

MEMORANDUM

July 17, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Legislative Attorney

SUBJECT: Worksession #6 – Floating Zones
Zoning Text Amendment 13-04, Zoning Ordinance - Revised
District Map Amendment G-956

Alert: The future schedule for the Committee worksessions is as follows:

July 26 – Parking/Signs (General Development Requirements)
September 13 – Administration and Procedures
September 20 – Wrap-up, including any outstanding implementation issues

The Committee's directions for staff from the July 12 worksession (only changes in the Committee's directions are noted; recommended changes that were accepted are not noted) are as follows:

- 1) In addition to the proposed amendments to §6.6.3.F.1.b.ii concerning BLTs in the LSC zone, delete §6.6.3.F.1.b.i.
- 2) The provision concerning DPS's land use flexibility will be revised to include that flexibility in the sentence concerning prohibited land uses.
- 3) Accept DPS's proposed standards determining permitted land uses for seasonal sales, unless directed otherwise. But limit the number of permits per property to 2 per year.
- 4) Planning staff will review grandfathering provisions in Overlay zones to determine which can be deleted.
- 5) Planning Staff will determine which design standards can be eliminated in Overlay zones due to the use of the CR family of zones as an underlying zone (2-1, Councilmember Floreen had no problem with the overlap).
- 6) Planning Staff to determine if the FAR limit in the Overlay zones is reflected in the FAR limits in the underlying zone.
- 7) Planning staff will propose fewer Overlay zone classifications.
- 8) Planning Staff will rewrite parking limits in the Regional Mall Overlay zone to reflect 4.0 parking per space, subject to site plan findings.
- 9) For the reference to the TDR Overlay zone in Article 2, include dwelling unit number limit as part of the establishment of the zone.

The Committee requested that the following items come back to the Committee:

- 1) Revise or delete the description of non-residential buildings (currently described as general buildings) in residential zones.

Planning Staff will come back when they have a resolution to the Committee’s request.

- 2) Evaluate the cost per public benefit point for CR and CRT zones.
- 3) Revise the standards for a filling station to describe how access off of a residential street may be allowed and how car rental service may be allowed.

Where a Filling Station is allowed as conditional use...

[a. The minimum site is 20,000 square feet.]

[b.]a. Access to the site from a street with a residential classification is prohibited unless the Board of Appeals finds that access from a residential street is appropriate for the site.

...

[g.]f. ... all service, storage, or similar activities in connection with the use, with the exception of car-share spaces, must be conducted entirely within the building.

- 4) Clarify that a general building on 3 acres in the AR zone will not result in a 3 acre non-residential lot in the AR zone.

Sec. 4.2.5. AR Zone, Stand Method Development Standards

A. Site	Detached House	General Building
Site Area		
Site (min)	25 acres	3-25 acres
Site Coverage (max)	n/a	10%
Specification for Site Coverage		
B. Lot and Density		
Lot		
Lot area (min)	40,000 SF	40,000 SF
Lot width at front building line (min)	125'	n/a
Lot width at front lot line (min)	25'	200'
Density (max)		
Density (units lots/acre)	1/25	n/a 1/25
Density (units/lot)	1	n/a
Density (FAR per tract)	n/a	0.5

A. Site	Detached House	General Building
Coverage (max)		
Lot	10%	n/a 5%
Specifications for Coverage		
...		
Voluntary Conservation Lots		
Lot Area (max)	3 acres	3 acres
Remainder of site must be placed in a conservation or agricultural easement or land trust	Yes	Yes
Coverage (max)	15%	n/a 10%
Specifications for Coverage		
1....		
2 <u>The Planning Board may approve a lot larger than 3 acres only if an on-site well and septic system is not feasible on such a sized lot and the lot cannot be served by a septic easement.</u>		
Child Lots ...		

FLOATING ZONES

Introduction to Floating Zones

Euclidian zones are generally mapped by the County to implement Master Plans. Euclidian zones do not require owner consent. A floating zone includes standards that must be met before that zoning district can be approved for an existing piece of land. An owner must make an application for a zoning map amendment. The zone does not land on the ground until the application is approved. In that respect, the zone “floats” in the ether until it lands on the ground by the Council approval of a particular application.

It is much more difficult to get approval for a local map amendment for a Euclidian zone than to get a floating zone application approved. A successful Euclidian zone application requires proof of a change in the neighborhood or a mistake in the original zoning approved by the Council.¹ A successful floating zone application only requires conformance with the applicability standards and approval by the Council. In the past 6 years, no Euclidian local map amendment applications in the County were applied for or approved.

¹ In Maryland, it is presumed that the original zoning was well planned and designed to be permanent; it must appear, therefore, that in the absence of mistake in the original zoning, the character of the neighborhood was changed to an extent which justifies the amendatory action. *Wakefield v. Kraft*, 202 Md. 136, (1953). Thus, there is a strong presumption of correctness of original zoning and of comprehensive rezoning. *Stratakis v. Beauchamp*, 268 Md. 643 (1973).

The Court of Appeals described a floating zone as follows:

A floating zone is a special detailed use district of undetermined location, a district in which the proposed kind, location, size and form of structures must be pre-approved, and which, like a special exception use, is legislatively pre-deemed compatible with the areas in which it may thereafter be located on a particular application, provided specified standards are gratified and actual incompatibility is not revealed.²

....[A] floating zone is subject to the same conditions that apply to safeguard the granting of special exceptions . . . special precautions are to be applied to insure that there will be no discordance with existing uses.³

Floating zones can be used to avoid the Court devised “change/mistake rule” that restricts the approval of Euclidian zone local map amendments. It is a method to assure zoning flexibility without a requirement for an updated master plan.

Current Floating Zones

When the County Attorney’s Office held the opinion that a requirement for site plan approval could not be imposed except by the consent of the owner, floating zones were used in some instances (RT zones in particular) to assure that such consent was given. Since that time, the Council has required site plan approval in a variety of Euclidian zones.

The floating zones in the current Zoning Ordinance are not obvious. The Ordinance lacks a table that calls a floating zone a floating zone; they are identifiable only by their requirements. There are 22 floating zones. Some floating zones (R-4 plex and Mineral Resource Recovery) have never landed on the ground. There are three zones that require a specific master plan recommendation to be applied (LSC, Mineral Resource Recovery, and Rural Service); another two zones require a master plan recommendation for a use without requiring the named zone (MXP, and MXN). Six zones (TSR, TSM, RT, CT, C-P, and C-3) require a master plan recommendation or specific attribute (current zoning, distance from transit). Fifteen zones have a minimum area for an application. Ten floating zones require a minimum frontage on an arterial road or better.

There have been 50 local zoning map applications in the past 10 years. The greatest number of applications was for a PD zone (15), the second greatest number was for RT zoning (14). There were 10 applications for TSM (3) and TSR (7) zones. The last notable floating zone is OM (5).

Most of the new zones created in the past decade have been Euclidian zones. Floating zones have proved difficult to apply, even when recommended by the master plan. The Planning Board was more interested in getting the master plan recommended zoning on the ground. The use of floating zones that require applications by the owner did not result in uniformly getting the zoning recommended by the master plan.

² Hooper v. Gaithersburg, 270 Md. 628 (1974).

³ Bigenho v. Montgomery County Council, 248 Md. 386 (1968).

Proposed Floating Zone Code – Purpose

Nothing is more important for a floating zone than its purpose. The proposed code has a single purpose clause for all 12 proposed floating zones. The proposed floating zones are for all imaginable uses: residential (detached through high-rise), Commercial/Residential, Employment and Industrial. This is a remarkable scope for a single purpose clause. It speaks to the proposed code's quest for flexibility.

Many jurisdictions use floating zones to provide for unforeseen circumstances. The American Planning Association had this comment on floating zones:

Floating zones can be used to plan for future land uses that are anticipated or desired in the community, but are not confirmed, such as affordable housing, shopping centers, and urban development projects. They can also be used for cluster zoning, planned-unit developments (PUDs), and urban development projects.

A land use law professor put the reasons for a floating zone this way:

A floating zone is a useful tool when the need for the presence of a particular land use is hard to predict. Thus, such zones are used to locate quarries, ... garden apartments, or a bed and breakfast in a single family residential zone. When a particular land use is emerging, or responding to a development market, a floating zone for locating it on a zoning map is useful when the parcel is large enough, or is configured in such a way that potentially negative effects on neighbors can be minimized with standards pre-set in advance.⁴

The APA and Professor Burke did not state the only reasons to use a floating zone, but they are describing the more typical use.

The breadth of floating zones proposed in the new code is equal to the breadth of Euclidian zones. Flexible development standards under the proposed code exist in the Euclidian zones. The floating zones as proposed by the new code would be flexible to take advantage of development opportunities. *Flexibility to some property owners is nothing but uncertainty to other residents.*

Planning Staff provided the following rationale for their approach to floating zones (including footnotes):

Rationale & Support

The proposed floating zones are a complete "rethinking" of our existing floating zones, which were created ad hoc to allow for interim development through local rezonings. Like much of our current code, the existing floating zones are very hard to interpret and implement because of their complexity, lack of clarity, and inconsistency. Staff has proposed a new set of floating zones that accomplish several goals.

⁴ Understanding the Law of Zoning and Land Use Controls, Barlow Burke (2009).

1. Tie purposes and findings to key legal concepts supporting the application of floating zones, as established in general planning and zoning practice⁵:
 - a. While stability and regularity are important, zoning is not static;
 - b. Property owners have no permanently vested right to a zoning classification (particularly where the public interest demands otherwise);⁶
 - c. Standards for floating zones must be clear and specific; and
 - d. The purposes of a floating zone must ensure that a rezoning will:
 - i. Implement the objectives of the comprehensive plan,
 - ii. Encourage the most appropriate use of the land, and
 - iii. Benefit the community as a whole.
 - e. The proposed draft uses these concepts to develop the intents and purposes in Article 59-2 and Article 59-5.
2. Ensure floating zone requests are consistent with county environmental, development and urban design policies:
 - a. Based on LEED ND model;
 - b. Require either a master plan recommendation (contemplated within comprehensive transportation/infrastructure/environmental model for redevelopment) or compliance with prerequisites (basic assurances that transportation/infrastructure/environmental considerations are accounted for); and
 - c. Encourage mix of uses, open space, buffering, public benefits for medium & large projects.
3. Establish limits based on context and provide an avenue for new housing models as long as densities are unchanged or remain similar (issues that are not typically contemplated in our current code):
 - a. Densities that may be requested must be tied to:
 - i. Master plan recommendations, or
 - ii. Existing Euclidean zone (the “base” zone) and
 - iii. Size of property (in relation to base zone and base lot size);
 - b. Allow new housing models to be provided – at or near the density limits of the base zone – when base zone development standards make redevelopment unlikely⁷; and
 - c. When projects are approved for at least 150 units and the base zone is residential, allow for limited mixed-use (commercial uses)⁸ to:

⁵ We have used the summary provided by the USGBC’s *Neighborhood Development Floating Zone Model Ordinance 2013* (attached); especially the precedent-setting *Rodgers v. Tarrytown*, 96 N.E.2d 731 (NY 1951).

⁶ It is understood, however, that the Euclidian zone approved by the Council is deemed well-planned and correct (until changed by the Council).

⁷ This provision is specifically tailored to meet the housing need that has recently been described as “The Missing Middle”. See, for example, Parolek, Daniel, “Missing Middle Housing: Responding to the Demand for Walkable Urban Living,” *Smart Growth Network: National Conversation on the Future of Our Communities*, February 2013 (attached); also discussed extensively by the Congress for New Urbanism and New Partners for Smart Growth.

- i. Provide access to basic retail/service,
 - ii. Decrease local vehicular trips & congestion, and
 - iii. Make more walkable communities while limiting commercial density (maximum of 0.25 FAR on 25% of site).
- 4. Most abstractly, but very importantly, address the planning conundrum that master plans are land use models for growth but economics, demographics, and the rules of the game (e.g., stormwater, green building, road cross-sections, or zoning) often change over the decades a master plan may exist⁹ by:
 - a. Providing flexibility for rezoning requests to cover our 47 master plans listed on our website, some of which were approved in the early 1980's and are more than 30 years old;
 - b. Encouraging development that will meet evolving comprehensive planning goals and policies; and
 - c. Establishing a set of floating zones that can be used for future planning efforts and is:
 - i. Resilient,
 - ii. Sustainable,
 - iii. Dynamic,
 - iv. Adaptable,
 - v. Context-limited, and
 - vi. Subject to robust community review and input.

⁸ In RDF & TF; AF is more liberal because of assumption for greater number of units – may be limited similar to other two, for example – must have density at 20 units per acre and at least 50 total units to get CRN uses.

⁹ This is an aspect of planning that is well described by the “black swan problem”: I have only seen white swans, I make the conjecture that all swans are white, but this conjecture is falsifiable – it only takes one black swan to prove me wrong. In planning this is akin to the assumptions we make in the model for transportation, population, demographics, etc. and the resulting conjectures about what should happen – but if one black swan alights in our model, many things can change and master plans are not nimble enough to accommodate those changes, floating zones are a more agile tool to accommodate change, but must have protections such that other aspects of the original model are not further disrupted. See: Karl Popper’s work, especially “Two Meanings of Falsifiability”, which has been aptly (to my mind) critiqued when it comes to “hard” sciences, but seems (again, to my mind) to hold a good deal of weight in the “soft” sciences. For example, Nassim Nicholas Taleb makes a strong case against economic prediction that applies widely to the social sciences in his theory developed in *The Black Swan* and, previously, *Foiled by Randomness*, which explains: (1) the disproportionate role of high-profile, hard-to-predict, and rare events that are beyond the realm of normal expectations in history, science, finance, and technology; (2) the non-computability of the probability of the consequential rare events using scientific methods (owing to the very nature of small probabilities); and (3) the psychological biases that make people individually and collectively blind to uncertainty and unaware of the massive role of the rare event in historical affairs.

Drafting

The Floating zone section of the new code is commendably concise. It uses the land use and development standards as references to other zones and other sections of code.

Floating Zone Category	Approved Density	All Uses Allowed
AF	< 20 units/acre and < 150 total units	R-30, CRN
	< 20 units/acre and ≥ 150 total units	R-30, CRT
	≥ 20 units/acre and < 150 total units	R-20, R-10, CRN
	≥ 20 units/acre and ≥ 150 total units	R-20, R-10, CR

The zone that establishes the uses generally defines the minimum lot area. Tables provide density limits depending upon the pre-existing zone. The proposed code would vary standards depending upon the size of the project.

Pre-Existing Euclidean Zone	Base Lot/ Site Size	Base Density in Units per Acre	Maximum Allowed Density in Units per Acre		
			Less than 3 times the base lot/site size	3 to <6 times the base lot/ site size	At least 6 times the base lot/site size
RE-2, RE-2C	2 acres	0.50	0.50	0.75	1.00
RE-1	40,000 SF	1.09	1.09	1.63	2.18
R-200	20,000 SF	2.18	2.18	3.27	4.36
R-90	9,000 SF	4.84	4.84	7.26	12.00
R-60	6,000 SF	7.26	7.26	10.89	14.52
R-40	4,000 SF	10.89	10.89	16.33	21.78
TLD	20,000 SF	9.00	9.00	13.50	18.00
TMD	20,000 SF	12.00	12.00	18.00	24.00
THD	40,000 SF	15.00	15.00	22.50	30.00
R-30	12,000 SF	14.50	14.50	21.75	29.00
R-20	16,000 SF	21.70	21.70	32.55	43.40
R-10	20,000 SF	43.50	43.50	65.25	87.00

The floating zone provisions are remarkably comprehensive in 12 numbered pages.

Headlines

- 1) As proposed, it would be easier for more land to get a floating zone than under the current code.
- 2) Floating zones as proposed would remove the need for any applicant to prove “change or mistake” before getting a new zone.
- 3) There is a single purpose clause for all floating zones.
- 4) The standards within the zones are flexible.
- 5) The special purpose floating zones (retirement communities, mobile homes, quarries, hotels, and Country Inns) are deleted.

1) As proposed, it would be easier for more land to get a floating zone than under the current code.

Article 8 in the proposed code covers the process for local map amendments. Those details will be covered at a future Committee Meeting (September 13). Article 5 defines the limit of who can apply for a floating zone. It is fair to say that Article 5 does not provide the same limitation on floating zone applications as exist in the current code. (See page 3 for a summary of how current floating zones are restricted.) There is no requirement for the land covered by any proposed floating zone to:

- be specifically recommended in a master plan;
- have any specific type of road frontage; or
- have any minimum size area for consideration.

There is a blanket prohibition of floating zones in AR and Rural Residential zones. These areas are not typically served by public water and sewer; prohibiting an intensification of development in these areas is clearly justified. The proposed code would allow all floating zones in all other Residential Detached zones.

There is a prerequisite provision in the proposed code for residentially zoned property that is seeking an increase in density or commercial uses. It is a menu where the applicant must satisfy 2 criteria from Column A (Location) and 2 criteria from Column B (Circulation Network).

There are 100 combinations of situations that would allow a floating zone application by virtue of allowing any 2 of 5 criteria from 2 separate lists. A vast number of sites in the County could satisfy the proposed prerequisites. The location prerequisites can be satisfied by 1) public water and sewer service; and 2) buffering water resources. The first item is a general characteristic of all zones not in the AR or Rural Residential category. The second item is a subdivision requirement. The circulation network prerequisites can be satisfied by 1) having all streets built available to the public; and 2) all parking, except for single-family detached housing, must not be located in front of the building. The circulation prerequisites are situations that can be accomplished by the development plan; *they do not exclude an applicant by virtue of their access to specific roadway classification*. **Staff recommends more specific prerequisites or deleting all of the proposed prerequisites.**

Even though Council approval would be required to apply all floating zones by local map amendment, some residents have characterized this as a threat to the stability of single-family neighborhoods. The possibility of CR and CRT floating zones was cited in testimony as a particular threat in the absence of a specific master plan recommendation.

The Council should consider more exclusions to floating zone applications (e.g., specific road frontages and minimum lot size) when such an application is not recommended by a master plan.

Planning Staff provided the following response (including footnotes):

- a. Although a master plan recommendation is not required there are numerous safeguards and limits. As pointed out above, the current code rarely requires a master plan recommendation.
- b. Although a particular road frontage is not proposed to be required, this could be amended to include a requirement for either:
 - i. Site fronts on a non-residential street or
 - ii. Site confronts or abuts a zone that is not a single-family detached zone (transition between zone “types”).
- c. Regarding minimum site size (residential zones):
 - i. No increase in density is allowed unless the site is at least 3 times the base lot/site size (as similarly required by the current RT zones).
 1. This allows alternative housing layouts without increasing density; and
 2. This may provide opportunities for seniors, affordable housing, co-ops, etc.
 - ii. The increase in density when a lot is between 3-6 times the base size can only be up to 50%; the increase in density when the site is at least 6 times the base size can be no more than 100%.
 1. Ergo, a *de facto* minimum lot size is required for increases in density;
 2. To get any commercial density in the RDF or TF zones, a site would have to be very large; for example, CRN uses would only be allowed in an R-90 base zone for sites of at least 12.5 acres or 10.3 acres in an R-60 base zone; and
 3. The public review and findings for compatibility and master plan consistency are robust and appropriate enough that even if an application meets the prerequisites and requirements for filling, it “may not be sufficient to require approval of the application.”(Article 59-5)
- d. At least four prerequisites must be met for any floating zone application (two from each category):¹⁰
 - i. There are numerous combinations, but:
 1. The set of properties that can meet 4 of these is actually less than the number of properties that may currently request at least one of the existing 22 floating zones; and

¹⁰ Generally, see USGBC, *LEED for Neighborhood Development Rating System*, latest version, at www.usgbc.org/neighborhoods.

2. Although there are fewer opportunities to meet the applicability standards, those properties that meet them have more flexibility to craft better solutions.
3. Further, the limits on density and use ensure appropriate and reasonable rezoning requests.

ii. Water and sewer:

The site must be served by existing water and sewer infrastructure that will not require an upgrade due to the proposed development;

1. The prerequisite is not that the site be served by public water and sewer, but that the development can tie into those services without any upgrade to the system being required.
2. Language could be modified to ensure intent is clear and the pre-req. is easily implementable.

iii. Environmental buffers:

Any stream, floodplain, wetland, or environmental buffer onsite will not be adversely impacted by the development;

1. The intent is for no disturbance to environmental buffers;
2. Additional language could be added that further restricts the limits of disturbance with respect to environmental buffers.

iv. Roads

All streets built as part of the development must be available for general public use;

1. Numerous developments are requesting private roads (for various maintenance and aesthetic reasons, but mostly to avoid dedication and the resulting cross-sections with very large paved areas);
2. LEED ND pre-req. 1 in the Neighborhood Pattern & Design Category - public roads are important to dilute traffic through various networks and allow for ped/bike connections;
3. As noted above, additional or alternative language could specify that site frontage on a non-residential street is required.

v. Parking

Surface parking for the development must not cover more than 20% of the site;

1. 20% surface parking restriction is LEED ND credit 6 in the Neighborhood Pattern & Design category; and
2. Should be made clear that driveways are included.

vi. Additional thoughts-

In addition to the minimum site size, as discussed above (any increase in density requires a minimum site size) could also require:

1. Road frontage or transitional location, as suggested above; and/or
2. An additional set of prerequisites to address housing diversity and affordability:
 - a. Category could be named "Diversity of Uses & Activities"

- b. Provide at least 2 of the following prerequisites (bringing the total required to 6):
 - i. At least two different residential building types, no more than one of which may total above 70%;
 - ii. At least 15% MPDUs or 10% WFHUs;
 - iii. Provision of a residential care facility for at least 9 persons;
 - iv. Provision of mixed-use development: in the Residential Floating zones, at least 10% but no more than 25% non-residential uses, as allowed under this Article (Article 59-5)¹¹ or, in the C/R Floating zones, at least 60%, but no more than 90% residential; or
 - v. At least 50% of the housing is for seniors or persons with disabilities.

vii. Alternatives

- 1. Could limit R-90 & R-60 rezoning to CRNF unless within 1 mile of metro (or some other criteria were met – such as discussed above regarding road frontage, transitional location, etc.) when CRTF could be requested;
- 2. Remove prerequisites and require any floating zone application to meet LEED ND certification or County equivalent; or
- 3. Require all floating zone applications to develop as optional method and provide public benefits:
 - a. Residential Floating Zones, if requesting density greater than allowed by base zone:

Density Requested	Points Required	Categories Required
Up to 1.5 times base zone	50	3
Up to 2 times base zone	100	4

- b. C/R Floating Zones, modify 5.3.4.F.1: require public benefits for all C/R floating zones under table F.2; add a new set of rows for CRN requiring 10 points from 1 category up to 0.5 FAR and 25 points from 2 categories up to 1.0 FAR, and 50 points from 3 categories up to 1.5 FAR.
- c. Employment Floating Zones: similar to C/R; add new rows for NRF & GRF – same as CRN, but with a 75 points from 4 categories for above 1.5 FAR.

¹¹ To intercept local trips; not applicable to Employment or Industrial.

- d. Industrial Floating Zones: similar to C/R; add new rows for ILF & IMF – same as Employment.

2) Floating zones as proposed would remove the need for any applicant to prove “change or mistake” before getting a new zone. (No one would apply for a Euclidian zone under the proposed code.)

The proposed zones use the land use and standards of Euclidian zones as the basis for floating zones. Every Euclidian zone has a floating zone counterpart. There would never be a need to confront the burdens of proving a change or mistake from the current zone when a floating zone is available to accomplish the same objective. As rare as Euclidian zone applications currently are (2 applications in the past 10 years), they would be completely gone under the proposed code.

As a legal matter, the County **can** establish by legislation the standards under which zones can be changed. The Constitution does not require the “change/mistake” rule. The court has indicated in at least one zoning process (special exceptions) that court-made zoning doctrine can be overtaken by local law.¹² Zoning changes cannot be done in an arbitrary manner. Arbitrary decisions would be a violation of substantive due process.

Planning Staff response:

- a. Planning staff disagree; there are numerous properties that cannot meet the minimum number of prerequisites as drafted – and probably less if amended as discussed above.
- b. Change or mistake would still be the only local map amendment process for projects outside the sewer envelope.
- c. Because of the filing requirements, process, and development standards/limitations, the change or mistake process will be an important legal allowance for property owners that can make a persuasive case.

3) There is a single purpose clause for all floating zones.

Planning Staff should explain how the zone would:

- > ensure that the proposed uses are in balance with existing and planned infrastructure;
- > ensure that the development satisfies basic sustainability requirements;
- > establish a compatible relationship between new development and existing neighborhoods.

¹² Montgomery County v. Melody Butler , 417 Md. 271 (2010):

We hold, as explained infra, that, to the extent there is any inconsistency between the special exception standards in the prevailing County Code and the reasoning and holdings of Schultz and its progeny, the County (“District Council”) was free to legislate as it did here; that is, we disagree with the notion that a local zoning ordinance’s treatment of special exceptions always must “be read in context and harmony with the holding in Schultz,” and we refuse to give such ordinances this “judicial gloss” when the local legislature has spoken unambiguously to the contrary.

Planning Staff response:

- a. There are, however, separate intent statements for each family of floating zones.
- b. How does one ensure that the proposed uses are in balance with existing and planned infrastructure?
 - viii. Allow master plan staging conformance, prerequisites, and APFO tests judge capacity – depoliticized tests for adequacy of infrastructure;
 - ix. Maintain densities at or near base zones until significantly sized sites are consolidated that can augment or mitigate impacts;
 - x. Allow a mix of uses once planned communities have enough units to require basic retail and services at a level that would otherwise put more local trips on the road; and
 - xi. Require public benefits to enhance the quality of the environment and mitigate increases in intensity.
- c. How does one ensure that the development satisfies basic sustainability requirements?
 - xii. Applicability based on LEED ND prerequisites and credits;
 - xiii. Require public benefits to enhance the quality of the environment and mitigate increases in intensity;
 - xiv. Apply a smart-growth model allowing flexibility for the missing middle, mixed-use nodes, and redevelopment that meets updated tree canopy, permeable surface, and stormwater requirements; and
 - xv. Encourage implementation of development that can deliver on factors more important to reduced vehicular trips than proximity to rail¹³ (attached), such as:
 - 1. Low off-street parking availability,
 - 2. Better bus service,
 - 3. Smaller, rental housing,
 - 4. Service retail proximity,
 - 5. Proximity to downtowns,
 - 6. Increased subregional job density.
- d. How does one ensure that the floating zones will establish a compatible relationship between new development and existing neighborhoods?
 - xvi. Limit densities until sites become significantly larger than base zone lot size;
 - xvii. Limit uses based on base zone and lot size;
 - xviii. Require development standards:
 - 1. Compatibility standards (setbacks, height restrictions, screening),
 - 2. Increased open space standards,
 - 3. Parking setbacks & landscaping,
 - 4. Site access standards; and

¹³ Chatman, Daniel G. (2013): "Does TOD Need the T?", *Journal of American Planning Association*, 79:1, 17-31.

- xix. Require a stringent, open process with:
1. Strict compatibility findings,
 2. Layers of review,
 3. Community noticing, input, and hearings, and
 4. Binding elements that may restrict particular building types, uses, etc.

4. The standards within the zones are flexible.

In larger residential floating zone applications, all of the uses in the CRT zone would be allowed without an application for a CRT zone (limited to 25% of the lot area with a .25 FAR; all commercial uses must be separated from any property not within the LMA by residential lots or open space and must not share a lot line with any properties in a Residential zone not included in the LMA).

There are no height limits in any zone, except what is approved in the floating zone plan. Building height must only satisfy compatibility standards under §7.4.

There is no required relationship between height and setbacks.

A master plan recommendation is never required for any floating zone, either as an absolute requirement or as an alternative requirement.

There is no prohibition of a floating zone being applied on top of a floating zone (it would increase the allowable density of the second rezoning, which could be filed 18 months after the first application).

Planning Staff response:

- a. Currently we rezone R-60- and R-90-zoned land to PD-60, TSR/TSM, and other zones with much more intensity than the proposed code would allow (examples and models of density can be provided at the worksession).
- b. Not only is commercial development limited to 0.25 FAR based on 25% of the site in Residential Floating zones, it must also be separated from any residential property not within the application by residential lots or open space;
- c. Height is limited by the angular plane restrictions required by the compatibility requirements in Article 7; setbacks are, thus, tied to height – the closer your building, the lower the allowed height.
- d. A limit on rezoning a floating zone should be added: only allow amendments to a floating zone application up to the maximums that could be approved under the original rezoning.

5. The special purpose floating zones (retirement communities, mobile homes, quarries, hotels, and Country Inns) are deleted.

All floating zones would be general under the proposed code. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict proposed uses to support the necessary findings for approval.

Planning Staff Response:

- a. Not retained because of experience and exasperation dealing with amendments, oddities, extreme specificity, and other issues over the years.
- b. See the general rationale & support section and the discussion of possible modifications to the prerequisites.

Appendix

Circle number

I. Changes to the Floating zones in the Planning Board Draft

1 – 18

Changes to the Floating zones in the Planning Board Draft

The existing zoning code has approximately two dozen floating zones; some of these zones have “sub-zones” such as the residential townhouse zones and planned development zones. The Planning Board draft recommends removing most of the current floating zones from the ordinance. Many are no longer used; most are outdated, and all have problems with interpretation, consistency, either too little or too much review, and lack of flexibility to accommodate demographic and economic change. A small number of floating zones are recommended for retention in a separate article, Article 59-9, allowing these zones to remain in place under their current rules, but not offering these zones for future application.

Zones Established

In place of the current floating zones, the proposed code creates four new families of floating zones.

A. Zones Established

1. Residential Floating

a. There are 3 Residential Floating zone classifications:

- i. Residential Detached - Floating (RDF),
- ii. Townhouse - Floating (TF), and
- iii. Apartment - Floating (AF).

b. The RDF, TF, and AF zones will be applied on the Zoning Map by showing their zoning classification symbols.

2. Commercial/Residential Floating

a. There are 3 Commercial/Residential Floating zone classifications:

- i. Commercial Residential Neighborhood - Floating (CRNF),
- ii. Commercial Residential Town - Floating (CRTF), and
- iii. Commercial Residential - Floating (CRF).

b. The CRNF, CRTF, and CRF zones will be applied on the Zoning Map by showing their zoning classification symbols.

3. Employment Floating

a. There are 4 Employment Floating zone classifications:

- i. General Retail - Floating (GRF),
- ii. Neighborhood Retail - Floating (NRF),
- iii. Employment Office - Floating (EOFF), and
- iv. Life Sciences Center - Floating (LSCF).

b. The GRF, NRF, EOFF, and LSCF zones will be applied on the Zoning Map by showing their zoning classification symbols.

4. Industrial Floating

a. There are 2 Industrial Floating zone classifications:

- i. Light Industrial - Floating (ILF), and
- ii. Moderate Industrial - Floating (IMF).

b. The ILF and IMF zones will be applied on the Zoning Map by showing their zoning classification symbols.

Intent Statements & Purposes

The existing ordinance typically describes specific purposes that an application for a specific floating zone must fulfill to be approved. These vary greatly and range from one or two sentences to over a page. The proposed floating zones have a general intent statement and intent statements specific to each family of Floating zone. The character of the intended development and the overall vision of the floating zone are summarized by each intent statement.

B. Intent Statements

1. In General

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). In order to obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment application. The review process provides substantial opportunities for analysis and public input to ensure compatibility with surrounding neighborhoods and development. The intent of the Floating zones is to:

- a. implement the objectives of the general plan and applicable master plan;
- b. provide flexibility in the planning and construction of development projects by allowing uses based on approved density and existing zoning while providing protections for abutting properties;
- c. provide an environment within the layout of a site that contributes to a sense of community and creates a distinctive neighborhood character;
- d. encourage the preservation and enhancement of natural amenities and cultural resources and ensure a minimum amount of open space;
- e. provide for an efficient arrangement of land uses, buildings, circulation systems, and infrastructure; and
- f. encourage infill projects and the development of sites made difficult for conventionally designed development because of shape, size, abutting development, poor accessibility, or environmental factors.

2. Residential Floating Zones

- a. The Residential Floating zones (RDF, TF, and AF) are intended to allow development of primarily Residential uses with limited accessory commercial uses allowed to provide for daily needs of the community.
- b. Building types, uses, density, height, and other standards and requirements are set by the zone. Development must also comply with the terms of the floating zone plan approved by the District Council.
- c. The area of the lot or site determines maximum density. Other base criteria must be met to ensure adequate circulation, building relationships, amenities, and open space.

3. Commercial/Residential Floating Zones

- a. The Commercial/Residential Floating zones (CRNF, CRTF, and CRF) are intended to allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings.
- b. Uses are generally flexible to allow construction of retail, service, office and residential development appropriate to the site: for example, smaller sites will typically allow only basic retail services in small bays, whereas larger sites will allow larger commercial uses.
- c. Building types, uses, density, height, and other standards and requirements are set by the zone. Development must also comply with the terms of the floating zone plan approved by the District Council.

d. Tract area determines maximum density. Other base criteria must be met to ensure adequate circulation, building relationships, amenities, and open space.

4. Employment Floating Zones

a. The Employment Floating zones (GRF, NRF, EOFF, and LSCF) are intended to allow development of mixed-use centers and communities, primarily with office uses, supporting housing, and accessory retail at a range of densities and heights flexible enough to respond to various settings.

b. Uses are restricted to ensure higher jobs-to-housing ratios, but flexible to allow some housing to support a portion of the proposed workforce and accessory retail to provide basic services to employees and residents.

c. Building types, uses, density, height, and other standards and requirements are set by the zone. Development must also comply with the terms of the floating zone plan approved by the District Council.

d. Tract area determines maximum density. Other base criteria must be met to ensure adequate circulation, building relationships, amenities, and open space.

5. Industrial Floating Zones

a. The Industrial Floating zones (ILF and IMF) are intended to allow development of industrial sites with primarily light manufacturing, warehouse, and related uses at a range of densities and heights flexible enough to respond to various settings.

b. Uses are restricted to industrial uses that provide employment and support economic diversity within the County, and limited ancillary housing.

c. Building types, uses, density, height, and other standards and requirements are set by the zone. Development must also comply with the terms of the floating zone plan approved by the District Council.

Purpose

These purposes delineated under Sec. 5.1.2 have been specifically drafted to address the primary legal bases for approving floating zones:

- Implementation of comprehensive planning objectives,
- Encouraging the appropriate use of land, and
- Ensuring protection of established neighborhoods.

These purposes point to more specific objectives than the intent statements and must be analyzed and found to be satisfied during review of any application (see below).

Sec. 5.1.2. Purposes

The purposes of the floating zones are to:

- A. Implement comprehensive planning objectives by:
 1. Furthering the goals of the general plan, applicable master plan, and functional master plans;
 2. Ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, and functional master plans; and
 3. Allowing design flexibility to integrate development into the circulation networks, land use patterns, and natural features within and connected to the property; and
- B. Encourage the appropriate use of land by:

1. Providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;
 2. Allowing various uses, building types, and densities on appropriate sites determined by the property's size and base zone to serve a diverse and evolving population; and
 3. Ensuring that development satisfies basic sustainability requirements including appropriate location and connections to circulation networks; and
- C. Ensure protection of established neighborhoods by:
1. Establishing compatible relationships between new development and existing neighborhoods;
 2. Providing development standards to protect the character of adjacent neighborhoods; and
 3. Allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use(s).

Applicability

Floating zones currently vary based on the circumstances under which an applicant may request a rezoning. See table below.

Zone	Requirement for a specific master plan recommendation	Neighboring zones	Transportation access	Size
R-4 Plex	None – but harmonious in style with adjoining residential bldg.	w/in 1,500 of CBDs or commercial zones	100 ft of arterial frontage	None
RMH -200	None	None	None	5 acres in MP recommended
RT	Required or buffer between SF detach and more intense uses	Commercial/Multifamily & SF	None	20,000 for RT- 12.5 or lower 40,000 for RT 15
R-H	None	Not detrimental to adjacent property or the general neighborhood	200 feet frontage	40,000 sf
R-MH	None	Maximize compatibility and adjoining development	None	15 acres
CT	Required or locational criteria	Between one-family residential areas and high-intensity commercial development	None	None
O-M	None	Not intended in predominantly one-family areas	None	None
C-P	Required or where "such uses are appropriate"	Low/medium density residential or non-residential	100 feet of frontage on arterial or higher	5 acres
H-M (hotel-motel)	None	Intend for tracts planned for commercial, (but not CT or C-1 land) industrial or high density residential	None	2 acres
C-3	Required or abuts/confronts major highway	None	Abuts/ confronts major highway or MP recommendation	None
C- Inn	None	Rural areas	None	2 acres unless less

				recommended in MP
LSC (This was created as a floating zone, but it's now treated as a Euclidean zone)	Required	None	None	None
PD	None	Must be recommended for residential density 2 units per acre or more	None	Acre sufficient to yield 50 units
TS	Area must be identified as corridor city	None	None	1,500 acres (unless adjoining other TS land)
PN	None	None	Major transportation arteries on the perimeter	Minimum number of units that would yield 450 elementary students
PRC	None	None	None	25 acres
MXPD	Must recommend mixed-use	None	Readily accessible from a major highway or freeway	20 acres
MXN	Must recommend mixed-use at neighborhood scale	None	Adjacent to arterial road or higher	20 acres less is recommended in the MP
PCC	None	None	Frontage on and be readily accessible from a major highway	5 acres
TSR / TSM	Required or where multifamily/commercial already exists	Adjacent to CBD, where multifamily residential is recommended	Within 1,500 feet of metro rail	None
Mineral Resource Recovery (none mapped in the County)	Required	None	None	10 acres
RS	Required	Rural	Direct access to a road of arterial or higher classification	None

In the proposed code, in all cases, an application for a floating zone may be made only if:

1. the subject property has been recommended in an approved master or sector plan for the particular zone requested or
2. the application meets the prerequisites stated under Sec. 5.1.3.

Sec. 5.1.3. Applicability and Approval Required

A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.

B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application.

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

1. The maximum allowed density is based on the base zone and size of the tract as stated in Div. 5.2 through Div. 5.5.

2. Residential Base Zone

When requesting a Floating zone for a property with a Residential base zone:

- a. If no commercial uses are requested and no increase in density above that allowed by the base zone is requested, there are no prerequisites for an application;
- 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 2 of the prerequisites for each of the following categories:

Category	Prerequisite Choices
Location	<p>At least 75% of the property must be within 1/4 mile of a level 2 transit station/stop or 1 mile of a level 1 transit station/stop;</p> <p>The tract must be served by existing water and sewer infrastructure that will not require an upgrade due to the proposed development;</p> <p>The tract must be in a transitional location between existing Residential Multi-Unit, Residential Townhouse, or no-residential zoning and Residential Multi-Unit, Residential Townhouse, or Residential Detached zoning;</p> <p>Any stream, floodplain, wetland; or environmental buffer on-site will not be adversely impacted by the development; or</p> <p>If proposing development that may generate students, the site must not be in an area that is under moratorium due to school capacity or result in a school utilization rate greater than 120% because of the proposed development. For any site within 2 school clusters, only the portions of the site that satisfy this requirement can proceed. Age-restricted or senior housing automatically qualifies for this prerequisite.</p>
Circulation Network	<p>All streets built as part of the development must be available for general public use;</p> <p>Except for detached houses, all parking, except on-street parallel parking, must be to the side of or behind buildings;</p> <p>Surface parking for the development must not cover more than 20% of the development footprint;</p> <p>The site has frontage on a non-residential street; or</p> <p>The tract is adjacent to an existing pedestrian and bicyclist route that is at least 5 miles in length.</p>

3. Non-Residential Base Zone

When requesting a Floating zone for a property with a non-Residential base zone there are no additional prerequisites for an application.

- D. Application of a Floating zone requires approval of a Local Map Amendment under Sec. 8.2.1.
- E. A Floating zone application that meets the prerequisites and requirements in this Article (Article 59-5) may not be sufficient to require approval of the application.

Special Provisions for Properties in a Zone under Article 59-9

For those zones that are not being translated from their current floating zone, special provisions are provided to allow them to request a floating zone under Sec.5.1.4:

- A. Properties in a zone under Article 59-9 may be rezoned to a Floating zone in this Article (Article 59-5) as follows:
 - 1. The applicant must propose an equivalent Euclidean zone based on the subject property's existing use and density;
 - 2. The equivalent Euclidean zone is the base zone that determines:
 - a. The prerequisites under Sec. 5.1.3 that apply;
 - b. The Floating zone that may be requested; and
 - c. Any applicable land uses, building types, and development standards.
- B. This Section (Sec. 5.1.4) does not apply where Article 59-9 specifically prohibits rezoning to a new Floating zone.

General Limits

When a specific master plan recommendation is not made, the proposed code limits the density and uses that may be requested for a floating zone. Generally, the smaller the lot and/or the lower the density allowed by the pre-existing Euclidean zone ("base zone"), the more restrictive the allowed density and uses are. In each case, a table in the proposed ordinance describes what uses are allowed based on approved density and what densities are allowed based on the existing zoning and size of the subject property.

Land Uses

The existing floating zones have a wide range of allowed uses, some tied to Euclidean Zones, some specifically enumerated in each respective section. This information is spread throughout the code and may be further limited during the approval process (by covenant or proffered binding elements).

The proposed code recommends clearly linking uses allowed by each of the floating zones to uses allowed by specific Euclidean Zones and retaining the ability to limit allowed uses during the approval process through proffered binding elements.

In the Residential Floating Zones, uses are tied to approved density – either minimum units per acre or total units. As the units per acre and/or total number of units increases, the "intensity" of allowed uses increase. For example, a low unit-per-acre approval would be limited to the uses allowed under the R-200 zone. If the units per acre increases above 3 but the total number of units is below 150, the uses would be limited to those allowed in the R-200 zone and commercial uses allowed under the CRN zone. In all cases, however, in the Residential Floating Zones the maximum area of the site for nonresidential uses is limited to 25% and the maximum nonresidential density on that 25% of the site is 0.25 FAR.

Sec. 5.2.2. Land Uses

A. Allowed Uses

Land uses are allowed in the Residential Floating zones as follows:

Floating Zone Category	Approved Density	All Uses Allowed
RDF	< 3 units/acre and < 150 total units	R-200
	< 3 units/acre and ≥ 150 total units	R-200, CRN
	≥ 3 units/acre and < 150 total units	R-90, R-60, R-40
	≥ 3 units/acre and ≥ 150 total units	R-90, R-60, R-40, CRT
TF	< 12 units/acre and < 150 total units	TLD
	< 12 units/acre and ≥ 150 total units	TLD, CRN
	≥ 12 units/acre and < 150 total units	TMD, THD
	≥ 12 units/acre and ≥ 150 total units	TMD, THD, CRT

Floating Zone Category	Approved Density	All Uses Allowed
AF	< 20 units/acre and < 150 total units	R-30, CRN
	< 20 units/acre and ≥ 150 total units	R-30, CRT
	≥ 20 units/acre and < 150 total units	R-20, R-10, CRN
	≥ 20 units/acre and ≥ 150 total units	R-20, R-10, CR

The C/R, Employment, and Industrial Floating zones are much simpler and track the uses allowed in the parallel Euclidean zoning classification (e.g., CRNF uses = CRN uses).

Sec. 5.3.2. Land Uses

A. The following land uses are allowed in the Commercial/Residential Floating zones:

1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.
2. In the CRTF zones, only the uses allowed in the CRT zone are allowed.
3. In the CRF zones, only the uses allowed in the CR zone are allowed.

B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.4.2. Land Uses

A. The following land uses are allowed in the Employment Floating zones:

1. In the GRF zones, only the uses allowed in the GR zone are allowed.
2. In the NRF zones, only the uses allowed in the NR zone are allowed.
3. In the EOFF zones, only the uses allowed in the EOF zone are allowed.

- 4. In the LSCF zones, only the uses allowed in the LSC zone are allowed.
- B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.5.2. Land Uses

- A. The following land uses are allowed in the Industrial Floating zones:
 - 1. In the ILF zones, only the uses allowed in the IL zone are allowed.
 - 2. In the IMF zones, only the uses allowed in the IM zone are allowed.
- B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses in order to support the necessary findings of approval under Sec. 8.2.1.

Building Types

Different building types are not differentiated in the current zoning ordinance. Building types in the Residential Floating Zones track the parallel Euclidean zoning classification. Additional building types are allowed only when the approved density for a particular zoning category allows commercial uses.

Sec. 5.2.3. Building Types

- A. Building types are allowed as follows:

	Detached House	Duplex	Town-house	Apartment/Condo	Multi Use Building	General Building
Zone						
RDF	A				S	A
TF	A	A	A		S	A
AF	A	A	A	A	S	A
KEY	A = Allowed S = Subject to approval of commercial uses under Sec. 5.2.2					

- B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific uses in order to support the necessary findings of approval under Sec. 8.2.1.

The C/R and Employment zones allow the same building types allowed by the parallel Euclidean zoning classification (e.g., CRNF building types = CRN building types).

Sec. 5.3.3. Building Types Allowed

- A. Any building type is allowed in the Commercial/Residential Floating zones.
- B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.4.3. Building Types Allowed

- A. Any building type is allowed in the Employment Floating zones.
- B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.5.3. Building Types Allowed

- A. Building types are allowed according to the equivalent Euclidean zone.

B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types in order to support the necessary findings of approval under Sec. 8.2.1.

Development Standards in General

The development standards for the existing floating zones vary substantially and have an oblique relationship to context. For example, setbacks may be 100 feet for certain zones (regardless of building type or density) but non-existent in others (again, regardless of building type or density). In many cases, the standards are established during the iterative review process, but in others they are established by the zone with no flexibility. Density may be regulated by FAR, by units per acre, or by approximated population. In the case of the PD zones, one may request up to 100 units per acre on any site that exists in a zone that permits a residential density of at least 2 units to the acre (e.g., R-200, R-90, R-60, or R-40). Currently, height is routinely determined during the review process. In all cases, there must be some kind of consistency with the respective master plan – either as stated by the zone or as required by the applicable findings of approval.

Density

The proposed code, first and foremost, recommends retaining the relationship between Floating zones and master plans. Sections 5.2.4.A, 5.3.4.A, 5.4.4.A, and 5.5.4.A each specify that density recommendations in the applicable master plan cannot be exceeded. Where the master plan does not make a recommendation, density limits are set by the existing base zone and the size of the applicable site.

Sec. 5.2.4. Development Standards [Density for Residential Floating Zones]

A. Density

1. Residential Density

- a. If a Floating zone is recommended in a master plan, residential density must not exceed the specific recommendation, except where MPDUs above the minimum required or TDRs are provided.
- b. If a Floating zone is not recommended in a master plan the following residential density limits apply, calculated on site area:

Pre-Existing Euclidean Zone	Base Lot/ Site Size	Base Density in Units per Acre	Maximum Allowed Density in Units per Acre		
			Less than 3 times the base lot/site size	3 to <6 times the base lot/ site size	At least 6 times the base lot/site size
RE-2, RE-2C	2 acres	0.50	0.50	0.75	1.00
RE-1	40,000 SF	1.09	1.09	1.63	2.18
R-200	20,000 SF	2.18	2.18	3.27	4.36
R-90	9,000 SF	4.84	4.84	7.26	12.00
R-60	6,000 SF	7.26	7.26	10.89	14.52
R-40	4,000 SF	10.89	10.89	16.33	21.78
TLD	20,000 SF	9.00	9.00	13.50	18.00
TMD	20,000 SF	12.00	12.00	18.00	24.00
THD	40,000 SF	15.00	15.00	22.50	30.00
R-30	12,000 SF	14.50	14.50	21.75	29.00
R-20	16,000 SF	21.70	21.70	32.55	43.40
R-10	20,000 SF	43.50	43.50	65.25	87.00

2. Commercial Density

Commercial density, if allowed under Sec. 5.2.2, is limited to 0.25 FAR, calculated on 25% of the site.

3. Modifications by Applicant

An applicant may limit density below the maximum allowed by this Section (Sec. 5.2.4.A) in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.3.4. Development Standards [Density for C/R Floating Zones]

A. Density

1. If a Floating zone is recommended in a master plan, density must not exceed the specific recommendation.
2. If a Floating zone is not recommended in a master plan, the following density limits apply.

Density Allowed

Pre-Existing Euclidean Zone	Maximum Density Allowed in FAR Based on Size of Tract in Acres					
	Up to 0.5 acres		0.51 acres - 3.00 acres		Greater than 3 acres	
	Total Density	C or R Density	Total Density	C or R Density	Total Density	C or R Density
RE-2, RE-2c, RE-1, R-200	0.75 FAR	0.5 FAR	1.0 FAR	0.75 FAR	1.25 FAR	1.0 FAR
R-90, R-60, R-40, TLD, TMD, THD	1.0	0.75	1.25	1.0	1.5	1.25
R-30, R-20, R-10	1.25	1.0	1.5	1.25	1.75	1.5
CRN	1.0	0.75	1.25	1.0	1.5	1.25
CRT	2.0	1.5	3.0	2.0	4.0	3.0
CR	4.0	3.0	6.0	4.5	8.0	6.0
Employment	2.0	1.5	3.0	2.0	4.0	3.0
IL, IM	0.75	0.5	1.0	0.75	1.5	1.25

3. An applicant may limit density below the maximum allowed by this Section (Sec. 5.3.4.A) in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.4.4. Development Standards [Density for Employment Floating Zones]

A. Density

1. If a Floating zone is recommended in a master plan, density must not exceed the specific recommendation.
2. If a Floating zone is not recommended in a master plan, the following density limits apply:

Pre-Existing Euclidean Zone	Density Allowed		
	Maximum Total Density Allowed in FAR Based on Size of Tract in Acres		
	Less than 0.5 Acres	0.5 – 3.00 Acres	Greater than 3 Acres
RE-2, RE-2c, RE-1, R-200	0.75 FAR	1.0 FAR	1.25 FAR
R-90, R-60, R-40, TLD, TMD, THD	1.0	1.25	1.5
R-30, R-20, R-10	1.25	1.5	1.75
CRN	1.0	1.25	1.5
CRT	2.0	3.0	4.0
CR	4.0	6.0	8.0
Employment	2.0	3.0	4.0
IL, IM	0.75	1.0	1.5

3. An applicant may limit density below the maximum allowed by this Section (Sec. 5.4.4.A) in order to support the necessary findings of approval under Sec. 8.2.1.

Sec. 5.5.4. Development Standards [Density for Industrial Floating Zones]

A. Density

1. If a Floating zone is recommended in a master plan, density must not exceed the specific recommendation.
2. If a Floating zone is not recommended in a master plan, the following density limits apply:

Pre-Existing Euclidean Zone	Density Allowed		
	Maximum Total Density Allowed in FAR Based on Size of Tract in Acres		
	Less than 0.5 Acres	0.5 – 3.00 Acres	Greater than 3 Acres
RE-2, RE-2c, RE-1, R-200	0.50 FAR	0.75 FAR	1.00 FAR
R-90, R-60, R-40, TLD, TMD, THD	0.75	1.00	1.25
R-30, R-20, R-10	1.00	1.25	1.50
CRN	0.75	1.00	1.25
CRT	1.00	1.25	1.50
CR	2.00	2.50	3.00
Employment	1.00	1.25	1.50
Industrial	2.00	2.50	3.00

3. An applicant may limit density below the maximum allowed by this Section (Sec. 5.5.4.A) in order to support the necessary findings of approval under Sec. 8.2.1.

Height, Setbacks, Lot Size, & Open Space

Height is also based on master plan recommendations, where provided. Otherwise height is established by the floating zone plan. Height must satisfy the compatibility standards for the applicable building type. Setbacks and lot size are established by the floating zone plan.

For the Residential Floating zones, the minimum open space requirement is determined by the most intense building type approved and the density in units per acre:

Building Type	Open Space Required			
	Minimum Open Space Required Based on Units per Acre			
	1-19 units/acre	20-39 units/acre	40-59 units/acre	60+ units/acre
Detached House	0%	10%	10%	15%
Duplex	0%	10%	15%	20%
Townhouse	10%	15%	20%	25%
Apartment/Condo, Multi Use, or General Building	15%	20%	25%	30%

For the C/R, Employment, and Industrial Floating zones, the minimum open space requirement is equivalent to the minimum open space requirement under the Euclidean zone that establishes uses for each applicable building type.

Requirements for the provision of parking, open space, recreation facilities, screening and landscaping must follow the requirements under Article 59-7 according to the Euclidean zone that establishes uses for each applicable residential or commercial area.

The floating zone plan may require additional parking, open space, recreation facilities, screening or landscaping in order to make the necessary findings for approval under Sec. 8.2.1

Public Benefits

Public benefits are required for C/R and Employment Floating Zones similar to their parallel Euclidean counterparts and, if required, a sketch plan must be filed. Thus, for any property rezoned to CRTF that proposes and FAR above 1.0, the project must obtain approval of a local map amendment, a sketch plan, and a site plan.

Sec. 5.3.4. Development Standards

F. Public Benefits

1. Public Benefits Required

- a. Development above 1.0 FAR in the CRTF zone requires public benefits.
- b. Development above 0.5 FAR in the CRF zone requires public benefits.

c. When public benefits are required by development in the Commercial/Residential Floating zones, a sketch plan must be submitted under Sec. 8.3.3.

2. Public Benefit Points and Categories Required

a. Public benefits under Div. 6.6 must be provided according to zone and to the site size or maximum total mapped FAR, whichever requires fewer public benefit points:

Zone	Tract Size OR Max Total FAR	Public Benefit Points (min)	Number of Benefit Categories (min)
CRTF	< 10,000 SF OR < 1.5 max FAR	25	2
	10,000 SF to < 1,250,000 SF OR 1.5 to < 3.25 max FAR	50	3
	≥ 1,250,000 SF OR ≥ 3.5 max FAR	75	4
CRF	< 10,000 SF OR < 1.5 max FAR	50	3
	10,000 SF to < 1,250,000 SF OR 1.5 to < 3.25 max FAR	100	4
	≥ 1,250,000 SF OR ≥ 3.5 max FAR	125	5

b. In the CRF zone, the purchase of BLTs is required under Sec. 6.6.3.F.1.a.

Sec. 5.4.4. Development Standards

F. Public Benefits

1. Public Benefits Required

- a. Development above 1.0 FAR in the EOFF zone requires public benefits.
- b. Development above 0.5 FAR in the LSCF zone requires public benefits.
- c. When public benefits are required by development in the Employment Floating zones, a sketch plan must be submitted under Sec. 8.3.3.

2. Public Benefit Points and Categories Required

a. Public benefits under Div. 6.6 must be provided according to zone and to the tract size or maximum total mapped FAR, whichever requires fewer public benefit points:

Zone	Tract Size OR Max Total FAR	Public Benefit Points (min)	Number of Benefit Categories (min)
LSC	< 10,000 SF OR < 1.5 max FAR	15	1
	10,000 SF to < 1,250,000 SF OR 1.5 to < 3.25 max FAR	30	2
	≥ 1,250,000 SF OR ≥ 3.5 max FAR	40	3
EOFF	< 10,000 SF OR < 1.5 max FAR	30	2
	10,000 SF to < 1,250,000 SF OR 1.5 to < 3.25 max FAR	60	3
	≥ 1,250,000 SF OR ≥ 3.5 max FAR	75	4

b. In the LSCF zone, the purchase of BLTs is required under Sec. 6.6.3.F.1.b.

Application Types

In the current code, under Article 59-D, certain floating zone applications require submittal of either a development plan or a diagrammatic plan. Under Section 59-H-2.52, certain floating zone applications require submittal of a schematic development plan. The type of plan required by each zone is shown below:

Development Plan

- R-4plex
- R-Mobile Home (RMH)
- Country Inn (C-Inn)
- Planned Development (PD)
- Mixed Use Planned Development (MXPD)
- Town Sector (TS)
- Planned Neighborhood (PN)
- Planned Retirement Community (PRC)
- Planned Cultural Center (PCC)
- Transit Station, Residential (TSR)
- Transit Station, Mixed (TSM)
- Mineral Resource Recovery (MRR)

Diagrammatic Plan

- Mixed Use Neighborhood (MXN)

Schematic Development Plan

- Office, Moderate (OM)
- Commercial, Transitional (CT)
- Commercial, Highway (C3)
- Residential Townhouse, 6 – 15 (RT)
- Residential, High-Rise (RH)
- Commercial, Office Park (CP)
- Hotel Motel (HM)
- Rural Service (RS)
- Life Sciences Center (LSC)
- Industrial, Technology & Business Park (I3)

The Planning Board draft proposes one floating zone application type, a Local Map Amendment application, which replaces the three current local map amendment application types (diagrammatic, development, and schematic development plans).

Comparison of Findings & Plan Contents

A separate worksession will cover administration and procedures in the code, including submittal requirements and findings, however, the following summary provides a brief overview of the existing and proposed local map amendment findings and application contents for context.

Current Code:

Findings (abbreviated)	Development Plan	Schematic Development Plan	Diagrammatic Plan
Not in Conflict with County Policies			x
Substantial Compliance w/Master Plan Use	x		
Substantial Compliance w/Master Plan Density	x		
Conform to Sector Plan			x
In accordance with Purpose Clause and all other Requirements of the Zone		x	
Purposes of Zone	x		x
Standards of Zone	x		
Compatible w/Adjacent Development	x		
Provide Max. Safety, Convenience & Amenity	x		x
Safe, Adequate, & Efficient Circulation	x		
Maintenance and Ownership of Recreation Amenities	x		
Prevent Erosion and Preserve Natural Features	x		
Forest Conservation	x		
Water Resource Protection	x		
Maximize Public Transit; Discourage Cars			x
Contents of Plan (abbreviated)	Development Plan	Schematic Development Plan	Diagrammatic Plan
NRI/FSD	x	x	
Natural/Historic Features	x	x	x
Vicinity Map	x	x	x
If Project will be Staged		x	
Development Program for Staging	x	x	x
Land Use Plan	x (includes*)		x (includes*)
Location, Height, and Uses of Buildings & Structures	*	x	*
Location of Parking	*	x	
Points of Access & Circulation		x	*
Dedications	*		*
Unit Types	*		*
Illustrative vs. Binding Elements		x	
Public-Use Space	*		*
Saved Trees			*
Water Quality Plan			x (if in SPA)
Master Planned Roadways			*
Town Sector Development Program	x (for TS only)		
Supplementary Plan	x (for TS only)		
Detailed Written Statement of Project		x	

Proposed Code:

B. Application Requirements

3. The applicant must submit the following for review:
 - a. An application form and fees approved by the District Council;
 - b. The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more (whether held in an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of any contract purchaser or person holding a mortgage, deed of trust, or option to purchase the property.
 - c. A statement disclosing political contributions to the treasurer or political committee of any candidate for County Council and County Executive or slate that contributes to candidates for County Council or County Executive, under State law. The applicant must submit the disclosure statement on a form approved by the District Council.
 - d. A statement explaining how the proposed development satisfies the criteria to grant the application;
 - e. For a Floating zone, a floating zone plan depicting:
 - i. building density, massing, height, and anticipated use;
 - ii. locations of open spaces and preliminary stormwater management strategy;
 - iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
 - iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and
 - v. the following additional information:
 - (a) current and proposed zone;
 - (b) existing site conditions and vicinity;
 - (c) existing or approved adjacent land uses, buildings, and rights-of-way;
 - (d) a Traffic Study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and
 - (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications.
 - f. For a Euclidean zone application, exhibits showing:
 - i. the subject property and the proposed neighborhood, identifying uses and zoning; and
 - ii. an explanation of the changes that have occurred in the neighborhood since the original zoning or previous comprehensive rezoning, or evidence of the alleged mistake made by the District Council in the previous Sectional or District Map Amendment, in support of the requested Euclidean zone.

E. Necessary Findings

1. For a Floating zone application the District Council must find that the floating zone plan will:
 - a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;
 - b. further the public interest;
 - c. meet the intent, purposes, and standards of the proposed zone and requirements of this Chapter;
 - d. be compatible with existing and approved adjacent development;
 - e. demonstrate the ability to provide adequate and safe internal infrastructure, open space, public amenities, and pedestrian and transportation circulation; and

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.