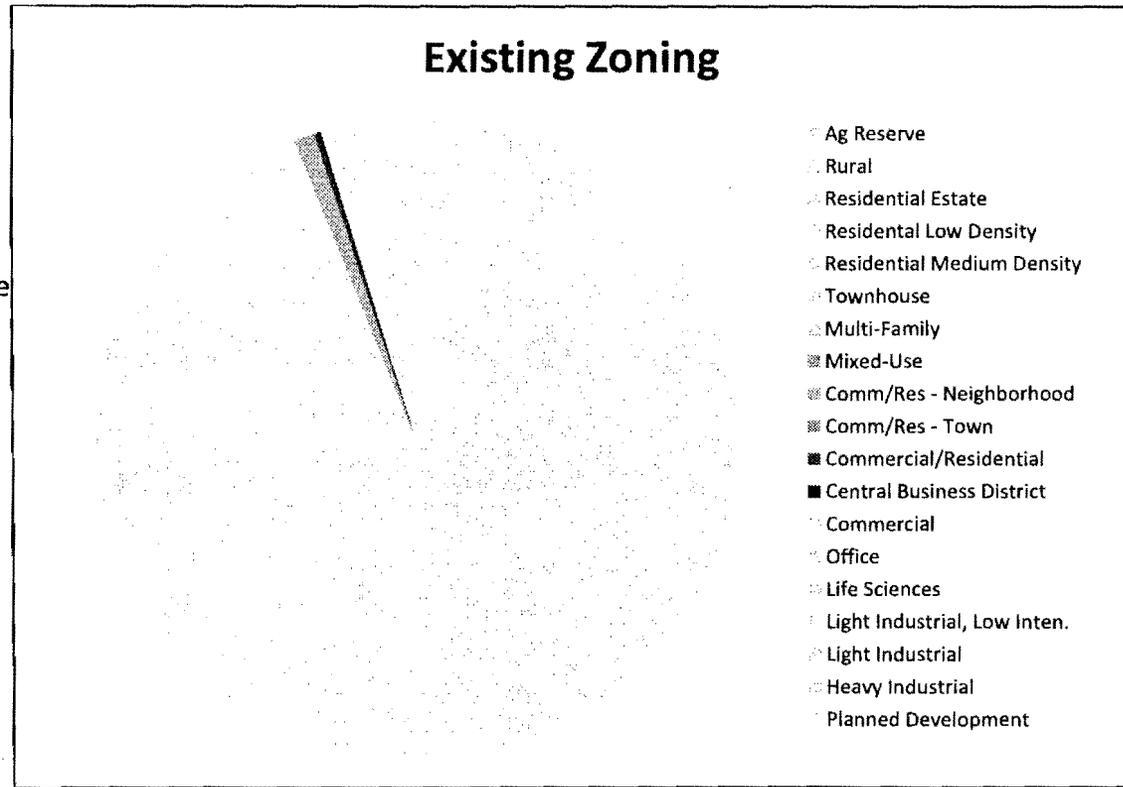


MoCo Mixed-Use Zoning

CBD - 364 acres (0.13%)
Mixed-Use - 2,690 acres (0.95%)
C/R Family - 636 acres (0.23%)

Current Mixed-Use Zones

- CBDs
- Mixed-Use
 - MXPB
 - MXN
 - Transit Station (Mixed & Re
 - RMX (optional method)
 - MXTC
 - TOMX
 - TMX
- C/R
 - CR
 - CRT
 - CRN



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MoCo Commercial Zones

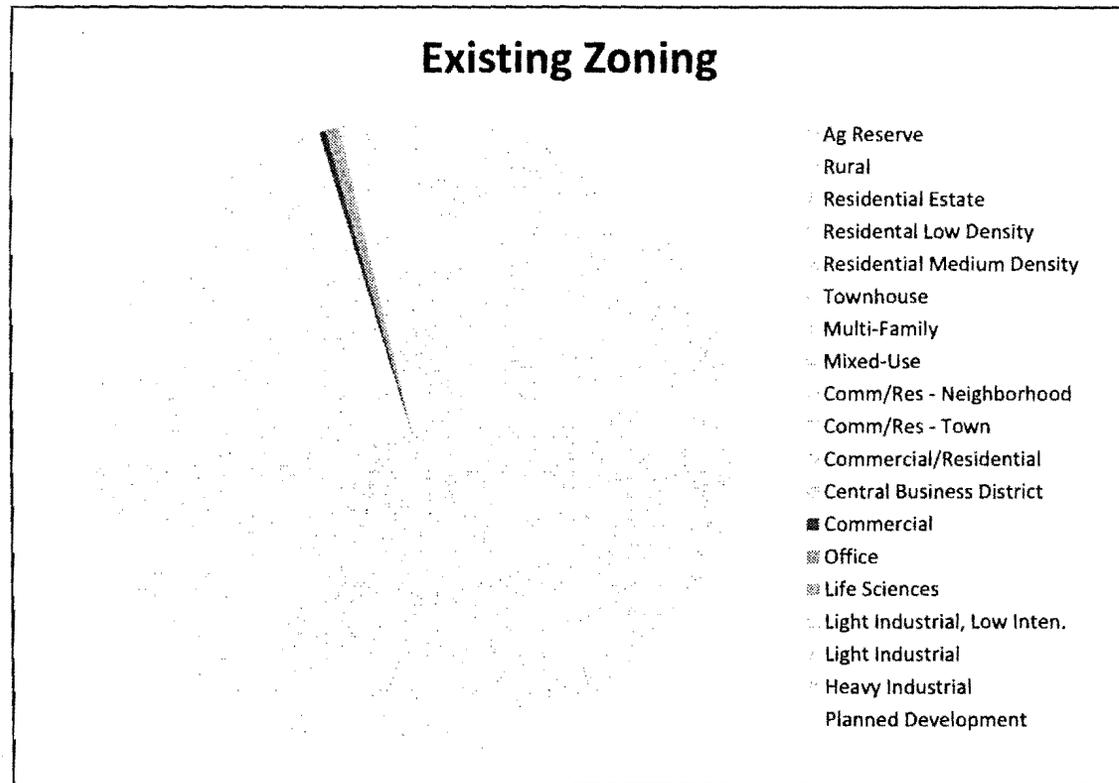
Commercial - 904 acres (0.33%)

Office - 1230 acres (0.45%)

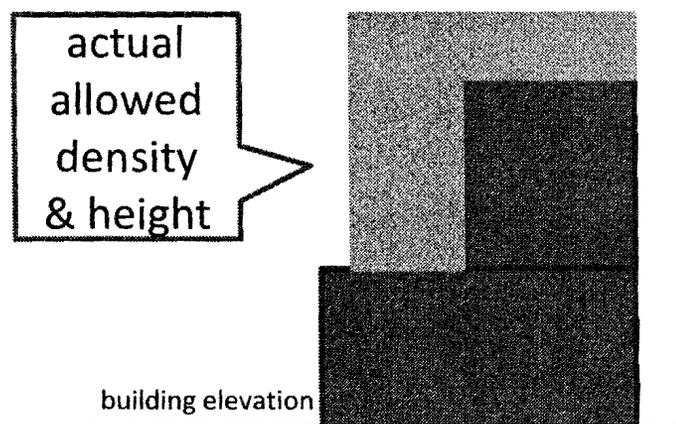
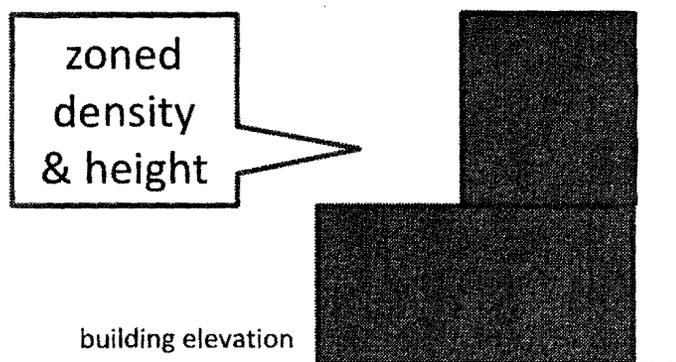
Life Sciences - 661 acres (0.24%)

Current Commercial Zones

- Commercial
 - C-1 through C-6
 - CT
 - H-M
- Office
 - O-M
 - C-P
 - C-O
 - I-3
- LSC



Mixed Use Zoning & Affordable Housing: Current Model

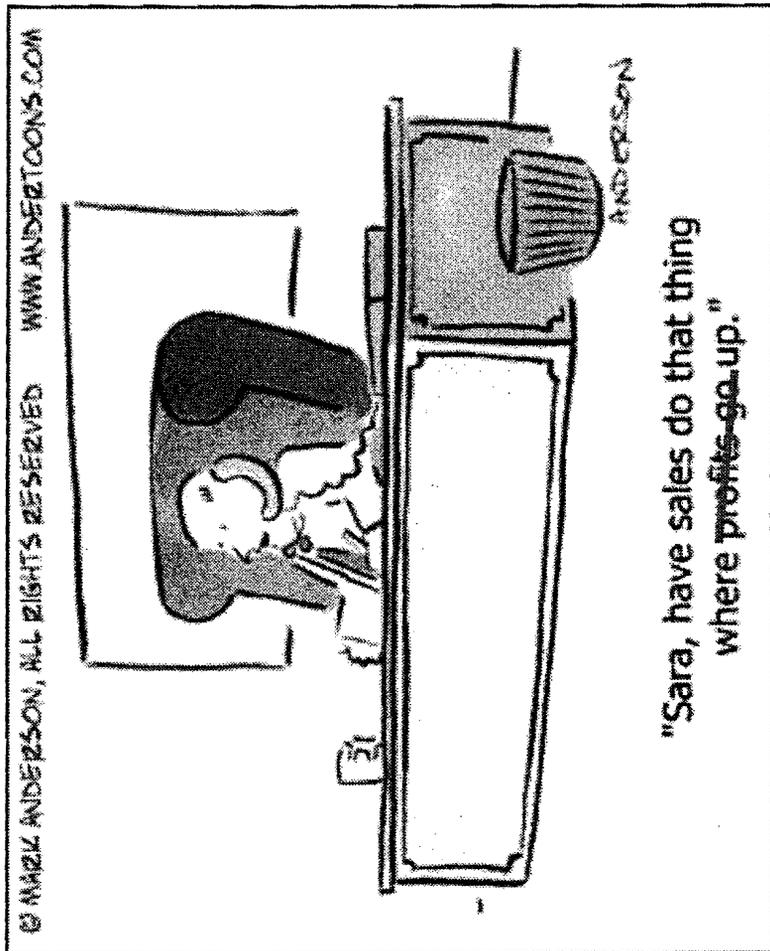


Under Chapter 25A

- MPDUs
 - Applies to projects w/20+ units
 - “Bonus Density” up to 22% above zoned density
 - Based on sliding scale for MPDUs above 12.5% up to 15%
- ≈ 1.5 times height allowed to accommodate WFHUs in CBDs

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- How Are We Doing So Far?



affordable housing goes

Past Performance: CBDs since 2005

- 32 residential projects
- 11 provided >12.5%
- 8 of the 11 are in Woodmont Triangle Amendment area
- total of 51 bonus MPDUs
- (11 of 51 bonus MPDUs will be provided only if buy-out is allowed)
- 40-51 bonus units over 8 years

Approved CBD Optional Method Plans Since July 2005: Bonus MPDU Analysis		
plan #	% mpdus	comments
920060010	12.5	
920060020	12.5	
920060030	12.5	
920060040	12.5	
920060050	15	2 bonus mpdus (woodmont triangle amendment)
920060060	12.5	
920060070	12.5	
920070020	15	3 bonus mpdus (woodmont triangle amendment)
920070030	15	3 bonus mpdus (woodmont triangle amendment)
920070040	15	7 bonus mpdus
920070050	13.1	no bonus mpdus (woodmont triangle amendment)
920070060	12.5	
920070070	12.5	
920070080	12.5	
920070090	15	1 bonus mpdu (woodmont triangle amendment)
920070120	12.5	
920070130	12.5	
920070140	12.5	
920090010	15	11 bonus mpdus (only provided if buy-out allowed) (woodmont triangle amendment)
920100010	12.5	
920100020	12.5	
920100030	12.5	
920110010	12.5	
920120020	12.5	
920120030	15	14 bonus mpdus (woodmont triangle amendment)
920130010	15	3 bonus mpdus (to exceed recommended height by 25+ feet)
920130020	12.5	
920130030	12.5	
920130040	12.5	
920130050	12.5	(pending)
920130070	15	2 additional mpdus (woodmont triangle amendment)
920140010	15	5 additional mpdus (pending)

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Past Performance: Mixed Use Zones since 2005

TSR/TSM:

- 2 of 7 residential projects with >20 units provided >12.5% MPDUs
- 12 bonus MPDUs out of 1,682 units

TMX: none

TOMX:

- 1 project
- 13.9% MPDUs
- 22 bonus MPDUs (out of 1,521 units)
- (pending)

MXPD:

- 1 of 2 large mixed-use projects
- completed after 2005
- 18% MPDUs req'd as part of re-zoning
- 23 bonus MPDUs out of 1,250 units
- bought out 48 units

C/R:

- 2 out of 9 residential projects
- >13.5% MPDUs
- 11 bonus MPDUs out of \approx 1200 units

Past Performance: CR Zones

C/R:

- Prior to Oct 2011 – 4 sketch plans approved
- Oct 2011 - ZTA 11-01 modifies the CR zone
- Increases maximum public benefit points for providing >12.5% MPDUs from 30 to 40 points
- After Oct 2011 - 4 more sketch plans approved
- 2 out of 4 plans
- >13.5% MPDUs
- 11 bonus MPDUs out of \approx 1200 units

**Past Performance:
Lessons Learned**

Bonus MPDUs: 119 over 8 year period
(however base 12.5% is still better than most jurisdictions)

Make Master Plan Recommendations

- Woodmont Triangle Amendment
- Shady Grove Station

Encourage Re-zonings of Appropriate Properties

- Density bonuses allowed under 25A built into requested envelope
- Binding elements may achieve >12.5% MPDUs

Modify the Ground Rules (see "Changes in the Rewrite")

- Translation of Zones to C/R & E



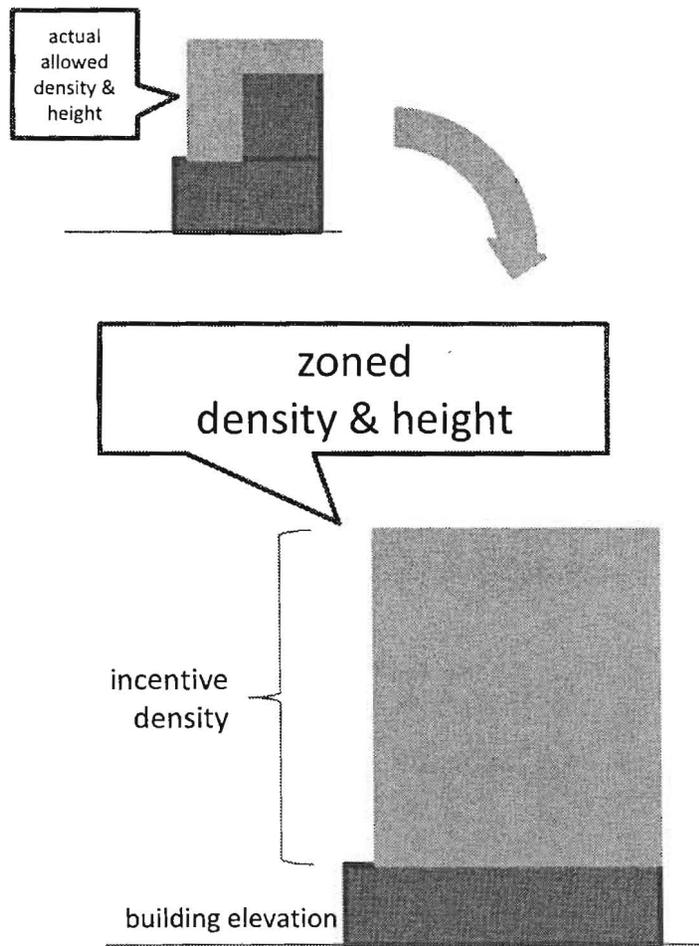
Translation of Existing Mixed Use Zones

Translation of Mixed-Use Zones

- Map to current:
 - Development standards
 - Master plan recommendations
 - “Un-built” approvals
- Retain 25A density bonus model
- Retain WFHU height bonus allowance in CBDs
- Identify allowances with a “T”
 - T = transitional
 - Subsequent master plans will rezone with appropriate densities & heights to accommodate “bonuses”



C/R & Employment Zones & Affordable Housing Model



Public benefits are provided to obtain incentive density

- Decreased “standard method” for many zones
- Public benefits are prioritized by master plan
- 6 categories (major facilities, transit proximity, connectivity, diversity, design, & environment)
- MPDUs
 - 12 points for every 1% provided between 12.5% - 15%
 - 2 points for every 1% above 15%
 - Up to 40 points (resulting in 20% MPDUs)
- WFHUs
 - 2 points for every 1% provided
 - Up to 20 points

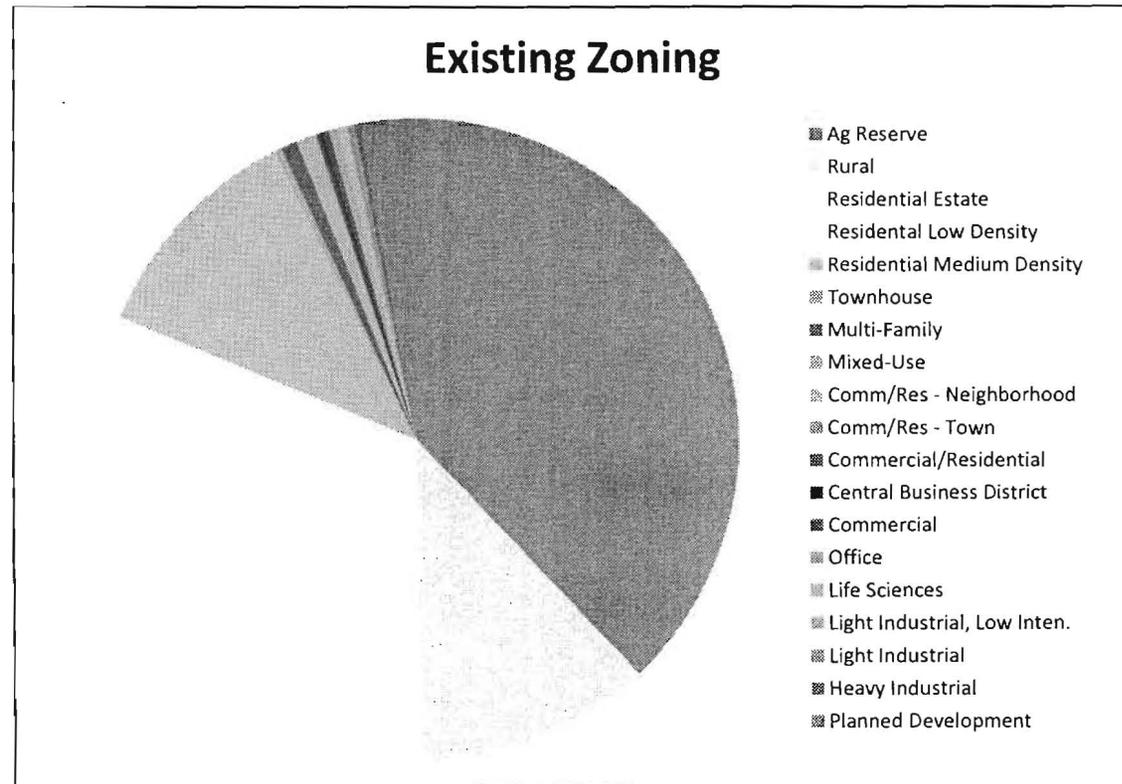
Translation: Impacts

Retains density bonus model for previous zones (no change):

- CBD
- TMX
- TOMX
- MXTC
- TSR/TSM

Current commercial zones:

- Allow residential as a permitted use –limit to 30% in Employment zones
- Potential for up to 10,000 units over about 1,200 acres
 - 8 units/acre
 - R-60 = 7.26 unit/acre
- Could provide up to 1,250 MPDUs (at 12.5%)
- This potential currently exists but in many commercial zones requires a special exception

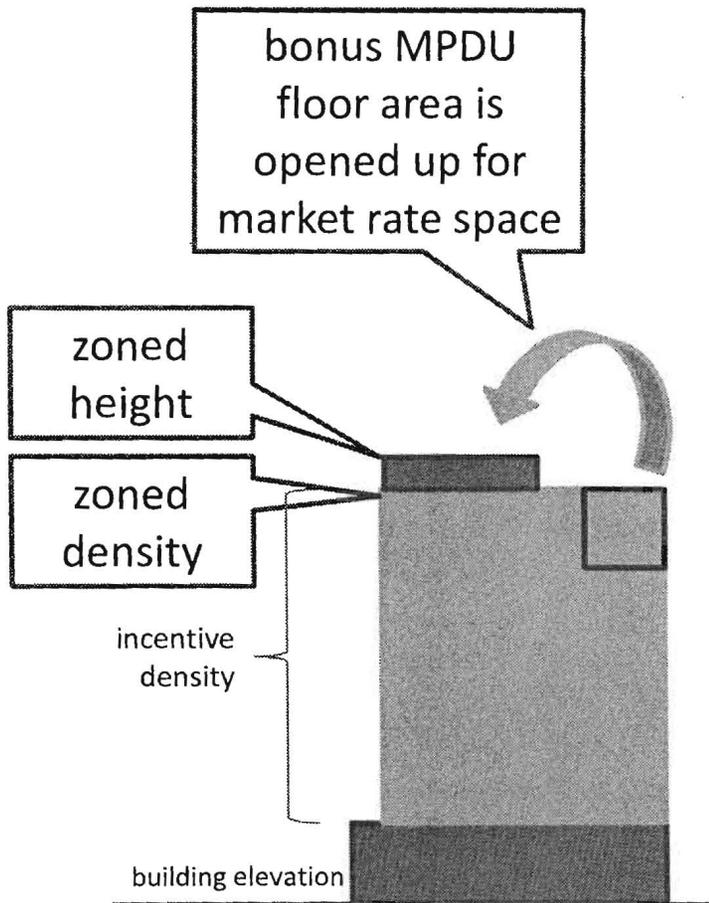


- Changes in the Rewrite

Frank and Ernest



C/R & Employment Zones & Affordable Housing Model

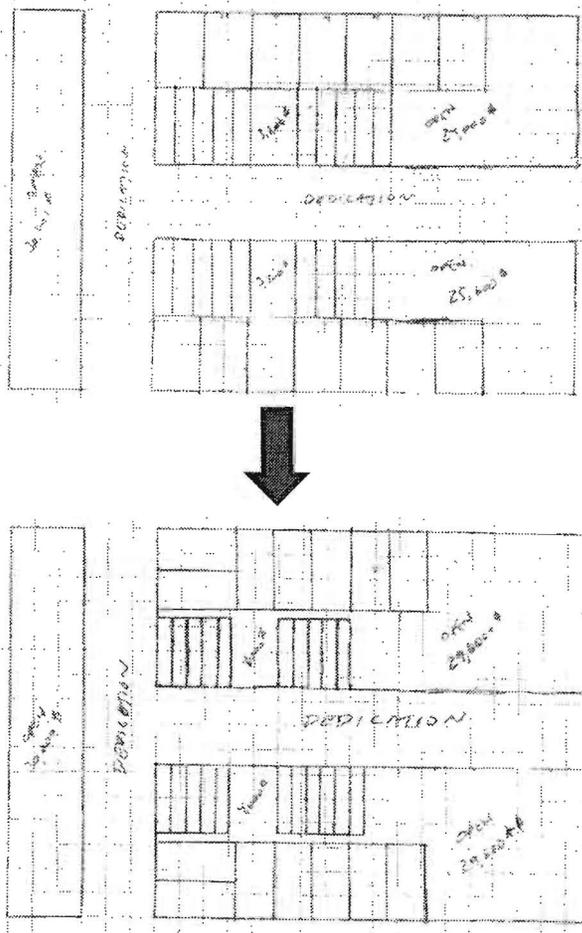


Zoned Density & Heights

- Current code & Proposed: not all floor area counts toward density (parking structures, cellars, rooftop mechanical, etc.)
- New: floor area of **bonus** MPDUs does not count toward density

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Lot Sizes & Building Types



- Reduced lot sizes in MPDU optional method in residential zones – to allow greater flexibility in building and design
- Redefined usable area (the base for optional method calculation) for clarity
- New building types & development standards for detached, duplex, & townhouses in high-density residential zones, C/R and employment zones

Floating Zones

Residential Floating

- Residential Detached (RDF-#)
- Residential Townhouse (TF-#)
- Apartment (AF-#)

Mixed Use Floating

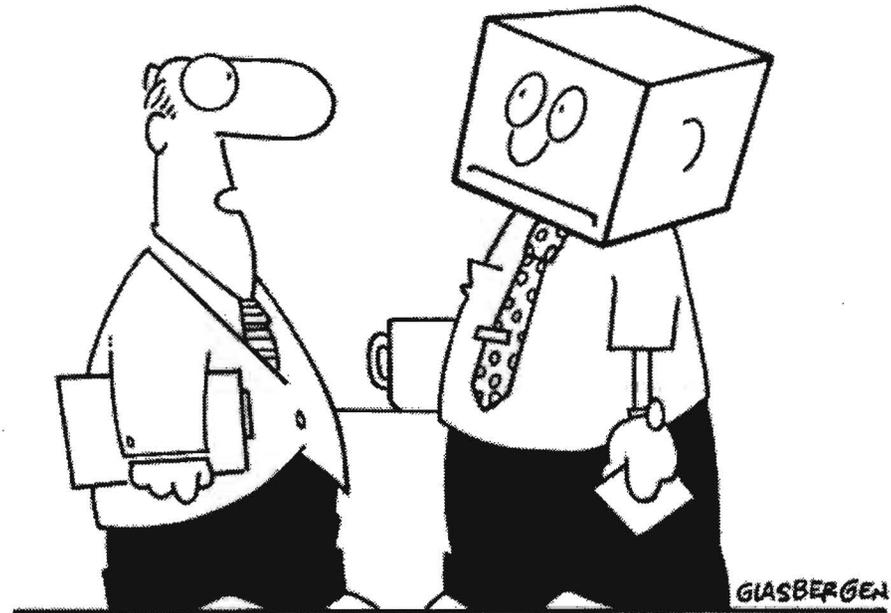
- CRF, CRTF, CRNF
- NRF, GRF, EOFF, LSCF

- If no change in density or commercial uses:
 - No MP recommendation or prerequisites
 - New building types
 - Flexible development standards
 - Example: re-zone R-60 to RDF-7
 - 7 houses per acre (same density)
 - Smaller units, co-housing, affordable options, etc.
- New townhouse, apartment, and mixed-use options (although applicability is more restricted than current)

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- New Ideas

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**"Thinking outside of the box is difficult
for some people. Keep trying."**

Residential MPDU Optional Method

Current Code:

- Standard Method
 - Density is determined by lot size
- MPDU Optional Method seems ... odd:

Development Method	RE-2C	RE-1	R-200	R-90	R-60
Standard (43,560/min lot size, mathematical density)	0.50	1.09	2.18	4.84	7.26
MPDU Optional (density in the code)	0.48	1.22	2.44	4.39	6.10

(Existing multi-family zones allow 1.22 times standard method for 15% MPDUs.)

Change?

- Conform to Chapter 25A (1.22 times standard method for 15% MPDUs)

Development Method	RE-2C	RE-1	R-200	R-90	R-60
Potential MPDU Optional	0.60	1.30	2.70	5.90	8.9



Incentive Density: BLTs & MPDUs

Current Code:

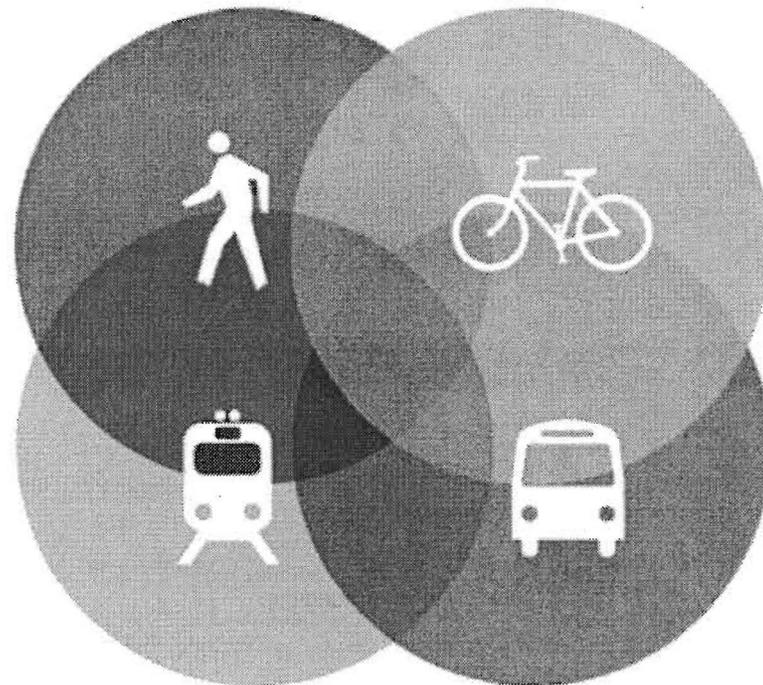
- 5 points for BLTs required for all CR optional method projects
- 12 points for each 1% of MPDUs above 12.5%

Change?

- 5 points for BLTs required for all CR optional method for properties > 3 miles from level 1 transit
- 30 points (15%) for MPDUs for properties \leq 3 miles from level 1 transit

Average Major Household Expenses

- Housing: 34.1 percent
- Transportation: 17.6 percent
- Food: 12.4 percent
- Insurance/Retirement: 10.8 percent
- Medical: 5.7 percent



Functional Master Plan for Housing

Demographics

- Income
- Age
- Family structure
- Etc.

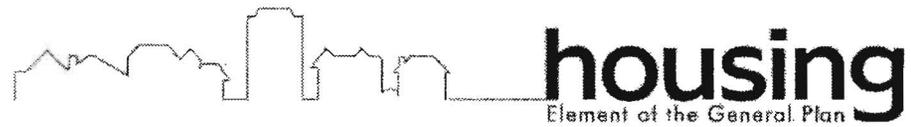
Other Factors

- Transportation expenses
- Access to services
- Recreation & health
- Etc.

Median Family Income (HUD income limits)	2012	%	2010	%	1999	%	1989	%
Extremely Low (30%)	44,232	12.2%	52,882	14.7%	28,090	8.6%	25,709	9.1%
Low (60%)	65,125	18.0%	65,981	18.4%	48,419	14.9%	43,918	15.5%
Work force housing (120%)	117,108	32.4%	118,247	32.9%	93,511	28.8%	89,176	31.5%
Total households	361,116		359,476		324,940		282,903	

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- Functional Master Plan for Housing



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Sustainability: Integration with Planning Elements

Transportation

Land Use

Zoning

Environment

Open Space & Recreation

Cultural Facilities

Building Code

MPDU/WFHU Codes

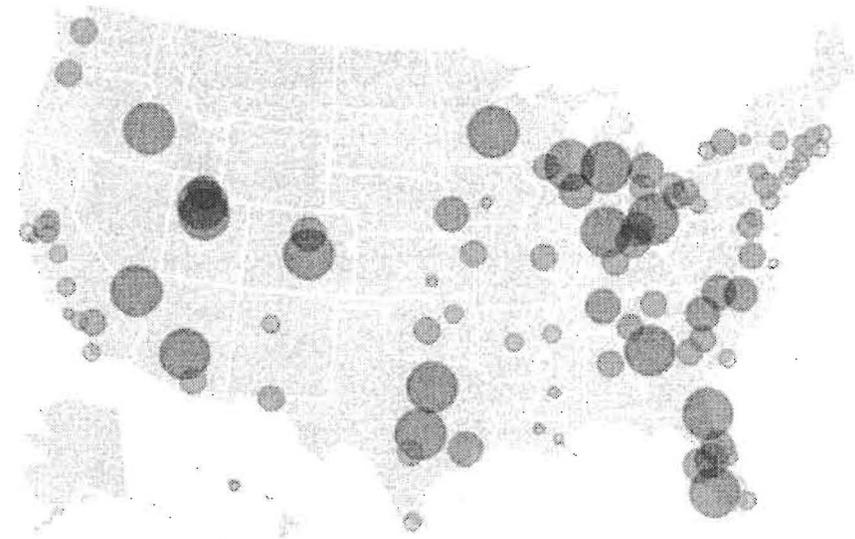
Urban Infrastructure & Design

General Planning Element	Common Sustainability Measures by Key Sustainability Principle				
	Strategic Emissions Reduction	Smart Land Use and Planning	Responsible Resource Management	Integrated Transportation	Innovative Waste Management
Land Use	<ul style="list-style-type: none"> Efficient transportation networks Public transit, walkways, bikeways Transit-oriented development (TOD) 	<ul style="list-style-type: none"> Compact, mixed-use development Integrated infrastructure design and layout 	Efficient Infrastructure	Reduce sprawl	Solid waste facilities
Circulation			Efficient transit	<ul style="list-style-type: none"> Improve circulation and cut congestion Reduce average vehicle miles traveled (VMT) 	Solid waste transport
Housing			<ul style="list-style-type: none"> Efficient use of materials Use recycled water & materials 	Integrate transportation	<ul style="list-style-type: none"> Recycling Composting
Conservation	<ul style="list-style-type: none"> Energy (electricity & gas), water, and transportation fuel efficiency Develop clean alternatives 	Preserve natural resources		<ul style="list-style-type: none"> Land Materials Natural resources 	<ul style="list-style-type: none"> Raw materials Reuse/Recycle
Open Space	<ul style="list-style-type: none"> Compact development to preserve open space Protect natural resources & ecosystems Preserve/increase carbon sequestration 				
Safety	<ul style="list-style-type: none"> Assure long-term reliable supply of critical water & energy resources Improve air quality Reduce hazardous materials & waste 				
Noise	Manage impacts of airport expansion on residents and wildlife areas				

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Suburban Poverty

Change in Suburban Poor Population in the Largest 95 Metro Areas
 Percent change in suburban poor population from 2000 through 2010



Circles sized according to change in suburban poor population:
 > 100% 75 to 100% 50 to 75% 0 to 50% No significant change
 Source: U.S. Census

Poverty Rate: Core Cities & Suburbs
 MAJOR METROPOLITAN AREAS: 2000 & 2010

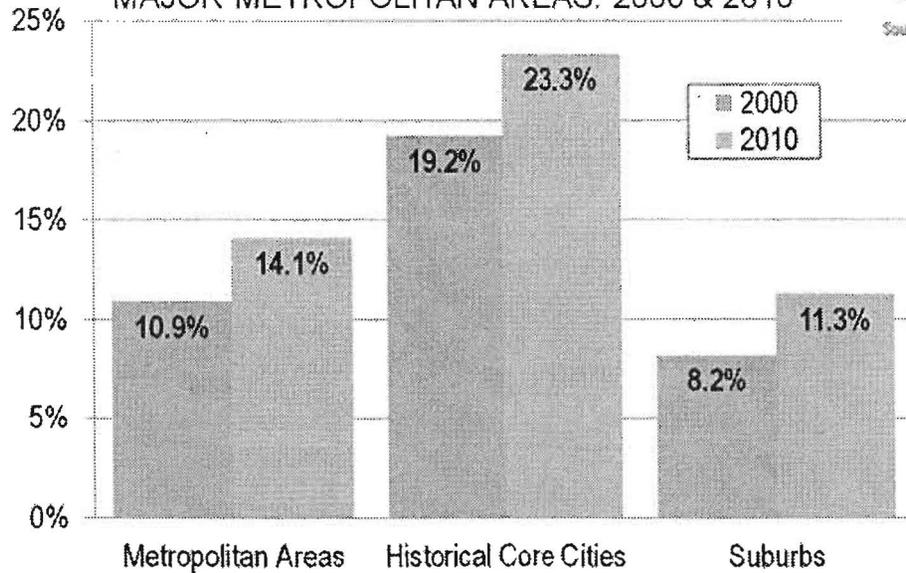
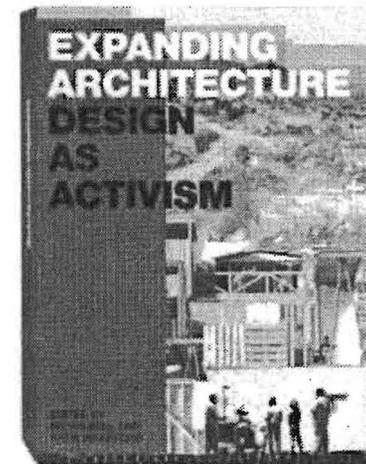
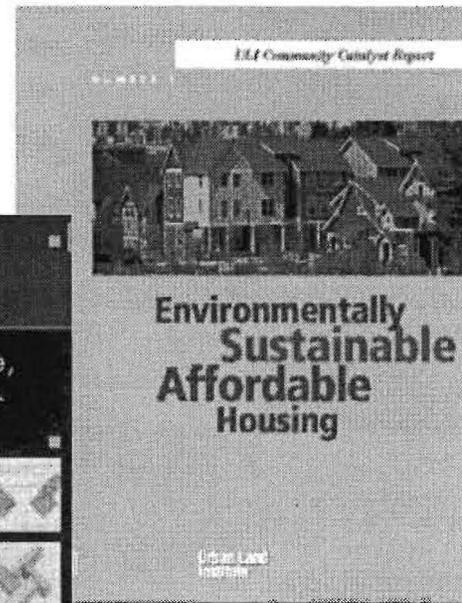
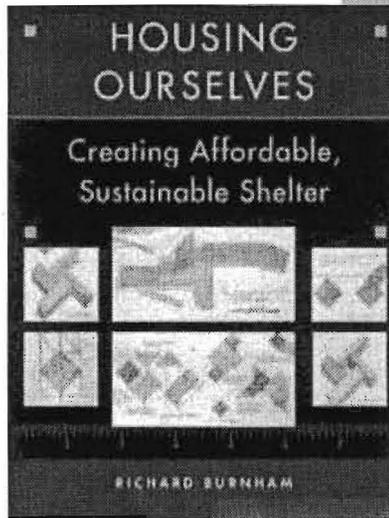


Figure 3

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Topics? Issues? Tools?

- Sustainability
- Integration
- Locations
- Connections
- Zoning - Rezoning
- Guidelines
- Design
- Energy
- Income Ranges – MPDU, WFHU, Productivity
- Rental/Sale
- Building Types
- Food Production & Access
- Health & Recreation



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Summary

Past

- MPDU program in all mixed zones provides about 15 bonus units per year
- Required 12.5% program (for no bonus density) provides hundreds
- Residential MPDU optional method does not provide for an increase in density over standard method yield (but allows flexibility in unit types)

Present

- New FAR rules for all mixed-use zones
- New flexibility for lot standards for all zones
- New floating zones allow new options (but in limited areas)
- New master plans have affordable housing recommendations
- New requirement for conformance to master plan

Future

- Can a framework be established that can adapt to changes we can't anticipate?
- Zoning is one piece of the development regulatory framework (and can only do so much – is provision of affordable housing its primary function?)
- Need comprehensive plan that considers affordable housing within the larger economic & social context

Changes in Public Benefit Points by Category	Current Code	Planning Board Draft	PLIB Committee Recommendation 2011
Major Public Facilities			
LSC	n/a	20	n/a
EOF or CRT	40	40	40
CR	70	70	70
Transit Proximity			
LSC	n/a	0-10	n/a
EOF or CRT	7.5-25	0-25	0
CR	15-50	2.5-50	0
Connectivity and Mobility			
Advance Dedication			
LSC	n/a	8	n/a
EOF or CRT	30	15	0
CR	30	30	0
Minimum Parking	10	10	20
Neighborhood Services	15	10	10
Public Parking	25	25	20
Through-Block Connections	20	15	0
Transit Access or Streetscape Improvement	n/a	20 (combined)	n/a
Transit Access	20	n/a	5
Streetscape Improvement	20	n/a	10
Trip Mitigation	20	15	5
Way-Finding	10	5	0
Diversity of Uses and Activities			
Adaptive Buildings	15	10	0
Affordable Housing	40	40	40
Care Centers	20	20	15
Dwelling Unit Mix	10	10	5
Enhanced Accessibility for Seniors or the Disabled	20	15	10
Enhanced Visitability for Seniors or the Disabled	n/a	15 (new)	n/a
"Live/Work"	15	10	0
Small Business Opportunities	20	20	10
Workforce Housing	n/a	20 (new)	n/a
Quality Building and Site Design			
Architectural Elevations	20	20	0
Enhanced Recreation Facilities	n/a	10 (new)	n/a
Exceptional Design	10	10	10
Historic Resource Protection	20	20	15
Public Open Space	20	20	15

Public Art	15	15	10
Structured Parking	20	20	20
Tower Step-back	10	5	(included in Exceptional Design)
Protection and Enhancement of the Natural Environment			
Building Lot Termination	30	30	30
Building Reuse	100	100	100
Cool Roof	10	5	0
Energy Conservation and Generation	15	n/a (split)	0
Energy Conservation	n/a	10	n/a
Energy Generation	n/a	15	n/a
Habitat Preservation and Restoration	20	20	0
Recycling Facility Plan	10	5	0
Transferable Development rights	20	20	0
Tree Canopy	15	10	0
Vegetated Area	10	5	0
Vegetated Roof	15	10	0
Vegetated Wall	10	5	0

Transit Proximity Public Benefit – Current Code								
Proximity	Abutting or Confronting		Within ¼ mile		Between ¼ and ½ mile		Between ½ and 1 mile	
	1	2	1	2	1	2	1	2
CRT	25	15	20	12.5	15	10	10	7.5
CR	50	30	40	25	30	20	20	15

Transit Proximity Public Benefit – Planning Board Draft												
Proximity	Abutting or Confronting			Within ¼ mile			Between ¼ and ½ mile			Between ½ and ¾ mile		
	1	2	3	1	2	3	1	2	3	1	2	3
LSC	10	5	2.5	8	4	0	6	2	0	4	0	0
EOF or CRT	25	15	5	20	12.5	2.5	15	10	0	10	7.5	0
CR	50	30	10	40	25	5	30	20	5	20	15	2.5

Productivity Housing

The following summary of Montgomery County's Productivity Housing program is intended for informational purposes only. You must read the law (Section 25B of the Montgomery County Code), the regulations (Executive Regulation 19-98), and the zoning ordinance (Section 59 of the Montgomery County Code) in order to understand and fully comply with the program. The Montgomery County code and regulations may be found on the American Legal Publishing website.

What is the Productivity Housing Program?

The Montgomery County Council created the Productivity Housing program on September 17, 1996; under this program, affordable housing (both rental and for sale) may be approved as an eligible use in certain commercial and industrial zones in Montgomery County through the special exception process. The housing produced is designed and priced to be affordable to households earning 75 percent of County median income, adjusted for family size (see below).

Where can Productivity Housing be Developed?

The Productivity Housing Program allows housing to be built in commercial and industrial zones where residential uses are not normally allowed. Productivity Housing projects may be approved through a special exception granted by the by the Montgomery County Board of Appeals

The program establishes a base residential density of six (6) units per acre for the relevant zones and permits an increase to 21.5 units per acre if at least 35 percent of the units are affordable to households with incomes at or below the County median income. Except through this program, most of the relevant zones do not permit residential development. The developer must apply for a Special Exception and be approved by the Board of Appeals.

The development standards of the applicable zone apply to residential projects with additional requirements regarding access and parking to accommodate residential use. No more than 25 percent of the land zoned for commercial and industrial use in each master plan area can be used for multifamily housing.

The eligible commercial and industrial in which the Productivity Housing may be permitted through a Special Exception are:

- C-1 Convenience Commercial
- C-2 General Commercial
- C-3 Highway Commercial
- C-4 Limited Commercial
- O-M Office Building, Moderate Intensity
- I-1 Light Industrial
- I-3 Technology and Business Park
- I-4 Low Intensity, Light Industrial

What is the approval process for a Productivity Housing Project?

1. The developer must apply for a Special Exception, which must be approved by the Board of Appeals. The zoning ordinance provides specific requirements for the approval process in Section G-2.36.2.
2. Before a building permit may be issued, the developer must execute a written agreement to provide Productivity Housing units (PHUs) with the Director of the Department of Housing and Community Affairs (DHCA). The agreement must contain the name of the subdivision, the marketing name of the subdivision or apartment building, and a plan for the staging of construction of all dwelling units. The staging plan must be sequenced so that the PHUs are building along with or before other dwelling units. The written agreement will require the developer to execute and record covenants prior to the sale or lease of any PHUs.
3. The developer must record the productivity housing agreement in the Land Records of the County promptly upon its execution. The developer must provide the County with a copy of the recorded agreement immediately after it is recorded. The agreement will be released from the

Land Records by the County when all required PHU covenants have been recorded in the Land Records.

4. A copy of the executed productivity housing agreement must be submitted to the Department of Permitting Services (DPS) with the first building permit application in the subdivision. DPS must not issue building permits in a subdivision having a productivity housing requirement unless the PHUS are part of the staging plan in the signed agreement.

What are the Specific Requirements for Productivity Housing Units (PHUs)?

- In a single-family dwelling unit, PHUs must have at two or more bedrooms.
- In a multi-family dwelling unit productivity housing project, the ratio of all efficiency and one-bedroom PHUs to all PHUs must not exceed the ratio of all market-rate efficiency and one-bedroom units to the total number of market-rate units in the development.
- In a subdivision containing both single-family and multi-family dwellings:
 - the ratio of rental single-family PHUs to all single family PHUs must not exceed the ratio of rental market rate, single-family PHUs to all multifamily units; and
 - the ratio of rental, multi-family PHUs to all multi-family PHUs must not exceed the ratio of rental market rate, multi-family units to all market rate, multi-family units.
- The maximum sales prices for PHUs must not exceed 175% of the sale price for a comparable Moderately Priced Dwelling Unit (MPDU) in effect at the time the unit is offered for sale by the developer. For information on the MPDU program, including information on rent levels and sales prices are determined, please refer to the MPDU web page.
- PHU Rental rates will be set based on the affordability at 75 percent of the area wide median income for a four (4) person family adjusted for family size by the factors indicated below:

Family Size and Adjustment Factor

Family Size	Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1.0
5	1.1

Maximum allowable rents, including tenant paid utilities, must not exceed 30% of the calculated gross household income. Household size will be estimated based on 1.5 persons per bedroomx.

Number of Bedrooms and Adjustment Factor

Number of Bedrooms	Adjustment Factor
Efficiency	1 person: 0.70 of area median income
1 bedroom	1.5 person: 0.75 of area median income
2 bedrooms	3 person: 0.90 of area median income
3 bedrooms	4.5 person: 1.05 of area median income

The Executive Regulation provides detailed guidelines on calculating the maximum income and rents.

What are the requirements for persons owning or renting Productivity Housing Units?

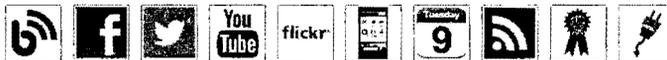
- PHUs that are sold must be occupied by the owner as his or her primary residence during the control period.
- Rental units may not be sublet during the control period, unless permitted by the developer, and unless sublet to an income qualified household approved by the Department.
- During the control period, a PHU may not be resold or refinanced for an amount great than an amount as determined by DHCA. The regulations provide detailed information on the calculation of the maximum resale price.
- An owner may sell a PHU on the open market for a fair market price once the applicable control

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period has expired. However, the owner must pay one-half of the excess profit into Montgomery County's Housing Initiative Fund (HIF) in order to provide affordable housing units in the future. The regulations provide detailed information on the calculation of excess profit.

- For-sale units are controlled for ten (10) years; rental units are controlled for twenty (20) years.

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Highlights/Excerpts about Affordable Housing from November 12 and 14 Public Hearings

1. Indian Spring Citizens Association (© 61-62)

Another major concern is to address the need for more affordable housing. This especially applies to low income rental housing...we are not keeping pace with the county's needs...recommend we do much more as a part of the zoning rewrite.

2. Action in Montgomery (© 63-64)

Agree with streamlining the public benefit point system for awarding maximum density...why should public art or open space receive more points than bonus MPDUs?

Minimum requirements for MPDUs in the CR and CRT zones should be 15% when optional method is used...former zoning code required 15% to get maximum density...Rockville requires 15% MPDUs for maximum density.

AIM has met with developers who all say that building more than the required 12.5% MPDUs without financial incentives from the County is impossible.

Align the zoning code with the following statement from the Draft Housing Policy, *"Provide additional incentives for projects in the Commercial/Residential Zone, and other similar zones that award points for providing certain public benefits, to developments that will have more MPDUs than required, and for projects having more units with 3 or more bedrooms."*

3. Montgomery Housing Partnership (© 65-67)

The County must employ a multi-pronged approach to address the housing crisis. This must include policy and legislative initiatives, financial support, and a zoning ordinance, which must all work together to address this housing shortage.

- (1) Require all developers to pursuing optional method development to provide 15% MPDUs in order to achieve bonus density. Because there is an additional cost for this additional 2.5%, open the door to payments in lieu for the additional MPDUs, the Zoning Code should say that buyouts do not exempt a property from receiving a bonus density.
- (2) Do not count bonus MPDUs toward the FAR limit.
- (3) Allow increases in height above the zone and master plan to accommodate additional square footage to achieve 15% MPDUs on site;
- (4) For developments above 15% MPDUs exempt them from achieving points from 3 or 4 categories;
- (5) remove current disincentive to build more

than 15% MPDUs; (6) reduce/eliminate points awarded for benefits that have minimal or no additional cost or are covered by other County regulations.

Implement an option for a developer of commercial property in CR and CRT zones to earn points through a commercial fee.

4. Hrant Jamgochian (© 68)

Hope we can further incentivize affordable housing options...it is imperative that MPDUs not be counted towards construction density or project density.

5. Coalition for Smarter Growth (© 69-70)

The MPDU program has served the county well...MPDUs must be given a higher priority in CR zones and related zones... We ask: (1) Require 15% MPDUs for projects seeking additional density in CR zones and other zones around transit stations; (2) allow limited height increases and FAR needed to accommodate the full 15% of MPDUs on site and compensate developers for the below market rate units.

6. Justice and Advocacy Council/Archdiocese of Washington (© 71)

Concerned that new zoning code gives developers 37 options other than affordable housing to obtain a density bonus...these other options are far less expensive...we fear these other options will result in less affordable housing being built.

Public financing for new housing affordable to low income families has been unable to meet the need...new constructions continues to provide the major source of affordable housing for the County's low income families...because of the County's MPDU requirements...The changes proposed undercut the county's own assessment of the need to have more MPDUs produced.

7. Housing Opportunities Commission (© 72-73)

HOC benefits from an increase in the supply of MPDUs and the availability of MPDUs in high density areas, especially near transit...allows HOC to continue achieving a social and economic balance in the County, which serves HOC's objective to deconcentrate subsidized housing.

Consider not counting total MPDU FAR when bonus units are produced in zones that no longer offer the traditional density bonus, not just the FAR for bonus units as currently proposed, to allow no loss of market rate units. It might require extra height for the MPDUs.

8. Hillandale Citizens Association, Inc. (© 74-76)

Council should incentivize and pinpoint MPDU production in areas lacking significant levels of affordable housing. The relationship between affordable housing policy and challenges in local schools should also be considered... "bonus density" program should pinpoint MPDU production and be tied to local FARMS rates in elementary and middle schools... example, bonus density threshold could be set for areas with a FARMS rate of 40% or lower.

9. Federal Realty Investment Trust (© 77-78)

Opposed to the changes PHED has suggested in regards to the public benefit points and categories in the CR Zone... the changes gut the CR Zone and will dramatically increase the cost of mixed use development in metro policy station areas... the public benefits associated with the sketch plan (for Pike and Rose) would be reduced by approximately 48%... how can business people invest in a County with such wild policy swings in such a short period of time?

We understand that concerns about affordable housing but proposed changes will reduce the amount of affordable housing units because it will essentially kill the majority of new construction by driving up costs... the provision of 12.5% MPDUs in White Flint costs and average of \$30/FAR sf, this dwarfs other public benefits in cost.

A solution for affordable housing lies in having a separate conversation as opposed to squeezing it into the zoning re-write.

10. Pam Lindstrom (no written testimony)

An informal coalition has formed around the concern about affordable housing. The Council was previously sent a letter and the coalition has met and come together around a set of recommendations that are mutually reinforcing and should be considered as a package.

(1) Require all developers to provide 15% MPDUs when using optional method to achieve bonus density; (2) Allow payments in lieu for the additional MPDUs that would be used to providing financing for other projects providing affordable housing; (3) add to list of benefits a commercial development payment to fund gap financing for affordable housing projects; (4) Do not count bonus MPDUs toward the FAR limit; (5) Allow increases in height, subject to a limit, to accommodate additional square footage to achieve 15% MPDUs; (6) For developments above 15% MPDUs, exempt them from achieving points from 3 or 4 categories; (7) revise point system to provide 12 points for every percent above 15% to remove current disincentive to build more than 15%

MPDUs; (8) streamline points awarded for benefits that have minimal or no additional cost.

11. Affordable Housing Conference (© 79-81)

One of the guiding principles of the AHC is to promote and support all realistic measures to create, preserve, maintain, and secure affordable housing...we encourage creative out-of-the-box thinking...AHC coordinated two meetings at Park and Planning to address the many questions and information about the zoning code re-write's impact on affordable housing.

While AHC would welcome a 15% MPDU requirement, it could present a problem if there is a reduction in the number of market rate units being built.

AHC recommends that if a developer provides 15% or more MPDUs, none of the MPDUs will count against the development FAR...increasing the number of proposed benefit points for providing 15% or more MPDUs...reducing the number of public benefit categories required for development providing at least 15% MPDUs...permitting exceeding the height of the zone and the master plan when providing 15% or more MPDUs, similar to what is allowed for Workforce Housing...requiring developers of commercial projects that do not have a housing component located in a mixed use zone to contribute to an affordable housing fund

TESTIMONY OF TONY HAUSNER
INDIAN SPRING CITIZENS ASSOCIATION
BEFORE MONTGOMERY COUNTY COUNCIL
ON ZONING REWRITE
NOVEMBER 12, 2013

Council President Navarro and Councilmembers, I am Tony Hausner speaking for the Indian Spring Citizens Association.

The proposed zoning rewrite now before the County Council is a very big deal. The rewrite does a good job of achieving its main goal, which is to simplify our current overly long and complicated zoning code.¹

District Map Amendments and Commercial Zones

But I and many other civic leaders feel one part of the rewrite undermines the ability of residents to have a say in the development of their nearby commercial and industrial areas through master plans and sector plans.²

The current draft of the zoning rewrite proposes a single county-wide, or “district map” amendment that would convert nearly all commercial zones in the county into commercial/residential zones in one fell swoop.

That means that a number of strip shopping centers could turn into lot of residential buildings, many of which could be high rise residential buildings. These many high rises could provide excessive strain on traffic and school capacity. Also it would place additional burdens on the police and social services for youths, families, seniors, etc.

My biggest concern with this district map amendment proposal is that it removes the right of each community to have a say about this issue through the master plan process. The changes occur throughout the county immediately if approved by the council.

¹ See <http://montgomeryplanning.org/development/zoning/> for more information about this rewrite.

² See also <http://wearemoco.org/alert-zoning-rewrite/> for one Citizen Group's viewpoints. This group represents many civic organizations and individuals.

I and many other civic activists feel that this is disastrous. We feel that some commercial zones are appropriate for conversion to commercial residential zones, but that others should stay commercial.

Montgomery County is too big and too varied in its makeup between urban, suburban and rural areas to have a one-size fits all zone for its commercial areas. Every local community needs a say on how its closest commercial areas should look.

Floating Zones and General Buildings

- Meet all prerequisites under each of three categories when increasing density through floating zones in single family home neighborhoods.
- Do not allow non-residential general buildings “by right” in residential neighborhoods without notifying neighbors and allowing public input into site design and use.

Affordable Housing

Another of our major concerns is to have the Zoning rewrite address the need for more affordable housing. This especially applies to low income rental housing. While this county is recognized for its leadership in using the MPDU process to create affordable housing, we are not keeping pace with the county’s needs. I recommend that we do much more as part of the zoning rewrite. I refer you to others for more guidance on this topic.

Testimony to Montgomery County Council
Public Hearing, Zoning Re-write, November 12, 2013
by
ACTION IN MONTGOMERY

Introduction I'm Dick Pavlin, with the Leadership Team of Action in Montgomery (AIM) a non-profit, faith-based organization of 30 member congregations. AIM has called for more affordable housing as a moral imperative for more than a decade. Thank you for these additional hearings on the Zoning Re- write.

Discussion AIM agrees with Councilmembers Elrich and Leventhal that parts of the Zoning Re-write need a re-write. They're right to want to streamline the public benefit point system for awarding maximum density in the Optional Method section.

As Hillary Goldberg of Bozutto has said, the current point system is "regressive" for developers providing bonus MPDUs. Why should developers providing Public Art or Open Space receive more points than those who provide bonus MPDUs? Public Art and Open Space are not a moral imperative - affordable housing is!

AIM urges Council to streamline the list of public benefits, eliminating or reducing the points awarded as Councilmembers Elrich and Leventhal have advised.

AIM also agrees with Nonprofit Montgomery that the minimum requirement for MPDUs in CR and CRT zones should be 15% when optional method to obtain more density is used. AIM recommended this at the June 11 Council Hearing and before the full Planning Board last February.

There are two precedents to support this measure:

First, the precedent of the former zoning code. It requires 15% MPDUs for maximum density. Developers have worked out financially how to pay for this to get maximum density. Retaining the 15% requirement isn't a new financial challenge.

Second, the precedent of Rockville City which requires 15% MPDUs for maximum density. By retaining the same requirement, the County keeps the continuity of how density is awarded throughout the County, avoiding a differential in zoning for density.

AIM also supports Nonprofit Montgomery's seven other recommendations, having worked together with their member agencies to develop these points. Two of these seven are supported by developers like Bozutto. Developers and housing advocates can agree on key provisions.

Developers are the key players in providing affordable housing. AIM has met with more than a dozen developers and all say the same thing. Building more than the required 12.5% MPDUs without financial incentives from the County is impossible. Even projects on County land require additional incentives, as the \$11 million of County funds for the Silver Spring Library project has shown.

Park and Planning staff compared MPDUs and Public Benefits in the CR and CDB Zones and found developers did not build more than the required MPDUs in 42 projects in CR zones. Only 10 projects had bonus MPDUs. Total bonus MPDUs were 55 – about 1.3 bonus MPDUs_per project.

Unless the County retains bonus MPDUs in exchange for density, developers will only build the required number of affordable units. As HOC Director Stacy Spann has testified to Council -

"As the Housing Policy notes, simply requiring 12.5% MPDUs in master planned communities, does not produce affordable units at an adequate rate to accommodate current and future housing needs. Furthermore, the public benefit structure adopted

Action in Montgomery, p 2

by the CR and CRT zones places greater production of affordable units in direct competition with other less expensive public benefit features such as public art and exceptional design. Developers will continue to opt for less expensive public benefits in lieu of affordable housing units until the scoring system is modified..."

Conclusion AIM's final point is that Council needs to align the zoning code with the Housing Policy Draft it is still reviewing. Policy and Zoning should agree on affordable housing. The Draft recommends -

"Provide additional incentives for projects in the Commercial/Residential Zone, and other similar zones that award points for providing certain public benefits, to developments that will have more MPDUs than required, and for projects having more units with 3 or more bedrooms."

The Draft shows the 2012 housing pipeline for multifamily housing already includes 60 projects with 18,000 units that have not yet started construction. There is time to give many of these projects the incentives to build more MPDUs than required in exchange for density, allowing the County to better meet housing needs. AIM urges the Council to revise the Zoning Code so that it conforms with the policy.

#####



12200 Tech Road, Suite 250, Silver Spring, MD 20904 • Phone: 301-622-2400 • Fax: 301-622-2800 • www.MHPartners.org

November 12, 2013

Council President Nancy Navarro
 Montgomery County Council
 100 Maryland Avenue
 Rockville, MD 20850

Council President Navarro and Members of the Council:

My name is Robert Goldman, and I am President of Montgomery Housing Partnership. Thank you for allowing me this opportunity to address the Council regarding the zoning rewrite process.

Montgomery Housing Partnership's mission is to preserve and expand quality affordable housing in Montgomery County. Our success over the years has been a result of taking a comprehensive approach to developing affordable housing that integrates three things: Housing people; Empowering families; and Strengthening Neighborhoods.

Through these three strategies, MHP has developed almost 1,400 quality affordable homes in Montgomery County; provides pre-school and after-school programming to almost 300 County children; and works directly with various neighborhoods, including Long Branch, Glenmont and Germantown to support residential and commercial sustainability.

The need for affordable housing in the County is acute. Given the high cost housing market in Montgomery County, households earning below 60 percent of the area median income struggle the most to find housing that is affordable. A family of four earning \$53,000 a year, should not be spending more than \$1,325 a month on their household costs. However, the County's current average rent is \$1,442 per a month, an increase of over \$500 since 2000.

Currently, over 52 percent of renters in Montgomery County are considered cost burdened, paying more than 30 percent of their gross income towards their housing costs. A household would need to earn almost \$58,000 a year to afford the average County rent, equating to having four full-time minimum wage jobs.

The County's planning department estimates that by 2040 there will be an additional 100,000 households with an average household size of 2.5 residents. According to analysis by George Mason

University's Center for Regional Analysis, the County needs an additional 54,000 rental units to accommodate this growth, with 95 percent of these units priced at \$1,800 per a month or less.

The County must employ a multi-pronged approach to address this housing crisis. This must include policy and legislative initiatives, financial support, and a zoning ordinance, which must all work together to address this housing shortage. Tonight, we are here specifically, to consider whether the zoning ordinance is fulfilling its duty to support further development and preservation of affordable housing.

While we commend the PHED Committee and the Planning Board and Staff for their tremendous effort, we feel that more needs to be done to support affordable housing through our zoning code. It is true that the total potential residential development envelope has expanded, which will lead to more affordable units. However, to us each unit is not just a number, it represents a family getting back on their feet. It represents a woman who escaped an abusive relationship, a veteran who fought for this Country and ended up on the streets, and parents working two or more jobs to try and give their kids the opportunities they didn't have for themselves. My point is we can't give up any opportunity to put more affordable units on the market.

In that regard, I'd like to raise a couple of points with the Commercial Residential (CR) Zones where we feel the zoning code can provide further support for affordable housing. However, I urge the Council to continue examining more deeply methods for supporting affordable housing in this code, and the other tools at the County's disposal.

The Commercial Residential (CR) Zones create a wonderful opportunity to provide mixed-use communities throughout the County. However, we cannot let this happen at the expense of losing affordable housing. The current zoning code requires developers to increase their Moderately Priced Dwelling Units (MPDUs) from 12.5 percent to 15 percent in order to achieve full bonus density. The proposed CR Zone effectively eliminates this requirement by lumping affordable housing with approximately 40 other alternative methods of achieving bonus density, many of which are cheaper to provide. As we are already seeing, most developers are choosing the alternative ways to get bonus density and therefore only the required 12.5 percent of MPDUs are being built. This decreases the amount of amount of affordable housing being built, in a time of great need in this County.

We propose requiring all developments pursuing optional method development be required to provide 15 percent MPDUs in order to achieve bonus density. We understand that there is a financial cost to the developers for providing this additional 2.5 percent of MPDUs, and therefore propose these additional recommendations:

- Open the door for payments in lieu of units for the bonus units only. While the specifics of this should be worked out through the County Code, the Zoning Code should note that buyouts do not exempt a property from receiving bonus density;

- Approving the PHED committee's recommendation to not county bonus MPDUs towards the projects FAR limit;
- Allow limited increases in height, above the zone and master plan, to offset the additional gross square footage necessary to achieve 15 percent MPDUs on site;
- For developments achieving more than 30 points (above 15% MPDUs) exempt them from the requirement for achieving points from three or four categories;
- Revise the point system for the public benefits to award 12 points for every 1 percent of MPDUS provided above 15 percent, removing the current point disincentive to build more than 15 percent MPDUs; and
- Streamline the list of public benefit points by eliminating and/or reducing the points awarded for benefits which have minimal or no additional cost to provide, or which are covered by other County regulations.

Additionally, housing is currently one of the only public benefit options that is only available to residential development. However, as the zone is a mixed use zone, we propose adding to the list of public benefits an option for commercial developers in CR and CRT who are pursuing optional method development to earn points through a commercial fee. This could be modeled similar to Alexandria, which charges developers a fee per a square footage to support affordable housing. These funds would supplement the County's HIF funds, and made available for projects which propose at least 20% affordability.

Having shared these ideas, it still doesn't fully address our affordable housing shortage. We must continue to push the envelope and explore additional opportunities to ensure all Montgomery County residents, current and future, have a quality and affordable place to call home.

Thank you for taking the time to listen to these thoughts and for keeping the housing needs of Montgomery County citizens at the forefront of your mind. We look forward to the opportunities to continue to work with the County ensuring all our residents have quality, affordable housing to call their own.

I welcome the opportunity to discuss this issue with you further. Please feel free to reach me at rgoldman@mhpartners.org or 301-812-4114.

Sincerely,



Robert A. Goldman, Esq.
President

Good evening. My name is Hrant Jamgochian. I live at 6540 Bradley Blvd in Bethesda, MD and have been commuting downtown for more than a decade. I am also a candidate for the Maryland House of Delegates in District 16.

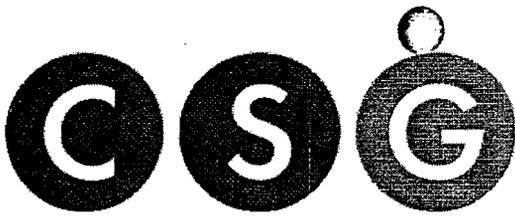
As a result, I applaud the County Council for holding tonight's hearing, and more importantly for its efforts to modernize our zoning ordinances, which have not been updated since 1977. We now know so much more about "transit oriented development," and need to ensure our zoning standards and development practices reflect our shared priorities, in order for our constituents and community to have an even brighter future.

I am particularly excited by the proposed goal of maintaining a wide range of housing options, including affordable housing, which will open doors for so many people - from young families to elderly seniors to mid-career singles and more. Many people here tonight probably know someone who has been shut out of our community, because of the lack of affordable housing. In fact, as I go door-to-door in my district, I continue to hear from countless seniors who worry about being able to stay in their homes, as the cost of living continues to rise along with the lack of affordable alternatives for them. Young professionals also face the same challenges and often commute from the eastern part of our County to work in the west.

I am hopeful that we can further incentivize the affordable housing options you are exploring to further stimulate our economy. I know the Affordable Housing Conference of Montgomery County has been active and involved in this aspect of the zoning rewrite and I wanted to let you know that I also believe it's imperative that Moderately Priced Dwelling Units (MPDUs) not be counted towards construction density or total project density. We aren't a community that turns its back on its neighbors - let's make sure that everyone has a place here.

One final aspect that I want to recognize, is all of the County Council's work to reduce our traffic. I especially appreciate its commitment to increase walkability, bikeability, carpooling and smarter, greener mass transit options like Bus Rapid Transit and the Purple Line, which are going to move our community forward. By investing in alternatives to cars on the road, we are reducing gridlock, protecting our air quality and taking another step towards improving the quality of life for our residents.

Thank you again for this opportunity to provide feedback, and for your efforts to help ensure we keep Montgomery County moving forward.



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Coalition for Smarter Growth

DC • MD • VA

November 12, 2013

President Nancy Navarro
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Additional comments on the Zoning Rewrite -- Zoning Text Amendment 13-04
(Zoning Ordinance - Revised and District Map Amendment G-956 (proposed zone implementation))

Dear President Navarro and members of the Council:

Please accept these comments on behalf of the Coalition for Smarter Growth. The Coalition for Smarter Growth is the leading organization in the Washington, D.C. region dedicated to making the case for smart growth. Our mission is to promote walkable, inclusive, and transit-oriented communities, and the land use and transportation policies and investments needed to make those communities flourish.

First, we want to reiterate our gratitude for the efforts of the Planning Board and staff. This is a tremendous undertaking. This update will simplify land use regulations, and allow the code to be better understood by the public. It carefully translates existing zones to a simpler set of zones without changing the intensity of the use. Beyond the important benefit of transparency, the major highlights in the rewritten code are modernized standards to support pedestrian-oriented environments. The use of a building form type approach rather than a zone-based approach to development standards will support more pedestrian-friendly environments, and also better protect residential neighborhoods from non-residential uses. The revision also allows for commercial zones to potentially provide a mix of uses which will provide greater walkability and new housing opportunities.

The revised zoning code is an important step forward for the county as it seeks to preserve what's best about its neighborhoods, while better guiding growth in its more urban areas. It establishes more up to date standards to foster truly walkable, transit-oriented urban places.

In addition to the many successes of this zoning rewrite, we wish to call attention to two key issues that still need improvement – affordable housing (MPDUs) and parking standards.

Affordable Housing

Montgomery County continues to struggle to offer housing affordable to the many workers who make up the economy. A core housing policy tool – Moderated Price Dwelling Units or MPDUs – has served the county well for more than 30 years. However, the MPDU program faces many challenges. The County Council must ensure that the zoning code is used to foster inclusive communities. Zoning is not the only tool, but it is a critically important one. This means that truly affordable housing, which MPDUs offer, must be given higher priority in CR zones and related zones. We join with the many stakeholders of

affordable housing asking the Council to ensure that the MPDU program retains its integrity through the zoning update and CR zone process. In particular, we ask that:

- Require 15% MPDUs for projects seeking additional density in CR zones and other zones around transit stations.
- Allow limited height increases and FAR needed to accommodate the full 15% of MPDUs on site and compensate developers for the below market rate units.

To address housing affordability and transportation costs, we urge the council to guaranteeing the full 15% of MPDUs and the compensating bonus density and needed height in the thriving housing markets of the county, especially those close to high quality transit.

Rethink parking requirements

We also reiterate our support for reducing parking requirements, though much more progress could be made. The negative effects of requiring too much parking are increased cost to housing and commercial space, and increased traffic generated by subsidizing car storage. It would be better to remove parking minimums. Parking supply is better left to individual developments to determine the marketability of parking based on demand factors. Removing minimums would be most helpful for CR zones as transit access and mix of uses reduces parking demand.

Despite the Planning Board draft's retention of parking minimums, progress was made with the CR and employment zones that are within Parking Benefit Districts. Evidence shows that a high walkscore, which rates access to nearby uses, is a stronger predictor of low parking demand than transit alone. So reducing parking requirements in these zones is an important place to start. While we do not support the one parking space per unit minimum standard, we do welcome the flexibility offered by the provision to unbundle the cost of a residential space that allows for a reduced minimum parking ratio to 0.5 -0.75. Commercial parking minimums should also be examined as these minimums contradict efforts to reduce vehicle trips. While the flexibility offered within Parking Benefit Districts is welcome, we ask that more urban centers be included in Parking Benefit Districts, such as Friendship Heights, Takoma/Langley, and Long Branch.

We should be looking to support more transit-oriented living and working as the county becomes more transit accessible with the expansion of transit through not only the Purple Line, but also the County's Rapid Transit System proposal. The zoning rewrite moves us in the right direction, but we need to do more to relieve the costly burden of forcing unnecessary parking into new development and ensure that the commitment to 15% MPDUs remain intact.

Thank you for your consideration.

TO: Montgomery County Council
FROM: W. Christopher Farrell
Justice and Advocacy Council of Montgomery County/ Archdiocese of Washington
DATE: November 12, 2013

The Justice and Advocacy Council of Montgomery County, an official voice of the Archdiocese of Washington, has serious concerns that the proposed new zoning code would gives developers 37 options other than affordable housing to obtain a density bonus.

These other options to obtain maximum density are far less expensive, making it more profitable for developers to use these other options rather than build more than the required affordable housing. We fear these other options will result in less affordable housing being built.

In a *Catholic Framework for Economic Life*, the United States Conference of Catholic Bishops has stated, " All people have a right to life and to secure the basic necessities of life (e.g., food, clothing, shelter, education, health care, safe environment, economic security)."

All people, including poor people, have a right to shelter. I am inspired by something Pope Francis recently said while in Brazil: "when we are generous in welcoming people and sharing something with them – some food, a place in our homes, our time – not only do we no longer remain poor: we are enriched." We will be enriched as a community in Montgomery County by truly helping the poor and needy as we help provide the housing they need.

Public financing for new housing that will be affordable to low income families – even with the substantial commitment the county has made to the Housing Initiative Fund – has been unable to meet the need and will remain so. New construction continues to provide the major source of affordable housing for the County's low income families. It does so because of the county's MPDU requirements

In its 2012 Housing Policy analysis, the county estimated that for families earning less than \$60,000, the county would need to generate, by 2030, some 23,000 more units of affordable housing than are likely to be produced under current rules. ¹ In testimony before the PHED committee, the Housing Opportunities Commission highlighted its concern that "the CR and CRT zones do not provide sufficient incentive for developers to provide additional affordable housing as a public benefit rather than other public benefits that can be used to achieve density."²

The changes proposed here undercut the county's own assessment of the need to have more MPDUs produced.

The county is facing an affordable housing crisis. The public benefit scheme proposed in the draft now before you for approval appears designed to address not an affordable housing crisis, but some perceived aesthetic crisis. It would award a developer up to 90 public benefit points to avoid erecting a non-descript eyesore – more than twice the maximum public benefit points that the same developer could earn for by providing 25% MPDUs. We see no reason to believe that developers need this skewed scoring to produce attractive developments, and more importantly, no reason that the council should miss this opportunity to require, or at very least strongly encourage, more affordable housing in the form of MPDUs.

Here in Montgomery County, please make it a priority to provide adequate housing to people living in poverty. As one of the richest counties in the United States, we can do no less. Thank you.

¹ See PHED Staff analysis of 2012 Housing Policy, Jan. 15, 2013, at 9.
² Idem, at 13.

Sally Roman, Vice Chair
Housing Opportunities Commission
Zoning Rewrite Testimony
November 14, 2013

Good evening. President Navarro and members of the County Council, I am Sally Roman, Vice-Chair of the Housing Opportunities Commission. Thank you for the opportunity to testify on behalf of the Commission.

We at HOC consider the need for affordable housing to be critical and taking care of it must be a priority for us and the County. While we have seen progress towards a housing recovery during the last year, we have also seen rising home prices and further rental market tightening. A record number of county renters – more than half - now pay more than 30 percent of their income towards housing costs.

As you know, our mission at HOC is to serve the housing needs of low and moderate income families in the County. We benefit tremendously from an increase in the supply of MPDU affordable housing. It allows us the option of purchasing a third of those units which we have done repeatedly over the last 20 years. The availability of MPDU units in high density areas, especially near transit, would allow us to continue achieving a social and economic balance in the County, which serves our objective to deconcentrate subsidized housing.

Our partners in the affordable housing community have recommended a variety of approaches to solving the need for affordable housing, both through the Zoning Ordinance Rewrite and other mechanisms. It is important that the County Council recognize that regardless of the preferred path, all of us in the affordable housing community are motivated to reach the same destination: Meeting the affordable housing needs of Montgomery County. We believe that there are very good ideas in the design and implementation of the zoning rewrite particularly in targeting higher density in transit corridors and promoting a mix of different uses with a

significant residential component. However, it is important that the County not lose the affordable housing that attracts young workers who may otherwise be more inclined to establish residence in D.C. or northern Virginia.

We urge you to consider the various alternatives being offered during these public hearings. We especially hope that you will seriously consider not counting the total MPDU FAR when bonus units are produced in zones that no longer offer the traditional density bonus, not just the FAR for the bonus units as currently proposed. This would allow developers to produce MPDUs, including bonus units, with no loss of market rate units. It might require extra height for the MPDUs, though in zones which provide for tower setbacks, there should be room for the density without extra height.

On behalf of the Commission, I ask that you carefully factor the County's affordable housing needs into your deliberations – in and beyond zoning rewrite. The County's affordable housing shortage cannot be solved through zoning alone, and HOC urges the Council to give affordable housing every possible consideration among the many competing priorities that you weigh.

Thank you.

Hillandale Citizens Association, Inc.
Silver Spring, Maryland
Testimony to Montgomery County Council re Zoning Code ReWrite
November 14, 2013

During the October General meeting of the Hillandale Citizens Association, the zoning rewrite was discussed. This topic provided an opportunity to review the current code along with the proposed modifications. Given that our area is not undergoing a remapping through the rewrite, but is being rezoned under the White Oak Science Gateway Master Plan, our concerns are concentrated primarily on the code changes and specific zoning impacts on our community.

- **General Request on Limited and Conditional Use Approval Process:**

Streamlining of approvals in this rewrite by assigning authority to OZAH rather than the BOA, or to Executive Departments rather than OZAH/BOA may cut down on the approval time cycle, but it will mean a loss of civic and citizen engagement on local and neighborhood issues. Furthermore, in trying to limit subjective considerations, neighborhood knowledge and concerns will be dismissed unfairly. Please do not downgrade the approval authority for limited and conditional uses.

- **59-3: Uses and Standards: Small Lot Residential:**

Animal Husbandry: Thanks to the PHED Committee for reverting back to the current code in light of Dr. Tillman's recommendation. The existing requirements have worked well for Hillandale in the past and will allow neighbors to peacefully co-exist far into the future.

Accessory Apartments: The code appears to combine "registered living units" with the new Accessory Apartment code. Thank you for recognizing that RLUs are AAs and should be regulated as the same use category.

Bed & Breakfast: As a community with a B&B operating under a DPS Certificate, we urge you to have DHCA also approve the living space for Chapter 26 compliance in addition to the required Health Department inspection. These businesses should be subject to regular inspections. Charging an annual fee to administer oversight is appropriate. (See page 4.)

Lawn Care: Although currently considered a "registered home occupation" loosely regulated by DPS, these businesses should be specifically itemized as a use with standards. Lawn care operations are no longer a teen with a lawn mower. These businesses have multiple large trucks, equipment storage problems and often accumulate vegetative waste. Homes operating lawn care businesses can be very unsightly, disruptive to neighbors, and are deserving of a use category of their own. Emphasis on the need to meet residential standards is critical.

- **59-3: Uses and Standards: CR zones:**

Please change the approval of drive-thru restaurants in CR to "Conditional" with Board of Appeals approval. As the CR zones becomes more ubiquitous many small parcels along highways will be considered for this use. The 100' buffer and site plan approval is insufficient. Community specific concerns along with inherent/non-inherent issues must be given a full airing. Having the Board of Appeals set both site and operational requirements is desired.

59-4: Euclidian Zone Requirements:

Older Development Standards: Please include the pre-1958 residential development standards in some appropriate fashion—possibly as an appendix.. If this new code is to be fully usable by all, having this basic information available in the new comprehensive zoning code will be helpful for those looking for details on what can be done with their older home.

Non-Residential Buildings (in small lot zones): Although additional setback is helpful, this building type should be subject to additional scrutiny by only being permitted by Board of Appeals or site plan approval.

CRN: Density Averaging: As a community that is about to have CRN zoning applied adjacent to R-90 subdivisions, we ask that density averaging be eliminated in the CRN zone. CRN is touted as ensuring compatibility to our homes, yet the zoning code weakens these promises by automatically allowing increased density. Please eliminate density averaging for the CRN zone.

- **59-5: Floating Zone Requirements:**

Please retain the requirement for the defined prerequisites, LATR analysis and the full public process

- **59-6: Optional Method: CR Bonus Density for MPDUs:**

Some areas of the county, are very affordable having both market rate and rent restricted housing in abundance. With the need for additional “affordable housing,” Council should incentivize AND pinpoint MPDU production in areas lacking significant levels of affordable housing. The relationship between affordable housing policy and challenges in the local schools should also be considered. HCA believes that any “Bonus Density” program should pinpoint MPDU production to areas lacking affordable housing AND be tied to the local FARMS rate in the elementary and middle schools serving the project. For example, the Bonus Density threshold could be set for areas with a FARMS rate of 40% or lower, thereby providing MPDUs in areas needing additional affordable housing — areas with high performing schools.

- **59-7: General Development Requirements: A Residential Parking Detail**

Footnote #12 in the existing residential use table has been inaccurately captured in the new code. Given our experience with this footnote---a dump truck and commercial moving vans---we ask that this footnote’s intent be fully restored in the new code. **Please ensure “temporary parking” for up to 12 days per year is for vehicles permitted in the zone...not for any or all vehicles.**

1. In the existing Residential Use Table, the following category is defined:

Parking of motor vehicles, other than heavy commercial vehicles, off-street, in connection with any use permitted in the zone. Vehicles and machinery for agricultural use may be parked without restrictions *Note: P12 is in the cell for small lot zones.*

2. Footnote 12 states:

One light commercial vehicle may be parked on any lot or parcel. A tow truck is not permitted to park with a vehicle attached. One recreation vehicle may be parked on a lot or parcel, however it must not be used for dwelling purposes for more than 3 days in any month. **Parking for any vehicle or trailer in a front yard must be on a surfaced area; however, temporary parking for visitors, and loading, unloading, or cleaning vehicles or trailers is permitted on any area.** Temporary parking is infrequent; not more than 12 days per year.

- **59-8: Administrative Procedures, Division 8.7 Grandfathering**

Our community has had multiple recent situations with property owners wanting to spin-off lots that have been joined for zoning purposes. Under the Maryland Court of Appeals Remes Decision, owners are required to have each property meet the development standards—such as setbacks—prior to independent use of each property. Please confirm that the broad grandfathering provisions in this zoning rewrite will not have the unintended consequence of undoing Remes and therefore allowing lots-combined-for-zoning purposes to be redeveloped without both lots meeting development standards.

Thank you for reviewing our concerns and hopefully, incorporating our suggestions into the final edition of the zoning code.

Submitted by:
Eileen Finnegan, President
Hillandale Citizens Association
Silver Spring, MD
finnegan20903@yahoo.com

Attachments: Hillandale B&B profile
Sample of Pre-1958 Development Standards

**Testimony of Billy Herbert on behalf of
Federal Realty Investment Trust
ZTA 13-04, Zoning Ordinance
November 14, 2013
7:30 p.m.**

Good evening. My name is Billy Herbert with Federal Realty Investment Trust. Don Briggs and Evan Goldman apologize that they are unable to attend - they are both on the west coast this week.

To start, Federal Realty is a strong supporter of the zoning code rewrite. The ordinance that park and planning has drafted embraces the direction development is headed in the County. However, we have two areas of concern regarding the re-write - both related to changes made by the PHED committee during work sessions.

First, we are adamantly opposed to the changes PHED has suggested in regards to public benefit points and categories in the CR Zone. Both Federal Realty and the White Flint Partnership will submit detailed written testimony outlining our concerns, but in general, we feel the changes gut the CR Zone and will dramatically increase the cost of mixed use development in our metro station policy areas.

As a major tax paying employer in the County and a company that is investing up to \$1 billion in new development at Pike & Rose alone, Federal Realty is very concerned with both this decision making process and the potential impacts of the changes. If the re-write is approved as drafted, the public benefits associated with our sketch plan would be reduced by approximately 48%. The CR Zone was approved just three years ago (after much public debate), and here we stand on the verge of losing almost half of our public benefit points. How can business people invest in a County with such wild policy swings in such a short period of time?

In terms of affordable housing, we understand the concerns in the County. However, the solution proposed in the PHED changes would reduce the amount of affordable housing units because it would essentially kill the majority of new construction in the County by driving up costs. In White Flint, the provision of 12.5% MPDU's already costs the developer \$30/FAR sf on average. This dwarfs all other public benefits in cost. Increasing this burden is certainly not going to incentivize developers to build more.

Instead, the solution for affordable housing lies in having a separate and much needed conversation about how to create the desired additional units – as opposed to squeezing the topic into a zoning re-write that was not intended to tackle such a complex policy issue.

The second change in the re-write we are opposed to is the grandfathering language proposed by Staff and modified by PHED. This language does not protect property owners with large phased projects like Federal Realty. We will be building out Pike &



Rose for the next 15 to 20 years. A ten-year grandfathering period is simply not long enough for a 3.5 million SF project subject to Sector Plan staging. On top of that, the risk of having to conform a sketch plan to the new zoning ordinance when amendments are requested simply does not work. We are in the middle of one of the largest investments in our company's history, and cannot have added risk that our entitlements may change midway through our project build out.

The simple solution to all of this is to leave the CR zone alone, and grandfather approved sketch plans to pre-Rewrite zoning standards. You all worked hard to approve this zone a number of years ago, and the first building using CR zone hasn't even opened its doors. It is inconceivable to think that we are sitting here looking at a major overhaul of a piece of legislation whose ink has not yet dried. We urge you to approve the zoning code re-write exclusive of PHED's recommended changes to CR zone.

Thank you for your time.



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The Honorable Ben Cardin
The Honorable Chris Van Hollen

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Testimony of
The Affordable Housing Conference of Montgomery County
for the Council Public Hearing on
ZTA 13-04 Zoning Ordinance—Revised and District Map Amendment G-
956
November 14, 2013

Thank you for providing the Affordable Housing Conference with this opportunity to testify before you about the Draft Zoning and District Map Amendment. I am Barbara Goldberg Goldman, the Conference's Co-Chair. The Affordable Housing Conference, a nationally recognized and lauded 501(c) (3) believes that decent, safe, and affordable housing, for all Americans, is an inalienable right and not a privilege. We are proud that numerous affordable housing issues have been addressed and solved through collaborative efforts by us and our housing partners' efforts over the past 23 years. However, Montgomery County still needs more affordable housing units especially for those families, individuals, seniors and physically and mentally challenged individuals of low and moderate income.

While Montgomery County has been identified as one of the finest communities in which to live, for far too many—including our adult children and the County's workforce— it still remains the impossible dream: **According to the National Low Income Housing Coalition, the average monthly rent for a two bedroom apartment is \$1,412.** Since a renter should spend no more than 30% of his or her income toward rent, assuming a 40 hour work week, he or she must earn \$29.17 per hour in order to afford this apartment in Montgomery County; Maryland's minimum hourly wage currently is \$7.25 per hour! **We can all do that math! According to USA.com, in 2010, the median price of a single family detached house in our County was \$452,299.00, and a single family attached house was \$270,000.00. The median house value in Montgomery County has grown by 117.2% since the year 2000. In fact, by the year 2040, our County will increase by 100,000 households, according to the County's Planning Department. The need for additional affordable housing is acute, indeed.**

We are proud that AHCMC continues to be successful in bringing together many different groups and people from both the public and private sectors to identify areas of concern and need and work toward finding solutions to them. One of the guiding principles of The Affordable Housing Conference is to promote and support all realistic measures to create, preserve, maintain and secure affordable housing in Montgomery County, Maryland. We encourage creative and out-of-the-box thinking, and provide the venues and environments for constructive dialogue, debate and education. This is one of the keys to

At the same time

our success. We will meet periodically to continue the conversation about this and other important issues, and be one of the principal clearinghouses for this effort that brings together those interested in supporting and advocating for affordable housing seeking "actionable" proposals. In fact, The Affordable Housing Conference organized and coordinated two separate meetings in October and November at the Park and Planning Commission to address the many questions and information about the zoning code rewrite's impact on affordable housing. Several concrete and constructive suggestions were gleaned from those meetings. These suggestions appeared to be well received and welcomed by Park and Planning staff.

This evening we will focus on the portion of this zoning rewrite as it specifically relates to affordable housing. While we have been blessed with elected officials who make the preservation, creation and maintenance of affordable housing a top priority, the demand for such housing far outweighs what currently exists. I know you agree that it is imperative that we continue to do all we can to address the housing needs of all Montgomery County residents. We applaud the Park and Planning Commission and Members of the Zoning Rewrite Team for taking on this most arduous and challenging task of revisiting a 30-year-old, antiquated zoning code that clearly does not reflect the current face and needs of Montgomery County. Much information has been circulated about this rewrite, accurate and otherwise. We will limit our remarks only to the accurate.

~~What exists~~ Today, under Chapter 25A, MPDUs apply to projects with 20 plus units with a bonus density up to 22% above the zoned density. In fact, bonus density has not lived up to the expectations that we had for it back in the 1970s. The yield of our overall affordable housing stock was not what we imagined it would be in 2013. Currently, bonus density is based on a sliding scale for MPDUs above 12.5% up to 15%. It is important to note that since 2005, ONLY 11 out of 32 residential developments in our CBDs provided greater than 12.5 % MPDUs. This translates into 40 to 51 bonus units over 8 years. I hope you will agree that this is incredibly insufficient to meet our growing affordable housing needs. In the mixed use zones since 2005, ONLY 2 out of 7 residential developments provided greater than 12.5%MPDU's with ONLY 22 bonus units, and ONLY 1 out of 2 large mixed-use developments completed after 2005 provided 18% MPDUs required as part of rezoning. This brought us ONLY 23 bonus units and a buy out of 48 required units. Again, this is woefully insufficient to meet our current and future needs. The CR Zones since 2010 saw ONLY 8 approved sketch plans. As we understand it, ONLY 11 bonus units have been approved in the CR zones. Again, this is way less than our needs require. Clearly, more must be done, and this is what the zoning rewrite sets out to do: Deliver more affordable units as part of all mixed use developments by providing incentives to our private sector and non-profit partners. In this vein, the Affordable Housing Conference supports some tweaking of the draft rewrite. Namely:

1. ^{While we would welcome a 15% requirement we think it could present a problem in this context.} Retain~~ing~~ the 12.5% requirement for MPDU's, but provide enough of an incentive for the developers to increase this percentage by a significant amount. We are concerned that if the zoning code raises the requirement to 15%, we actually could see a reduction in the number of affordable and market rate units from being built. The more market rate units built, the more affordable also will be built. We cannot predict our County's future economic vitality, given the volatility that we've all experienced in the past five years. Therefore, developers might opt out completely from doing residential development in our current CBDs. And, taking it a frightening step further, a developer might

be so risk averse, that he or she might discard any thoughts of doing commercial development. They very well might choose to do business elsewhere in Maryland, and worse, across the river. Our tax base as well as our affordable housing supply would suffer. We cannot take this chance.

2. Providing incentives. IF a developer provides 15% or more MPDUs, none of the MPDU's will count against the development's Floor Area Ratio or FAR.

3. Increasing the number of proposed Public Benefit Points for providing more than the required 12.5% MPDUs. We would like to see an increase in the number of these recommended public benefit points than what currently is being proposed for developing 15% or more MPDUs. This is an effort to further incentivize the developers to recognize that affordable housing is a primary public benefit. A more equal playing field would be created.

4. Reducing the number of required Public Benefit categories for developments that provide at least 15% MPDUs.

5. Permitting the developer to exceed the height restriction provisions in the respective zone and master plan when producing 15% or more affordable units in any one development. In such instances, a formula based upon the overall number of affordable and market rate units combined would be necessary to determine the additional permissible height. Such a method would be similar to the extra height that currently is permitted for Work Force Housing Units built in the Central Business Districts.

6. Requiring developers of commercial projects that do not include a housing component located in a mixed use zone to contribute an agreed upon formulaic amount to a dedicated affordable housing development fund such as the HIF, or even a newly created entity.

Once again, we applaud the Council and Planning Department for taking on this rewrite challenge.. Our recommendations are meant to strengthen these efforts, and not to compromise it. We all must come together and ensure that all current and future Montgomery County residents enjoy the quality of life that our wonderful County offers now and will offer in the future. We also must do what we can to enhance and make richer the character, integrity and vibrancy of our small, medium and large sized communities within Montgomery County.

Thank you.