MEMORANDUM

September 28, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-10, Townhouse Living – Accessibility Tax Credit

PURPOSE: Approve, disapprove, or amend the PHED Committee’s recommendation to approve ZTA 18-10 as introduced

Expected Participants:
- Pam Dunn, Chief, Functional Planning & Policy (FP & P), Maryland-National Park & Planning Commission (M-NCPPC)
- Greg Russ, Planner Coordinator, FP & P, M-NCPPC
- Ehsan Motazedi, Division Chief, DPS

PHED Committee Recommendation: On September 20, 2018, the Committee (3-0) recommended approval of ZTA 18-10 as introduced. The Committee believes that more incentives for accessible communities are warranted.

Background

Zoning Text Amendment (ZTA) 18-10, lead sponsor Councilmember Rice, was introduced on July 24, 2018. ZTA 18-10 would allow the owner of a project that was approved as an accessible, conditional use with increased density to be eligible for tax credits.

The provision for accessible townhouse projects includes the following:

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.
ZTA 18-10 would delete that provision. In the opinion of the sponsor, the public interest in getting accessible projects completed outweighs any potential loss in revenue.

A public hearing on ZTA 18-10 was held on September 18, 2018. The Planning Board recommended approval of ZTA 18-10 as introduced. Planning staff did not object to ZTA 18-10.

Issues

1) What tax credit provisions are available for homes with increased accessibility?

There are 2 provisions in Chapter 52 for accessibility tax credits. Section 106 allows a tax credit for an improvement done by the principal owner. Between FY14 and FY16, tax credits for $7,500 were approved under this program. In FY16 alone, tax credits for $2,500 were approved.

Section 107 allows any homeowner a credit for multiple features that achieve accessibility standards. Between FY14 and FY16, tax credits for $52,000 were approved under this program. In FY16 alone, tax credits for $26,000 were approved.

1 Section 52-106 (changed to this number from Section 52-18T by Bill 7-16).
* * *
(b) Credit established. In accordance with Section 9-250 of the Tax-Property Article of the Maryland Code, the owner of real property may receive a property tax credit against the County property tax for a feature that is installed on an existing residence that is the owner’s principal residence when the feature is installed.

(c) Credits.
(1) The tax credit allowed under this Section is the lesser of:
(A) 50% of the eligible costs; or
(B) $2,500 less any subsidy received from a governmental, quasi-governmental, or non-profit entity for the feature.

(2) Any credit that is received which exceeds the annual tax liability of the property may be carried over to the next tax year.

(3) The credit runs with the property upon the transfer of title, and the balance of any credit must be applied to the tax bill of the subsequent owner of the property.

(d) Annual Limit on Amount of Credits Granted.
(1) During any fiscal year, the total of all tax credits granted under this Section must not exceed $100,000.
(2) Credits must be granted in the order in which the Department certifies the amount of the credit under subsection (b)(3).
(3) A certification of a credit that would cause the limit in subsection (d)(1) to be exceeded must be granted in the next tax year or years, subject to subsections (c) and (d)(1).

2 Tax Expenditure Report, Department of Finance, October 2018, page 31.
3 Sec. 52-107. Property tax credit — level I and level II accessibility standards (changed to this number from Section 52-18U by Bill 7-16).
* * *
(b) Credit established. As authorized by Section 9-250 of the Tax-Property Article of the Maryland Code, the owner of a single family residence located in Montgomery County may receive a property tax credit against the County real property tax for the cost of features that achieve Level I or Level II Accessibility Standards.

(c) Amount of Credit. The tax credit permitted by this Section must be as follows:
(1) For features meeting Level I Accessibility Standards, certified costs of up to $3,000 less any credit received against the Development Impact Tax for School Improvements under Section 52-58 for those features and less any funds or assistance received for the accessibility feature.
(2) For features meeting Level II Accessibility Standards, certified costs of up to $10,000 less any credit received against the Development Impact Tax for School Improvements under Section 52-58 for those features and less any funds or assistance received for the accessibility feature.
(3) The maximum amount of credit that may be applied in any one tax year is $2,000.
2) Why were projects that received a density bonus for doing an accessible project excluded from the tax credit program?

The bonus density provisions for accessible projects were approved by the Council through ZTA 15-02. The prohibition of tax credits was not in ZTA 15-02 as introduced. The provision was added by the Council at the recommendation of the PHED Committee. (Councilmember Floreen opposed the tax provision that limited tax credits.)

Based on the considerable increased land value under ZTA 15-02 due to increased density, the Committee recommended the addition of the provision that prohibited the use of both a density bonus under ZTA 15-02 and tax credits. In the opinion of the Committee majority, tax credits were an unnecessary additional incentive, given the density bonus. ⁵

The Council avoided “double dipping” when both a tax incentive and a zoning incentive are possible in other code provisions:

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 52-107 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.

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. The following condition was added to ZTA 15-02 as introduced:

As a condition of approval, any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-106 or Section 52-107. This prohibition does not apply to additional accessibility features that are installed post-occupancy and for which a property tax credit is requested. [Corrected references to Chapter 52 are stated.]

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⁴ Tax Expenditure Report, Department of Finance, October 2018, page 32.
⁵ The Committee heard testimony that the costs of Level II accessible improvements were as much as $40,000 per unit. Staff provided evidence from the Building Association that costs to achieve Level II standards would not be as high as $40,000. Testimony further suggested that the maximum achievable density would be 11 units per acre. That density would make the increased land value $692,500 per acre. Even if the land costs $400,000, as asserted by testimony, the value of townhouse zoned land at 11 units per acre would be $880,000.
3) **What has changed since the Council’s approval of bonus density for accessible developments?**

The Hearing Examiner approved one accessible project with a maximum of 19 dwelling units. That project has also received preliminary plan approval by the Planning Board. The one accessible project in the development pipeline project has not proceeded to construction due to financing problems.⁶

4) **Why should the prohibition on the tax credit for accessible development be deleted?**

In the view of the sponsor, the lack of accessible projects is an indication that more than bonus density is required to incentivize the production of accessible projects.

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⁶ CU 16-11, Garrett Gateway Partners, LLC, approved on December 2, 2016.
COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow a tax credit under Section 52-107 for a townhouse unit approved as a conditional use; and
- generally amend the standards for townhouses approved as a conditional use

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

Division 3.3. “Residential Uses”
Section 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.
[S]ingle 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.
OPINION

Zoning Text Amendment No. 18-10 was introduced on July 24, 2018. ZTA 18-10 would allow the owner of a project that was approved as an accessible, conditional use with increased density to be eligible for tax credits.

The provision for accessible townhouse projects includes the following:

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.

ZTA 18-10 would delete that provision. In the opinion of the sponsor, the public interest in getting accessible projects completed outweighs any potential loss in revenue.

In its report to the Council, the Montgomery County Planning Board recommended approval as introduced. Planning staff did not object to ZTA 18-10.

The Council's public hearing was conducted on September 18, 2018. All testimony supported ZTA 18-10.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on September 20, 2018. The Committee recommended approving ZTA 18-10 as introduced. Staff corrected the references to Sections in Chapter 52 in lines 13-15.

The Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 18-10 will be approved as introduced.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance
Sec. 1. DIVISION 59-3.3 is amended as follows:

DIVISION 3.3. Residential Uses

Section 3.3.1. Household Living

D. Townhouse Living

2. Use Standards

b. Where Townhouse Living is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

i. All buildings and structures must meet or exceed the Level II Accessibility Standards established by Section [52-18T] 52-106 and detailed in Section [52-18U] 52-107.

ii. Public bus service must be available on a road abutting the site.

iii. A Metro Station must be within 2 miles of the site.

iv. Public recreation or park facilities must be within 1,000 feet of the site.

v. A grading plan must demonstrate that the post-construction site will have a slope less than 5%.

vi. The minimum tract size is 2 acres.

vii. The density limitations and development standards of the TMD zone under optional method (Section 4.4.12.C) apply in spite of any other limitation in this Chapter.
viii. Reducing the number of required parking spaces through a parking waiver under Section 6.2.10 is prohibited.

ix. A minimum of one parking space for each dwelling unit must satisfy the dimensional standards for handicapped-accessible vehicle parking and a minimum 8-foot-wide access aisle required by the State.

[x. 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.]

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council
MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 14, 2018

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland
FROM: Montgomery County Planning Board
SUBJECT: Zoning Text Amendment No. 18-10

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland—National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-10 (ZTA 18-10) at its regular meeting on September 13, 2018. By a vote of 4:0 (Commissioner Dreyfuss absent from the hearing), the Planning Board recommends approval of ZTA 18-10 to allow a tax credit under Section 52-107 for a townhouse unit approved as a conditional use that meets or exceeds the Level II Accessibility Standards established by Section 52-18T and detailed in Section 52-18U. Per the intent of the sponsor of the ZTA, the Board believes that eliminating the current policy provision that does not allow a tax credit for a project that was approved as an accessible conditional use will assist in establishing more accessibility projects in the County.

As adopted under ZTA 15-02 in 2015, a conditional use is allowed for townhouse living in the RE-1, R-200, R-90, and R-60 zones under requirements that include: meeting the Level II Accessibility Standards of Sections 52-18(T) and 18(U) for all units (as a part of the County’s Design for Life program); close proximity to public transit (on road abutting the site), public recreation services within 1,000 feet of the site; a Metro Station within 2 miles of the site; demonstration that the post construction site will be minimally sloped; a project site of at least 2 acres; density limitations and development standards of the TMD zone under optional method; at least one parking space for each dwelling unit satisfying the dimensional standards for handicapped-accessible vehicle parking; and, 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). At the time of adoption, the Council believed that allowing both a density bonus and a tax credit for the same attribute would be excessive.

ZTA 18-10 would allow the owner of a project that was approved as an accessible, conditional use with increased density to be eligible for credit tax credits. In the opinion of the sponsor, the public interest in getting accessible projects completed outweighs any speculative loss in revenue.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, September 13, 2018.

Casey Anderson
Chair

CA:GR

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Zoning Text Amendment (ZTA) No. 18-10, Townhouse Living – Accessibility Tax Credits

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Completed: 09/06/18

Description
ZTA 18-10 would allow a tax credit under Section 52-107 for a townhouse unit approved as a conditional use that meets or exceeds the Level II Accessibility Standards established by Section 52-18T and detailed in Section 52-18U.

Summary
Staff has no objection to eliminating the current policy provision that does not allow a tax credit for a project that was approved as an accessible conditional use. Per the sponsor of the ZTA, the intent of removing this provision is to assist in establishing more accessibility projects in the County.

Background/Analysis
As adopted under ZTA 15-02 in 2015, a conditional use is allowed for townhouse living in the RE-1, R-200, R-90, and R-60 zones under requirements that include: meeting the Level II Accessibility Standards of Sections 52-18(T) and 18(U) for all units (as a part of the County’s Design for Life program); close proximity to public transit (on road abutting the site), public recreation services within 1,000 feet of the site; a Metro Station within 2 miles of the site; demonstration that the post construction site will be minimally sloped; a project site of at least 2 acres; density limitations and development standards of the

1 ZTA 15-02 was adopted as part of the County’s Design for Life program, intended to incentivize builders and property owners to install accessibility features in existing and new construction. A key objective of the Design for Life program is to increase the stock of existing and new residences usable by people of diverse abilities. The County provides tax credits to builders and homeowners for including features in new and existing residential housing that improve accessibility for persons of all ages, including seniors and those with disabilities. There are standards for both making it easier for physically challenged visitors and physically challenged occupants. The law was 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.
TMD zone under optional method; at least one parking space for each dwelling unit satisfying the dimensional standards for handicapped-accessible vehicle parking; and, 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). At the time of adoption, the Council believed that allowing both a density bonus and a tax credit for the same attribute would be excessive.

ZTA 18-10 would allow the owner of a project that was approved as an accessible, conditional use with increased density to be eligible for credit tax credits. Specifically, the provision for accessible townhouse projects includes the following provision:

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.

ZTA 18-10 would delete that provision. In the opinion of the sponsor, the public interest in getting accessible projects completed outweighs any speculative loss in revenue.

Staff has no objection to this ZTA given the policy intent to increase the number of accessible units in the County.

Attachments

1. ZTA No. 18-10 as introduced