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March 4, 2024

By Email

The City of Gaithersburg
The Honorable Jud Ashman, Mayor
Members of the City Council
Members of the Planning Commission
31 S. Summit Avenue
Gaithersburg, Maryland 20877

Re: Written Comments for March 11, 2024 Joint Public Hearing on Retool Gaithersburg
(the “Zoning Rewrite” or the “Retool”)

Dear Mayor Ashman and Members of the City Council:

On behalf of the Land Use/Zoning practice group at Selzer Gurvitch, we offer these comments for the upcoming joint public hearing on the Zoning Rewrite scheduled for March 11th. While we represent a number of landowners and others in the development industry with development projects in the City of Gaithersburg (the “City”), these comments are not submitted on behalf of any clients and represent our own independent positions based on our experience navigating the City’s development review process over the last several decades. Matt Gordon participated in a stakeholder work group with City staff, and we appreciate staff making themselves available to answer our questions over the last several months.

In short, we have identified a number of positive components in Retool that will allow property owners to pursue development approvals with greater clarity and in a market responsive fashion. The proposed format and organization of the Zoning Rewrite is improved and will result in a more user-friendly ordinance. We offer the following specific comments for your consideration and are generally in support of the Zoning Rewrite.

{00680672;1 }

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1. Parking Ratios

Employment Uses

We support Retool’s recommended parking ratios for: (a) professional business service uses (e.g., general office, medical clinic and office uses) of 1 space per 500 square feet; and (b) life sciences of 1.5 spaces per 1,000 square feet. *See* Section 27-4.2(c). These parking ratios are comparable to neighboring jurisdictions and allow development projects with employment uses the certainty that they can provide parking that is commensurate with market demands. Moreover, there is precedent for the City approving parking reductions for employment uses that is consistent with these proposed ratios. In this respect, Section 27-4.2(c) establishes appropriate and market responsive minimum parking standards for employment uses.

2. Corridor Development (CD) Zone Standards

FAR bases and height standards

We support Section 24-4.4 as it represents a significant improvement to the current CD Zone development standards by clearly establishing a methodology for allowable density (floor area ratio) and building heights. The revised standards governing the CD Zone will provide property owners with greater certainty on development yields should they pursue approvals under this floating zone in the City. Retool eliminates artificial height limitations that are outdated and inconsistent with current construction typologies for multi-family housing.

FAR bonuses for affordable housing

We support Section 24-4.4(C)(2)(c)’s proposal to create density bonuses for projects that include MPDUs at 40% Area Median (sometimes labeled deeply affordable MPDUs). We also support the other proposed density bonuses for projects that include additional 3+ bedroom units, underground utilities on MD 355, and/or payment of a fee in lieu to the City that can be used to further the City’s housing goals or for improvements within the MD 355 corridor. These are favorable incentives that will help property owners pursue market-responsive development projects that also advance various City goals.

3. Affordable Housing Incentives

With respect to the emphasis on affordable housing, we suggest that the City consider opportunities to provide incentives through reduced application fees for projects that achieve a density bonus under proposed Section 24-4.4(c)i). By way of example, the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) Montgomery County

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Planning Department has a process for a development project with 25% MPDUs (or more) to request a reduction in application fees. For projects attempting to provide deeply affordable MPDUs at 40% AMI, the density bonus is helpful, but it may not be enough to support the additional costs incurred by a developer in all cases. M-NCPPC's policy is attached for your reference and use as Attachment "1".

In addition to reduced application fees, we request that the City evaluate whether it would be appropriate to codify a reduced parking ratio for MPDUs and other regulated affordable units in multi-family buildings. By way of example, the Montgomery County Zoning Ordinance provides a 0.50 reduction factor for MPDUs as compared to the base parking ratio applicable to market rate units. Section 27-4.2(c) establishes a minimum parking requirement of 1.5 spaces for 2-bedroom multi-family dwelling unit. With an adjustment factor of 0.50, this would equate to a parking ratio of 0.75 spaces per 2-bedroom MPDU. A reduced parking ratio for multi-family MPDUs would send a strong message to multi-family developers that the City recognizes the significant cost of providing structured parking (between \$35,000 to \$70,000 per space, depending on whether it is below-grade or above-grade), which often compromises opportunities for housing developments with additional MPDUs.

We appreciate your time and consideration of these comments to the Zoning Rewrite and generally view Retool as a positive step forward that will help the City grow its commercial tax base and produce more affordable housing. We will continue to engage with City staff and others as Retool makes its way through the public hearing review process.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

Land Use/Zoning Practice Group

C. Robert Dalrymple

By: _____
C. Robert Dalrymple

Matthew M. Gordon

By: _____
Matthew M. Gordon

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cc: Rob Robinson
Greg Mann
John Schlichting



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

MCPB No. 18-075
Regulatory Application Refunds and Fees
Date of Hearing: June 28, 2018

JUL 25 2018

RESOLUTION

WHEREAS, Section 50.10.5 of the Montgomery County Code authorizes the Montgomery County Planning Board, by resolution, to set fees necessary to cover the cost of administering Chapter 50 of the Montgomery County Code, titled "Subdivision of Land"; and

WHEREAS, Section 59.7.6.5.A.2 of the Montgomery County Code authorizes the Montgomery County Planning Board, by resolution, to set fee necessary to cover the cost of administering certain portions of Chapter 59 of the Montgomery County Code, titled the "Montgomery County Zoning Ordinance"; and

WHEREAS, Section 22A-26(d) of the Montgomery County Code authorizes the Montgomery County Planning Board to set fees necessary to cover the cost of administering Chapter 22A of the Montgomery County Code, titled "Forest Conservation"; and

WHEREAS, following review and analysis of current fee structures, the Planning Board staff ("Staff") issued a memorandum to the Planning Board dated June 17, 2018, setting forth its analysis and recommendation for approval of a refund policy for regulatory applications and a limited delegation of authority to the Planning Director to modify application fees; ("Staff Report"); and

WHEREAS, on June 28, 2018, the Planning Board held a public hearing on the Staff analysis and recommendation, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record; and

WHEREAS, at the hearing, the Planning Board voted to approve: i) the refund policy as proposed by Staff and ii) a limited delegation of authority to the Planning Director to modify certain application fees, on the motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzalez, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor.

Approved as to
Legal Sufficiency:

Attachment "1"

JUL 25 2018

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves the refund policy as attached to the Staff Report; and

BE IT FURTHER RESOLVED that the Planning Board approves a delegation of authority to the Planning Director to modify application fees for:

1. Development applications that include 25% or more moderately priced dwelling units (MPDUs) as part of the overall project density.
2. Development applications that include significant public benefits over and above the requirements established by law, if the applicant has provided adequate justification as determined by the Planning Director.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, July 19, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

From: [Matthew Gordon](#)
To: [Wallace, Scott C.](#); [Rob Robinson](#); [Nancy Regelin](#); ["Barr, Stuart R."](#)
Cc: [Gregory Mann](#)
Subject: RE: Retool Comments
Date: Monday, March 4, 2024 12:14:22 PM
Attachments: image002.png
image003.png

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Rob and Greg,

To follow-up on our group discussion concerning the calculation of density, please see how both Montgomery and Prince George's County allow property owners to utilize dedicated right-of-way (for nominal consideration or less) for density calculation below. I'm not sure that this is a huge issue, but it may be appropriate for additional consideration given that these neighboring jurisdictions take the position that the landowner retains the density rights to dedicated right-of-way.

Montgomery County

Section 4.1.7. Measurement and Exceptions

The rules in Section [4.1.7](#) apply to all zones unless stated otherwise.

A. Area, Lot, and Density

1. Tract

A tract is a contiguous area of land, including all proposed and existing rights-of-way, lots, parcels, and other land dedicated by the owner or a predecessor in title. A tract does not include land conveyed to a government for more than nominal consideration.

2. Site

A site is an area of land including all existing and proposed lots and parcels in one application, except proposed and previous dedications and rights-of-way.

3. Lot

A lot is a contiguous area of land that is described by a plat recorded in the land records for which a building permit can be issued.

Floor Area Ratio (FAR): The ratio between the gross floor area of all buildings on a tract divided by the area of the tract.

Prince George's County

-
Net lot area shall be determined by measuring the total horizontal land area (in acres or square feet) within the lot lines of the lot, excluding public street or alley rights-of-way and private street or alley easements, and land lying within the 100-year floodplain. For purposes of determining net density, floor area ratio, or lot coverage, any part of the net lot area dedicated as right-of-way for which no more than nominal consideration was received, recreation area, park, greenway, or other public open space in conjunction with a development approval in accordance with this Ordinance shall

continue to be considered part of the net lot area of the development site.

Net Density (Dwelling Units per Acre)

Net density (expressed as dwelling units per acre) shall be determined by dividing the total number of dwelling units located or proposed on a lot by the net lot area (see Section 27-2201(a), above). If net lot area is measured in square feet, the result of this division shall be multiplied by 43,560. Net density standards apply only to residential development comprised of dwelling units. In the RCO sub-zone of the Chesapeake Bay Critical Area Overlay (CBCAO) Zone only, the gross tract acreage is used to calculate density except as noted in Section 5B-115(f) of the County Code.

Matthew Gordon

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From: Wallace, Scott C. <swallace@MilesStockbridge.com>

Sent: Monday, March 4, 2024 10:53 AM

To: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>; Matthew Gordon <mgordon@sgrwlaw.com>; Nancy Regelin <NRegelin@shulmanrogers.com>; 'Barr, Stuart R.' <srbarr@lercheearly.com>

Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>

Subject: [EXT] RE: Retool Comments

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Rob – thanks again for your time on this. In addition to Phil’s comments, I think the grandfathering provisions (Sec. 24-1.2(E)) need to include all of the required development approvals that flow from the initial approval. For example, with Metrogrove , we had sketch approved, now we should get SDP approved before the rewrite is effective, but then we’ll have the FSP which is likely to come after the effective date. The FSP has to be reviewed under the current ZO. If this was your intent with Sec. 24-1.2(D), I suggest the language could be more clear. You may want to consider language along the lines of the language in bold the County put in their 2014 rewrite:

Sec. 7.7.1.B. Application Approved or Filed for Approval before October 30, 2014

1. Application in Progress before October 30, 2014

Any development plan, schematic development plan, diagrammatic plan, concept plan, project plan, sketch plan, preliminary plan, record plat, site plan, special exception, variance, or building permit filed or approved before October 30, 2014 must be reviewed under the standards and procedures of the property's zoning on October 29, 2014, unless an applicant elects to be reviewed under the property's current zoning. Any complete Local Map Amendment application submitted to the Hearing Examiner by May 1, 2014 must be reviewed under the standards and procedures of the property's zoning on October 29, 2014. If the District Council approves such an application after October 30, 2014 for a zone that is not retained in Chapter 59, then the zoning will automatically convert to the equivalent zone as translated under DMA G-956 when the Local Map Amendment is approved. **The approval of any of these applications or amendments to these applications under Section 7.7.1.B.1 will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014.** The gross tract area of an application allowed under Section 7.7.1.B.1 may not be increased.

There are other grandfathering concepts in Sec. 7.7.1.B of the County ZO that you may want to consider (excerpt attached), such as allowing relatively small expansions to proceed under the old ZO at the applicant's discretion, but I understand your viewpoint that the changes you are proposing are generally not substantive and therefore more grandfathering is not necessary. That may be true in general, but there always seems to be unintended consequences from a ZO overhaul.

Let me know if you have questions. Thanks.



Scott C. Wallace | *Principal*
Miles & Stockbridge
direct: +1 (301) 517-4813

From: Rob Robinson <Rob.Robinson@gaitthersburgmd.gov>

Sent: Wednesday, February 28, 2024 12:31 PM

To: Wallace, Scott C. <swallace@MilesStockbridge.com>; Matthew Gordon <mgordon@sgrwlaw.com> <mgordon@sgrwlaw.com>; Nancy Regelin <NRegelin@shulmanrogers.com>; 'Barr, Stuart R.' <srbarr@lercheary.com>

Cc: Gregory Mann <Greg.Mann@gaitthersburgmd.gov>

Subject: [EXTERNAL] Retool Comments

[EXTERNAL]

Hi All, I wanted to touch base to again thank you for the focus group and to let you know, if you have

any specific personal technical comments for edits (not reflecting your firm's position), it would be great to receive those by noon next Monday so we can include as discussion items in our March 11th JWS packet. We have already received Phil's (attached). Thanks!

Rob

Rob Robinson III, AICP CEP
FCA Qualified Professional
Long Range Planning Manager
City of Gaithersburg
240-805-1072

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