

MEMORANDUM

April 9, 2015

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ^{JZ}Legislative Attorney
SUBJECT: Zoning Text Amendment 15-02, Townhouse Living – Design for Life

PHED Recommendation: On March 16, 2015, the Committee (3-0) recommended approval of ZTA 15-02 with the following amendments:

- 1) Delete the R-40 zone from the list of zones that may get Townhouse Living conditional use;
- 2) Add a requirement for an accessible aisle next to the accessible parking space;
- 3) Delete the requirement for proximity to a hospital; and
- 4) Add a provision to prohibit accessibility tax credits for property owners that take advantage of the Townhouse Living conditional use.

The staff memorandum for the March 16 Committee meeting is attached. That memorandum includes background material (not repeated here). The last recommendation made by the Committee (add a provision to prohibit accessibility tax credits for property owners that take advantage of the Townhouse Living conditional use) was not addressed in the memorandum. The issue was raised in the course of the Committee's discussion. Councilmember Floreen would like the Committee to reconsider that issue.

There are 2 possible tax credits for accessible improvements. One is a property tax credit that is limited to "the owner's principal residence when the [accessibility] feature is installed." The second is a school impact tax credit for improvements to new dwelling units. In addition to tax benefits, a developer may take advantage of building accessibility features in the zoning code. Optional method of development projects may get public benefit points for accessibility improvements.

Should landowners who take advantage of ZTA 15-02's density increase also be able to use tax credits?

Tax credit

Under Section 52-18U(c)(2), the property tax credit for Level II accessibility improvements is limited to a maximum of \$10,000 per dwelling. The maximum credit against any year's tax levy is \$2,000. A \$2,000 per unit school impact tax credit is also available if at least 30% of the units in a project meet

accessibility Level 1. The developer of a project would get the benefit of the impact tax credit. The ultimate buyer, who pays property taxes annually, would be the likely beneficiary of the property tax credit.

Legal Authority v. Policy

The Council may allow multiple benefits for the same attribute as a matter of law. As a matter of policy, it has **not** done so.

As introduced, a landowner who takes advantage of ZTA 15-02's density increases could also claim a tax credit for providing accessible dwelling units. The Director of the Department of Permitting Services noted that this a "double dipping" aspect of the incentive. The Council has avoided this type of double dipping when both a tax incentive and a zoning incentive are possible. There are 4 examples:

Section 59.4.7.1 stated "Granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited."

Section 52-18U(c)(2) does not allow a tax credit for accessibility improvements to the extent tax credits against the Development Impact Tax for Schools are also granted.

Section 52-93(e) prohibits school impact tax credits if the person received public benefit points for constructing accessible units

Bill 8-15, which is pending before the Council, would allow relief from impact taxes for affordable developments and would only allow such relief if the added affordable units were not also used to gain public benefit points for optional method development approval.

Based on this policy in the existing and proposed code, the Committee **recommended the addition of a provision to prohibit the use of both a density bonus under ZTA 15-02 and tax credits.** To that end, staff would propose the following additional condition:

As a condition of approval, any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e). This prohibition does not apply to additional accessibility features that are installed post-occupancy and for which a property tax credit is requested.

As drafted, the provision would not allowed a school impact tax credit of \$2,000 and a density bonus or a property tax bonus.¹

¹ Staff questions whether an owner who purchases a new unit from a developer can claim that the unit is "the owner's principal residence when the [the accessibility] feature is installed", since the tax credit provision requires, but Section 52-18U(c)(2) implies that a new home can take advantage of both the property tax credit and the impact tax credit for new houses.

The cost of providing Level II accessibility improvements

After the PHED meeting of March, a letter from Steve Orens, representing Garret Gateway Partners, LLC said:

The incentive provided by the Level II² property tax credit is equally essential to the economic viability of an accessible community as is adequate density and both must be evaluated in context. For example, Level II Design for Life accessibility features adds approximately 10% or \$40,000 to the cost of \$400,000 townhouse. The property tax credit authorized by the County Code represents only 25% to 30% of the additional costs associated with universal design and that tax credit is only available when justified by expense receipts approved by the Department of Permitting Services.

Mr. Orens' cost estimate includes a working elevator:

In order to meet Level II standards, a dwelling must have an elevator or other means of making each level of the home accessible.

There is evidence to suggest that the \$40,000 per unit cost estimate for new houses to achieve Level II status is very high.³ Level II standards do **not** require an elevator.⁴ Executive Regulation 3-14 noted elevators and chair lifts as an acceptable alternative design, but they are not mandated.⁵ Level II standards require at least one accessible bedroom, which may be on the first floor. Accessible bedrooms above the entrance level would require a stair guide unit or an elevator, but an upstairs accessible bedroom is not required. With an accessible entry level bedroom, the builder could offer an elevator as an option for the homebuyer.

The first floor must have a no-step entrance, accessible doorways (32 inches), wide hallways (36 inches), and an accessible kitchen and bathroom. A representative of the building industry estimated that it would cost, at most, \$10,000 per lot for grading and \$8,000 for bathroom work. Custom lower kitchen cabinets are not required for Level II improvement; if allowed as an option, such cabinets could cost as much as \$10,000. The great unknown is what Level II improvements would do to the market desirability of the home. Every square foot of space required for a bigger bathroom and wider hallways (\$85 per square foot of additional space) is an expense that the average homebuyer is not inclined to pay. In addition, the no-step entrance may decrease the home's value to an able-bodied buyer.⁶

² Level II Accessibility Standard means a permanent addition to a single-family residence that includes at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level, a usable powder room or bathroom, and a 32-inch nominal clear width interior door, plus an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom.

³ "Exaggeration is truth that has lost its temper." Khalil Gibran.

Read more at <http://www.brainyquote.com/quotes/keywords/exaggeration.html#OfvyYxm1h0WcUzwY.99>.

⁴ DPS, *Design for Life Montgomery - Technical Guidelines*, Page 8, an exterior or interior elevator or lift or stair glide unit is not required, June 2, 2014. Regulations to implement accessibility improvement were approved by Council November 25, 2014.

⁵ Regulation 3-14; 52.18T.01.01 and 52.18U.01.01 Definitions; "Alternative design means the use of designs, products, or technologies such as an elevator, lift or stair glide unit as alternatives to those prescribed, provided they result in substantially equivalent or greater accessibility, usability or visitability."

⁶ See email from Robert Kaufman, © 10-11. Buyers may like a more monumental entrance and having an entrance step above any drainage issues.

Increased land value from increased density

The economics of increased density are impressive. A detached single-family lot is worth about 25% of the sales price. Assuming a \$750,000 detached house sales price, the value of the lot would be \$187,500. The value of a townhouse lot is 15 to 20 percent of the sales price. Assuming a \$400,000 townhouse sales price, the lot would be worth \$80,000. Using RE-1 as an example with these assumptions, an approval of a Design for Life project at maximum density would increase the land value of one acre of land from \$272,500 to \$1,220,000. If Design for Life improvements add value equal to their cost, then ZTA 15-02 would add \$947,500 of value per acre at maximum density.⁷ Mr. Orens' letter suggested, "At best, a regulation allowing a theoretical density of 15.25 units per acre may result in about 11 units per acre, not 15." That density would make the increased value \$692,500 per acre (and the maximum density could be lowered without harm to the hypothetical development). Even if the land costs \$400,000, as asserted by Mr. Orens, the value of townhouse zoned land at 11 units per acre would be \$880,000. Exactly how the increased value is divided between the landowner and the developer is well beyond zoning authority.

Staff recommends retaining the Committee's recommendation to prohibit getting both a density bonus and a property tax credit. The Council has had a consistent policy to not allow more than one tax incentive for the same attribute. The increased costs for providing accessibility are more than covered by the increased land value created by increased density. Reduced taxes do not reduce the costs of public services.

A middle ground from prohibiting all tax credits would be to allow the tax credit for School Impact Taxes, but not the property tax credit in addition to the impact tax credit.

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⁷ The value of the lots would be reduced by the costs of completing the accessibility improvements that do not add market value to the house. If the unrecoverable costs are less than \$62,000 per unit, the developer will break even on land costs minus expenses. The maximum density increase under ZTA 15-02 would be 14 units per acre. There may be additional profits on 14 home sales beyond the lot value increase.



Stephen J. Orens
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sorens@milesstockbridge.com

April 1, 2015

VIA ELECTRONIC MAIL
VIA HAND DELIVERY

The Honorable Nancy Floreen
The Honorable George Leventhal
The Honorable Hans Riemer
Planning, Housing and Economic Development Committee
The Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Design for Life Zoning Text Amendment 15-2

Dear PHED Committee Chair Floreen
Dear PHED Committee Members Leventhal and Riemer:

As you know, we represent Garrett Gateway Partners LLC, a strong advocate for the enactment of Zoning Text Amendment 15-02. On behalf of Garrett Gateway Partners and the families that will benefit if the Design for Life program succeeds, we urge the PHED Committee to reject limiting the availability of the property tax credit for Design for Life communities that achieve or exceed the Level II accessibility standards intended when the County Council enacted by Council Bill 5-13 in 2013.

If an entire community can be developed that achieves Level II accessibility standards it will represent a new benchmark that exceeds the current limited expectations of "visitability" for individual homes. Visitability is the goal of the Level I accessibility standards and as important as that is, it does not achieve the public policy objective of moving mobility impaired persons out of restricted housing and into communities designed to be inclusive. Zoning Text Amendment 15-02 does not propose to couple the Section 52-18U property Tax credit with density incentives for "visitability."

The County embraced the policy of facilitating the development of Level II fully accessible – universal access - communities as a housing policy objective when it enacted property tax credits for providing accessibility features under the Level I and Level II accessibility standards defined in Section 52-18U of the county Code. (Council Bill 5-13 enacted in 2013.) Council Bill 5-13 established the Level II property tax credit as an incentive to facilitate the development of inclusive Design for Life communities and housing. Since that time not one fully accessible, inclusive community meeting the Level II standards has been built in Montgomery County. While there may be other reasons to explain the failure of the property tax credit for Level II to

actually incentivize the development of inclusive communities, the fact is that the property tax credit for achieving the highest Level of accessibility addressed only one component of the economic calculus that either drives or deters new residential communities.

Adequate density is the missing element. In order for universal access communities to become a reality the County must address density along with, and not as a substitute for, the economic incentive provided by the property tax credit. Increased density and the property tax credit must be recognized as the complimentary components of the public policy of promoting the establishment of economically feasible Design for Life communities.

The incentive provided by the Level II property tax credit is equally essential to the economic viability of an accessible community as is adequate density and both must be evaluated in context. For example, Level II Design for Life accessibility features adds approximately 10% or \$40,000 to the cost of \$400,000 townhouse. The property tax credit authorized by the County Code represents only 25% to 30% of the additional costs associated with universal design and that tax credit is only available when justified by expense receipts approved by the Department of Permitting Services.

In order to meet Level II standards, a dwelling must have an elevator or other means of making each level of the home accessible. It is not enough to simply “rough in” an elevator by simply “stacking” closets of adequate size to accommodate an elevator. That is consistent with Level I standards but does not rise to Level II standards. In order to *actually* accommodate an elevator precise wall alignment, electrical connections and support structures must be installed and that cost does not include the cost of the elevator itself.

Universal access communities must be carefully located to assure access to infrastructure required by those with mobility impairments; Universal Access communities must achieve a development density that is consistent with the concept of “community” and which spreads the additional costs associated with access over a sufficient number of dwellings that a builder to deliver housing at affordable prices attractive to elderly persons and families with disabled family members who chose not to isolate themselves from the mainstream of community living.

The density component is what is missing from the existing economic calculation and without allowing for sufficient development density to compliment the already in place “Design for Life” property tax credit universal access Communities will continue to be economically infeasible.

The reality of developable density is that it is virtually impossible to actually achieve the maximum density permitted by a zoning classification and still comply with all of the other zoning, subdivision and forest conservation restrictions in addition to the County’s environmental site design requirements for stormwater management. At best, a regulation allowing a theoretical density of 15.25 units per acre may result in about 11 units per acre, not 15.

Any potential economic benefit to a housing provider derived from the higher density allowed by this Zoning Text Amendment does not outweigh the beneficial return to the public that inclusive, universal access communities will provide. The locational requirements for Design for Life communities that include metro station proximity means that land values can easily exceed \$400,000 per acre. Typically when land is sold for development, the sales price is escalated by the seller over that which the seller might otherwise expect a buyer to pay. The price a developer must pay for land purchased with the intent of increasing the density is not a fixed number that serves as a base for future value.

In addition to the purchase price of land, the more standard infrastructure costs of up to \$50,000 per unit, County fees of approximately \$60,000 per unit, and design fees of approximately \$15,000 per unit must also be factored into the cost of producing reasonably affordable Level II communities.. Even though Level I visitability can be achieved at a minimal (if any) additional cost to the builder, the bottom line is that achieving Level II costs more and the County's property tax credit reduces the impact of the added costs by, best, 30 percent.

Because the Design for Life program has not yet been embraced by the housing industry it is necessary to test the concept with pilot projects and pilot projects for an unproven market are not financed by conventional capital investors. Substantially more expensive high risk equity capital must be raised in order to finance a Design for Life community. Builders and developers have not embraced these high risk ventures because of the sum total of the risk and expenses associated with opening a new unproven market. In order for this program to succeed the element of additional density must be added to, not substituted for, the incentive provided by the property tax credit.

Notwithstanding the potential availability of undeveloped or potentially re-development parcels of land in the County, the restrictions set forth in the Zoning Text Amendment limit the potential for developing Design for Life Communities to very few locations.

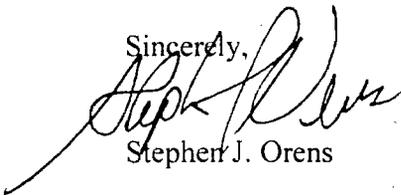
The reality of the selection process is as follows:

- a) The land will have to be at least ½ mile from a metro station to avoid the highest costs per acre in the county.
- b) The parcels or consolidated parcels will have to be at least 2 acres in size and must be able to be purchased for approximately \$400,000 per acre.
- c) The parcels will need to be on a roadway of significant volume to support of bus route and be within 1000 feet of a public park.
- d) The end sales of the houses must be reasonable priced so that age in place seniors, disabled veterans or physically challenged people can afford the home purchase.
- e) The Hearing Examiner must make a finding that the Design for Life community is compatible with the existing surrounding community.

The Zoning Text Amendment now before the County Council adds the missing density component while providing appropriate safeguards through the Conditional Use approval process that will ensure adherence to the accessibility standards for proposed communities that are found to be compatible with the surrounding area. The standards and restrictions in the Zoning Text Amendment will limit where pilot Design for Life projects can be located to a small number of parcels. The economics and marketability of these units is a monumental hurdle for the building industry to overcome and both increased density and the property tax credit are essential to achieving the objective of inclusive universally accessible communities.

Providing additional density, the second component of the economic calculus, will truly incentivize the development of universal access communities. An approach that balances property tax credits and additional density is not “double-dipping” instead it is in fact recognition of the need for a balanced approach for assuring economic viability.

Sincerely,



Stephen J. Orens

cc: The Honorable Craig Rice, Montgomery County Councilmember
The Honorable Casey Anderson, Chair, Montgomery County Planning Board
Dr. Steven Goldstein, Chief of Staff for Councilmember Rice
Kathleen Mitchell, Senior Legislative Aide to Councilmember Riemer
Tedi Osias, Senior Legislative Aide to Councilmember Floreen
Jeffrey Zyontz, Esquire, Legislative Counsel to the County Council
Garrett Gateway Partners, LLC
Jackie Simon

Zoning Text Amendment No.: 15-02
Concerning: Townhouse Living –
Design for Life
Draft No. & Date: 2 – 3/16/15
Introduced: January 20, 2015
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Rice, Katz, Floreen, Berliner, Navarro, and Hucker

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Allow design for life projects with increased density under certain circumstances

By amending the following sections of the Montgomery County Zoning Ordinance,
Chapter 59 of the Montgomery County Code:

DIVISION 59.3.1. "Use Table"
Section 59.3.1.6. "Use Table"
Division 59.3.3. "Residential Uses"
Section 59.3.3.1. "Household Living"

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

1 **Sec. 1. DIVISION 59.3.1 is amended as follows:**

2 DIVISION 59.3.1. Use Table

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be
6 modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag AR	Rural Residential R R C RNC		Residential										R-30	R-20	R-10			
					Residential Detached								Residential Townhouse					Residential Multi-Unit		
					RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD				R-20	R-10	
* * *																				
RESIDENTIAL																			* * *	
HOUSEHOLD LIVING	3.3.1.																			
Single-Unit Living	3.3.1.B	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Two-Unit Living	3.3.1.C				P		L	L	L	L	L	P	P	P	P	P	P	P		
Townhouse Living	3.3.1.D				P		L	L/C	L/C	L/C	L/C	L[[L/C]]	P	P	P	P	P	P		

7 * * *

8 **Sec. 2. DIVISION 59.3.3 is amended as follows:**

9 Division 3.3. Residential Uses

10 **Section 3.3.1. Household Living**

11 * * *

12 **D. Townhouse Living**

13 **1. Defined**

14 Townhouse Living means 3 or more dwelling units in a townhouse building
15 type.

16 **2. Use Standards**

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

 - [a] i. In the RE-2C and RE-1 zones, Townhouse Living is permitted as part of a development including optional method Moderately Priced Dwelling Units (see Division 4.4) if it is:

 - [i.] (a) served by public sewer service; or
 - [ii.] (b) designated for sewer service in an applicable master plan.
 - [b] ii. In the R-200 and R-40 zones, Townhouse Living is permitted as part of a development including optional method Moderately Priced Dwelling Units (see Division 4.4).
 - [c] iii. In the R-90 and R-60 zones, Townhouse Living is permitted as part of the following:

 - [i.] (a) a development including optional method Moderately Priced Dwelling Units (see Division 4.4);
 - [ii.] (b) optional method cluster development (see Division 4.4) that is a minimum of 10 acres in size; or
 - [iii.] (c) optional method cluster development (see Division 4.4) that is a minimum of 3 acres or more in size and recommended in a master plan.
 - [d] iv. In the GR, NR, and EOF zones, the gross floor area of all Household Living uses is limited to 30% of the gross floor area on the subject site.

- 44 [e] v. In the LSC zone, all Household Living uses are limited to
45 30% of the maximum allowed FAR mapped on the
46 subject site.
- 47 b. Where Townhouse Living is allowed as a conditional use, it
48 may be permitted by the Hearing Examiner under Section
49 7.3.1, Conditional Use, and the following standards:
- 50 i. All buildings and structures must meet or exceed the
51 Level II Accessibility Standards established by Section
52 52-18[(T)]T and detailed in Section 52-18[(U)]U.
- 53 ii. Public bus service must be available on a road abutting
54 the site.
- 55 iii. A Metro Station must be within 2 miles of the site.
- 56 iv. Public recreation or park facilities must be within 1,000
57 feet of the site.
- 58 v. [[A Hospital must be within a 5 mile radius of the site.]]
- 59 [[vi.]] A grading plan must demonstrate that the post
60 construction site will have a slope less than 5%.
- 61 [[vii.]] vi. The minimum site size is 2 acres.
- 62 [[viii.]] vii. The density limitations and development standards
63 of the TMD zone under optional method (Section
64 4.4.12.C) apply in spite of any other limitation in this
65 Chapter.
- 66 [[ix.]] viii. Reducing the number of required parking spaces
67 through alternative compliance under Division 6.8 is
68 prohibited.
- 69 [[x.]] ix. A minimum of one parking space for each
70 dwelling unit must satisfy the dimensional standards for

71 handicapped-accessible vehicle parking and a minimum
72 8 foot wide access aisle required by the State.
73 x. As a condition of approval, any property owner of the
74 conditional use project must be prohibited from seeking a
75 tax credit under Section 52-18U or Section 52-93(e). This
76 prohibition does not apply to additional accessibility
77 features that are installed post-occupancy and for which a
78 property tax credit is requested.

79 * * *

80 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
81 date of Council adoption.

82

83 This is a correct copy of Council action.

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86 _____
Linda M. Lauer, Clerk of the Council

Zyontz, Jeffrey

From: Bob Kaufman <bkaufman@marylandbuilders.org>
Sent: Wednesday, April 01, 2015 1:30 PM
To: Zyontz, Jeffrey
Cc: Montengro, Renee
Subject: Design for Life

You asked that I poll our builders to get a better idea as to the costs of complying with the general Design for Life features promoted by the County.

1. Land issues

Ultimately both the cheapest and most expensive element with designing zero step homes has to do with the earth balance, storm water management and grading requirements. If the builder/developer upfront can identify the homes that will have zero steps, they can plan the grade accordingly and other than the design costs, there would be nominal incremental difference in cost with a normal house footing. However, should it become necessary to "regrade" the house site, the cost could easily run between \$2000 to \$10,000 per lot to lower the grade, manage the storm water and dispose of the additional dirt.

2. Construction Issues

a. Change of usable space

- i. To increase the widths of pass ways and hall ways, this will generally mean converting usable space in a kitchen, family room or den into a hall way. The "loss" of usable space can represent approximately \$85/sq. ft. times the length of the hall way. However, this may result in less desirable space in the other rooms and can affect the "sale ability" of the home if the buyer is not interested in the wider hall ways. This can also result in the loss of a den or breakfast nook.
- ii. The other major costs involves the design and construction of a usable first floor bathroom. Again, the main problem is the additional space required that has to come from other usable space. Also, bathroom space is more expensive generally due to more expensive flooring. So here we are probably looking at roughly \$2-4K per bathroom.
- iii. If the bathroom has to include a tub and/or shower, the cost goes up substantially to probably \$4- 8K per bathroom to include reinforcing walls for grab bars and the costs of the additional fixtures.
- iv. For VISIBILITY, the main issue is a zero entry either in the front, side, rear or garage door and access to a powder room and kitchen. The hallway need not be wider if there is other circulation to the kitchen and powder room.
- v. For LIVIBILITY, the problem is a first floor full bath and bedroom suite. This generally means loss of a room (either a den, breakfast nook, living room or family room) and the costs of a full bathroom instead of a powder room. The key is knowing before the site is graded, which houses need zero entry and which homes will have a master first floor suite. The master suite house should be either deeper or wider to fit the additional space. The other elements (cabinets, counters, flooring, grab bars, access to appliances etc. can all be included as "options" that the buyer pays for separately and does not have to be part of the base price of a house.

b. Cabinets, counters

- i. While these cost more than traditional materials, they are generally not significantly different. The key is that the BUYER pays the difference as an "upgrade." If however ALL houses were required to install lower counters, different cabinets and faucets etc. the cost could be well over \$10K but more importantly, would be a detriment to selling the house to a traditional buyer.

3. Market Issues

- a. The market overwhelming prefers homes to sit up out of the ground to give the house a "monumental" entry. Additionally, a step entry assures good water flow around homes to eliminate any potential for water intrusion during major rain events.

- b. Traditional buyers prefer higher counters and cabinets for both the look and the convenience
- c. Buyers prefer a den or breakfast nook over wide hall ways.
- d. Buyers prefer privacy for full bathrooms so they usually go upstairs.

Hope this helps.

Please note new contact information

S. Robert Kaufman
Senior Vice President, Government Affairs
Maryland Building Industry Association
11825 W. Market Place
Fulton, MD 20759
Ph: 301-768-0346



MBIA's Casino Night - April 16
Feeling Lucky? [Click here](#) for registration form.

Meet the MBIA Board FREE Happy Hour - April 21
Network with YOUR Leadership. RSVP to [Felicia Fleming](#).

Check out NAHB's Member Advantage Program at www.nahb.org/ma

MEMORANDUM

March 12, 2015

TO: Planning Housing and Economic Development Committee
FROM: Jeff Zyontz, Legislative Attorney
SUBJECT: Zoning Text Amendment 15-02, Townhouse Living – Design for Life

Background

Zoning Text Amendment (ZTA) 15-02, sponsored by Councilmembers Rice, Katz, Floreen, Berliner, Navarro and Hucker, would allow a conditional use for Design for Life projects with increased density under certain circumstances. ZTA 15-02 was introduced on January 20, 2015.

The County allows tax credits to builders and homeowners for including features in new and existing single-family dwelling units that improve accessibility for persons with disabilities. There are standards for both making it easier for physically challenged visitors (Level I¹) and physically challenged occupants (Level II²). The tax credits became effective on July 1, 2014. The intent of this law was to increase stock accessible dwelling units in the County and thereby create a more inclusive community. Builders of new dwelling units have not taken advantage of this provision. The Council's intent to provide more housing for disabled persons has not been realized. Although some larger builders offered accessibility improvements as an option in new homes, no new home buyer took advantage of this option.

The sponsors of ZTA 15-02 believe that more incentives are warranted for new accessible communities. ZTA 15-02 would create a new conditional use for Design for Life communities that include features to make access easier for visitors and residents.³ The approval of the conditional use would increase the

¹ Level I Accessibility Standard means a permanent addition to a single-family residence that include at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level, a usable powder room or bathroom, and a 32-inch nominal clear width interior door. Other jurisdictions call Level I improvements "visitability standards".

² Level II Accessibility Standard means permanent additions to a single-family residence that provide all of the Level I Accessibility Standards plus an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom, as further defined and described in Executive Regulations adopted under Method 2.

³ Feature means a permanent modification to a residence that results in:

(1) a no-step front door entrance with a threshold that does not exceed ½ inch in depth with tapered advance and return surfaces or, if a no-step front entrance is not feasible, a no-step entrance to another part of the residence that provides access to the main living space of the residence;

number of dwelling units per acre over a site's base zoning and require Level II accommodations. In the sponsors' opinion, the criteria for approval will restrict conditional use approvals to appropriate areas of the County.

Public Hearing

The Council conducted a public hearing on February 24, 2014. All 7 speakers, including the Planning Board Chair, spoke in favor of ZTA 15-02. Several possible revisions were suggested in testimony:

- 1) Reduce the maximum allowable density from the proposed 15.25 units per acre (the maximum in the TMD zone) to 9.76 units per acre (the maximum density in the TLD zone).
- 2) Prohibit the Design for Life conditional use in the R-40 and R-60 zone.
- 3) Require a maximum 2% slope from the public right-of way to an accessible entry and from the parking area to the accessible entry.

Issues

1) Is the maximum density proposed appropriate to the benefit?

The Council paid great attention to the protections afforded single-family detached dwellings when it approved the new zoning code. Potential zoning changes through a local map amendment were viewed through that prism. The owner of land in a residential zone may request a floating zone for no more than 2.5 times the density of the land's Euclidean zoning unless more density is recommended in a master plan. The modestly higher density decreased the likelihood of floating zone applications and increased the likelihood that the resulting development would be compatible with the surrounding neighborhood. The maximum density that could be allowed as a conditional use under ZTA 15-02 is 15.25 units per acre. Under ZTA 15-02, the density allowed by conditional use approval would not vary with the density of the underlying zone.

As the Planning Board noted in its testimony, there are constraints in granting the maximum density. A local map amendment must be approved by the Council and found to "substantially conform with the recommendation of the applicable master plan". A conditional use must be approved by the Hearing Examiner with a finding that the proposed development would be "compatible with the character of the residential neighborhood". Site plan approval, which requires master plan conformance, would also be necessary before the issuance of building permits. An application may never get its maximum density, but zoning sets the limits on the density that may be approved.

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- (2) an installed ramp creating a no-step entrance;
 - (3) an interior doorway that provides a 32-inch wide or wider clearing opening;
 - (4) an exterior doorway that provides a 32-inch wide or wider clear opening, but only if accompanied by exterior lighting that is either controlled from inside the residence, automatically controlled, or continuously on;
 - (5) walls around a toilet, tub, or shower reinforced to allow for the proper installation of grab bars with grab bars installed in accordance with the Americans with Disabilities Act Standards for Accessible Design;
 - (6) maneuvering space of at least 30 inches by 48 inches in a bathroom or kitchen so that a person using a mobility aid may enter the room, open and close the door, and operate each fixture or appliance;
 - (7) an exterior or interior elevator or lift or stair glide unit;
 - (8) an accessibility-enhanced bathroom, including a walk-in or roll-in shower or tub; or
 - (9) an alarm, appliance, and control structurally integrated into the unit designed to assist an individual with a sensory disability.

ZTA 15-02 would allow the density increase for producing a Design for Life development to vary inversely to the property's current density; the lowest density property (RE-1 zone; base density 1.09 units per acre) would be allowed to pursue the highest increase in density per acre (14.2 units per acre). The highest density zone (R-40 zone; base density 10.9 units per acre) would be allowed to pursue the lowest density increase per acre (4.4 units per acre).

Zone	Base Density (DU/acre)	Max. Zone Floating Density (DU/acre)	Proposed Max. Density (DU/acre)	Proposed Density Increase (DU/acre)
RE-1	1.09	2.18	15.25	14.16
R200	2.18	4.36	15.25	13.07
R-90	4.84	12.0	15.25	10.41
R-60	7.26	14.52	15.25	7.99
R-40	10.89	21.78	15.25	4.36

The economics of increased density are impressive. A detached single-family lot is worth about 25% of the sales price. Assuming a \$750,000 detached house sales price, the value of the lot would be \$187,500. The value of a townhouse lot is 15 to 20 percent of the sales price. Assuming a \$400,000 townhouse sales price, the lot would be worth \$80,000. Using RE-1 as an example with these assumptions, an approval of a Design for Life project at maximum density would increase the land value of one acre of land from \$272,500 to \$1,220,000. If Design for Life improvements add value equal to their cost, then ZTA 15-02 would add \$947,500 of value per acre.⁴

In Staff's opinion, the density increase allowed by conditional use approval is out of scale to the far more conservative approach of the new zoning code. Staff suggests the following alternatives, depending upon the Council's goal.

- If the Council's goal is to get more accessible housing, it could require such attributes for some portion of units developed.⁵
- If a general requirement is more than the market could bear, then it could be required for all projects approved through local map amendments.
- If the Council wants Design for Life Projects to only be available by incentives, then Staff would recommend a lower maximum density. The maximum in the TLD zone (9.76 units per acre) would still offer a significant incentive in the RE-1 and R-200 zones and might avoid unrealistic expectations for what might be achieved in the approval process.

⁴ The value of the lots would be reduced by the costs of completing the accessibility improvements that do not add market value to the house. If the unrecoverable costs are less than \$62,000 per unit, the developer will break even on land costs minus expenses. There may be additional profits on 14 home sales beyond the lot value increase.

⁵ Visitability legislation has been passed in many localities, including Atlanta, Georgia; Pima County, Arizona; Bolingbrook, Illinois; San Antonio, Texas; and the State of California. As of January 2014, 56 jurisdictions had a visitability program in place; most of these programs are mandatory ordinances; the others are voluntary initiatives (i.e., cash and tax incentives for builders and consumers, consumer awareness campaigns, and certification programs). The cities of Atlanta, Austin, and San Antonio adopted visitability ordinances for newly built single-family homes and duplexes that receive tax credits, city loans, land grants, or impact fee waivers. Pima County and Tucson, Arizona and Bolingbrook, Illinois require that all new single-family homes meet basic visitability criteria without regard to special benefits.

2) Should R-40 and R-60 zoned property be excluded from the ability to get increased density?

ZTA 15-04 would allow greater density by the approval of a conditional use only if the property is located within 2 miles of a Metro station and 5 miles of a hospital and adjoins a bus route. In addition, the density increase would be limited to some residential zones. The number of parcels and the acreage that satisfy those criteria are as follows:

Zone	Number of Parcels⁶	Acreage
RE-1	4	14
R-200	18	237
R-90	44	590
R-60	103	918
R-40	0	0
Split zoned	3	51
TOTAL	172	1,810

R-40 zoning allows a density of 10.9 units per acre. Land in this zoning classification generally developed as duplexes. There is no vacant R-40 zoned land. Based on the 2 acre minimum size, there are no R-40 parcels that would not satisfy the 2 acre minimum lot size requirement (without resubdividing improved property to larger lots).

Staff recommends deleting the increased density provisions for R-40 zoned land.

Older areas of the County are zoned R-60. The vast bulk of R-60 zoning is inside the beltway. There are 103 R-60 zoned parcels that satisfy the criteria of ZTA 15-02. Most of the larger parcels of R-60 are currently developed as schools. The largest parcel is the Chevy Chase Country Club.

Staff recommends deleting the increased density provisions for R-60 zoned land.

3) Should a lower slope be required leading to accessible entrances?

ZTA 15-02 would require a site that takes advantage of density increases to have a maximum slope of 5 percent.⁷ Under ADA, that is the maximum allowed grade for a sidewalk along the path of travel. The maximum cross slope is 2 percent.

⁶ Excludes park land and federally-owned land, but includes all institutional uses such as schools and golf courses.

⁷ Above a 5 percent slope, a sidewalk is characterized as a ramp that would require railings and possibly landing areas.

ADA compliant parking spaces and the access aisles for the parking may not be more than a 2 percent grade in any direction. ZTA 15-02 would require 1 ADA compliant parking space per unit but does not require a 2 percent grade beyond the parking space. A 2 percent grade from the parking area to the accessible entry would be well in excess of ADA standards. The County ADA compliance officer did not recommend this requirement.

Staff does not recommended adding a 2 percent grade standard to the accessible entry.

4) Are the locational standards for a Design for Life conditional use appropriate?

There are 4 standards in ZT 15-02 that concern the general location of an approvable Design for Life project. Going from the largest geography unit to the smallest, those criteria are as follows:

- Within 5 miles of a hospital
- Within 2 miles of a Metrorail station
- Within 1,000 feet of a park
- Bus service on an abutting road

These criteria are general measures of urbanization. The 5 mile radius from a hospital is the broadest geographic area. All of the area within 2 miles of a Metrorail station is also within 5 miles of a hospital, but not all areas within 5 miles of a hospital are within 2 miles of a Metrorail station. The other factors, within 1,000 feet of a park and bus service on an abutting road, restrict the area within 2 miles of a Metrorail station. These criteria assure that conditional use approvals go to land connected to the surrounding community.

Staff recommends deleting the hospital distance requirement.

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