

Zoning Diagnostic Report

Gaithersburg, Maryland

DRAFT REPORT - MAY 2023

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Introduction

Gaithersburg is a diverse community in the heart of Montgomery County, Maryland. It occupies approximately 10 square miles of land, with over 4,000 businesses and over 70,000 residents. The City lies 13 miles northeast of the Washington D.C. border at the intersection of highways 270 and 370.

The City has many assets, including a diverse population, numerous employers and innovative companies, a legacy of innovative urban design, and generous parks and tree cover. There is a strong biotech/R&D presence within the City, spurred by adjacency to the National Institute of Standards & Technology.

Currently, the modernity of the City is not reflected within the City's Zoning Code (the "Code"). Much of the Code was developed in the 1960s, which is reflected in terms that are dated and the number of piecemeal amendments that have created inconsistencies over time.

In the time since the current zoning Code was adopted in 1965, office, retail, industrial, and residential uses have evolved and modernized, and the pace of change has only accelerated in the last 5-10 years. Many communities have not updated their zoning standards to reflect these changes; Gaithersburg is not alone. It is commendable that Gaithersburg has taken proactive steps to rectify these issues through a comprehensive Code update. This is a unique opportunity to revise zoning regulations to provide more clarity and intentionality for Code users, administrators, and public officials, in addition to assuring that the Code is achieving desired outcomes.

The Diagnostic Report analyzes the zoning code through the lens of the newly adopted Strategic Plan and best practices in zoning. It is informed by the consultant's experience in numerous other communities of a similar size and structure. This report will first identify shortcomings and needed updates, inform the community about potential revisions, and ideally build consensus around the direction of the code update process. The graphic below provides an overview of the code update project timeline, and how the Diagnostic Module and the Diagnostic Report fit into the larger process. The development of the Diagnostic Report falls in Phase 2, "Engagement and Identification of Zoning Code Revisions".



This Diagnostic Report is not however complete in identifying the needed changes and will be further expanded through input from City staff, citizens, and other stakeholders. The Gaithersburg community should continue to provide feedback throughout the process, in addition to providing feedback on the recommendations contained within this report. These recommendations are subject to change based on community feedback and input.

Report Structure

This report is subdivided into five sections. The table below lists the five sections of this report and provides a description in order to orient the reader.

Report Sections	Description
Guiding Principals	There are several key tenets that all zoning codes should follow. This section lays out the guiding principles that should be cornerstones of any code update project.
Gaithersburg Strategic Plan Objectives	Through a review of the 2022 Strategic Plan, goals for land use policy were distilled from the Plan’s objectives and outcome areas. These objectives act as a touchpoint into community objectives that act as a guide for the code update that will establish a modern regulatory framework for the City’s next Land Use Master Plan update.
General Observations	Throughout the code review, general observations about the organization, flow, and overall structure were denoted. These general observations are presented in this section.
Analysis	A thorough, line-by-line analysis of the existing Code was undertaken. The analysis of existing provisions is laid out by section within this portion of the report.
Recommendations	Through the review and analysis of the Code, we will present our conclusion and recommendations for the code update.

Guiding Principles

Zoning is a powerful tool to shape the built and natural environment. When reviewing Gaithersburg's zoning code, the regulations were viewed through the lens of the new Strategic Plan, in addition to the following principles.

1. Zoning should regulate only what needs to be regulated.

The orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning controls, as per the Maryland Annotated Code Land Use Article. However, regulations that do not relate to public interests of health and safety may overstep the police power granted to governments and may not be legally defensible.

2. Zoning should respect both existing and desired development patterns.

Zoning regulations should relate to a community's existing and desired development patterns and should foster a climate that facilitates investment and redevelopment within the community. When regulations are out of context with existing or desired development patterns, land owners may need to apply for numerous administrative approvals for typical development projects that increase the cost of investment in a community. Further, antiquated or burdensome zoning regulations may act as a disincentive to investment and development, hindering growth.

3. Zoning should implement the plan, not be a barrier to achieving the vision.

Zoning should be a tool to implement a community's vision as expressed in its comprehensive plan. In many instances, a community invests time, funds, and energy into the development of a comprehensive plan, but zoning regulations are overlooked or revised over time in a disjointed manner. This scenario leads to outdated, inconsistent, and disorganized zoning regulations that are cumbersome, intimidating, and costly for property owners and administrators alike, impeding planning goals and economic development. On the other hand, a comprehensive update to the zoning ordinance within the long-term planning process allows for clear, usable, defensible, and consistent regulations that operate efficiently to protect the public interests and encourage desired outcomes.

4. Ensure compliance with the Maryland Code, Land Use Article.

To promote the health, safety, and general welfare of the community, a legislative body in Maryland may regulate: (a) the height, number of stories, and size of buildings and other structures; (b) the percentage of a lot that may be occupied; (c) off-street parking; (d) the size of yards, courts, and other open spaces; (e) population density; and (f) the location and use of buildings, signs, structures, and land.

5. Zoning should center equity.

Zoning codes are complex and multi-disciplinary documents, and given the ubiquity and power of zoning, there is relatively little research regarding all the myriad ways that zoning has contributed to segregation and differential access to opportunity within the United States. At a minimum, zoning has reduced the availability, affordability, and diversity of housing options in communities across the country and impeded investment in older and obsolete properties. All zoning amendment processes should explore and find solutions for the direct and indirect ways zoning codes contribute to inequity.

Gaithersburg Strategic Plan Objectives

The City of Gaithersburg recently completed the 2022 Strategic Plan, which provides “a guide for aligning our actions and budgets with our long-term goals for the community” (*Gaithersburg 2022 Strategic Plan, p. 2*). The Plan was developed through engagement with a broad group of internal and external stakeholders.

The objectives below were distilled through review of the City’s Strategic Plan, and the various “outcome areas” listed within the plan. As the project team reviewed the Code, the objectives listed below acted as guideposts and points of comparison to assess how the code compares to the current City vision.

Objective A

Housing Options: Provide a diversity of accessible housing options.

Objective B

Infill and Adaptive Reuse: Support and enhance infill development and adaptive reuse.

Objective C

Equity Barriers: Advance equitable outcomes of its zoning Code for people who are currently within the community and for people who may one day choose to be part of the community.

Objective D

Regulatory Processes: Simplify, streamline, or eliminate processes that place uncertainty and unnecessary regulatory costs between a person and their investments in Gaithersburg.

General Observations

Throughout the code review process, general observations regarding Code-wide issues were compiled. The general observations listed below apply to multiple sections of the Code, and instead of stating them repeatedly for multiple sections, they are presented cohesively within the section below.

Organization and Usability

- **Information is hard to find.** The code lays out development standards within long passages of text, which make them challenging to find. Modern zoning codes present permitted uses and numeric development standards within tables to make the information easy to identify and access.
- **The code does not contain visuals.** In addition to condensing information into tables for ease of access, graphics and illustrations should be utilized in the Code to provide a visual guide to facilitate better comprehension of concepts and standards within the Code.
- **Like standards are sometimes scattered throughout the code.** The Code chapters should be reorganized, and some information should be consolidated. For example, special use standards are found within four separate sections of the code, within Division 1A, Article IV. - Supplementary Zone Regulations, within individual zoning districts, and the special standards for some uses have their own article.
- **Some zones are not mapped.** Zoning districts that are not mapped and not used anywhere in the City should be removed from the Code in order to streamline information.
- **Clearly state permitted uses.** When listing permitted uses in any district, clearly list all uses, do not reference other zoning districts. This requires flipping between sections which gets onerous for the code user.
- **Minor Amendments to a Plan.** It is positive that several districts provide development standard flexibility in exchange for a thorough review and findings process, however, ensure that minor amendments to plans can occur without requiring an additional extensive review process. There should be an expedited process for the review and approval of a minor amendment. This may necessitate a clear definition of a minor amendment.

Language and Consistency

- **Language is inconsistent throughout the Code.** As a zoning code is amended over decades, there is an increased likelihood that terminology and language does not stay consistent from amendment to amendment. The code re-write will provide an opportunity to foster consistency throughout the code. When terms are not used consistently, this can lead to inconsistent outcomes.
- **Language is not standardized.** Within the sections for individual districts and zone, the information is not standardized; navigation of the code can be simplified so that the user becomes habituated to the information found within each zoning district, whereas this information currently varies between zoning districts.
- **Definitions are absent or require revisions.** In addition to consistency, all terms used throughout the code should be defined to ensure consistency in interpretations and

outcomes. Furthermore, our review and stakeholder input around administration revealed that some definitions are too broad.

- **Dated terms.** Many of the use terms are dated and do not reflect a modern economy, especially one with advanced biomedical industry like Gaithersburg.

Procedural Clarity

- **Conciseness in process descriptions.** In reviewing the code, many of the sections that describe processes and procedures are written in a manner that is overly verbose and needlessly wordy. Use of cross-referencing between zoning districts creates unintended and possibly undesired results when the underlying regulation is changed. These sections should be re-written with the goal of making processes and procedures easy to understand.
- **Provide certainty to applicants.** Assess whether some of the discretion given to amend site plans during the review process are creating a high degree of uncertainty for applicants.
- **Consistency in zoning approval terms.** Some zoning permissions are addressed by different terms within the code, which will create confusion for applicants.
- **Streamline review procedures for minor site plan amendments.** Given the prevalence of floating zones in Gaithersburg, ensure that minor changes to site plans can be reviewed in a timely and efficient manner.

Zoning Equity

- **Zoning should encourage diversity of housing types.** There exists an opportunity to encourage the provision of more diverse housing types, such as 2-over-2 condos and triplexes. Zoning regulations should foster diverse housing types.
- **Consider context appropriate ADU permissions.** Where there is sufficient space and infrastructure for ADU's, consider permitting in zones where larger-lot residential development is found to increase the supply of units that would ideally be within a lower, more affordable price point within the City.
- **Programs for enforcement support.** Enforcement of zoning standards in any community is an important part of maintaining the health, safety, and welfare of the community. However, if an enforcement action imposes a costly improvement or fine on a lower income community member, it can be highly disruptive to their finances. Consider the creation of a funded support program to assist lower-income homeowners with repairs that make them code-compliant. Although this program would be outside of the zoning code, it ensures that the enforcement actions that follow the code foster equity.
- **Supportive services.** Consider the inclusion of day care and other social support uses as accessory or primary uses in the review of residential and commercial developments and review any regulatory barriers to their inclusion.
- **Food deserts.** Continue to track the locations of food deserts and ensure that grocers, urban agriculture, farmstands, and community gardens are permitted as defined land uses.
- **Language accommodations.** The City should continue to explore ways to provide resources and information in multiple languages.

- **Income opportunities.** Consider where non-traditional commercial opportunities for vendors could exist in the form stalls, vendor carts, food trucks, markets, or other low-cost startup businesses. These commercial formats should be added as uses and promoted through other City programs. These types of uses are largely absent in commercial areas.

Analysis

The following section presents the analysis of the zoning code by section. The section number and title of the section is listed alongside the analysis for that section. When a section is absent, this means that the provision was deemed to be standard zoning language, and it is not apparent that comment or revision is necessary.

Article 1 – In General

Article 1: Section #	Section Name	Analysis
24-1	Definitions	<ul style="list-style-type: none"> <input type="checkbox"/> Some definitions have regulatory aspects within them and should be converted to use-specific standards. <input type="checkbox"/> Restaurant definitions are broken out into three classes, which is unnecessary. Consider consolidating the uses and definitions for restaurants. <input type="checkbox"/> Definitions of use categories are too broad and too many uses fall under each definition. <input type="checkbox"/> Definitions require more standardization across all chapters. For example, Chapter 19 states that alleys are a road. In the Chapter 24 definitions, an alley is a public way less than 30' and a street is a public way larger than 30'. <input type="checkbox"/> Definition for "Dwelling unit" includes limitation "for not more than one family". Overcrowding should be regulated by objective health and safety standards, not through delineating who may and who may not live together. <input type="checkbox"/> Remove the definition of "Family". The term "Household" should be used in reference to householding units. <input type="checkbox"/> Chapter 24 definition for an alley says that it must be public. Most are private – resolve this discrepancy. <input type="checkbox"/> Consider whether the definition of story should exclude basements. <input type="checkbox"/> Animal-related commercial uses are not defined. <input type="checkbox"/> Add EV charging to the definition of automobile fueling. <input type="checkbox"/> Comprehensive Plan references the repealed Article 66b and not the Land Use Article <input type="checkbox"/> ."Green area" as a term does not accurately reflect the intent as defined <input type="checkbox"/> The definitions of structures and accessory structures are too broad. <input type="checkbox"/> The Building Height definition is confusing for corner lots. <input type="checkbox"/> Several sign packages refer to a "sign band", but sign band is not defined.

Article 1:		
Section #	Section Name	Analysis
		<ul style="list-style-type: none"> <input type="checkbox"/> There needs to be consistency between “green space”, green area”, “open space” as neither “green space” and “open space” are defined.
24-2	Provisions of chapter declared minimum requirements	<ul style="list-style-type: none"> <input type="checkbox"/> Promotion of “morals” may create equity concerns
24-4	Same— Amendments	<ul style="list-style-type: none"> <input type="checkbox"/> References the repealed Article 66b and not the Land Use Article
24-8	Applicability of Zone Regulations	<ul style="list-style-type: none"> <input type="checkbox"/> Remove 24-8(b)(2), which restricts expansion based on the number of families within a house. Remove the definition of family and ensure that permitted expansion of residential units is based on a building code definition of overcrowding/permitted occupancy. <input type="checkbox"/> Ensure that 24-8(c) is not preempting Gaithersburg from approving shared vehicular parking facilities across separate buildings and lots.
24-8A	Applicability of Special Conditions	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that special conditions that warrant zoning relief are recognized, however, the language of this section should be condensed and revised to be more concise.
24-10	Conditional Use Permits	<ul style="list-style-type: none"> <input type="checkbox"/> Replace instances of "use permit" with "conditional use permit" for clarity and consistency. <input type="checkbox"/> Notification requirements for conditional use permits are the same as those for local map amendment applications, and they can be filed simultaneously, which streamlines the process for the applicant.
24-10A	Floating Zones	<ul style="list-style-type: none"> <input type="checkbox"/> The language around the applicability of the Floating Zones is dense, wordy, and somewhat challenging to follow.

Article 2 – Nonconforming uses, lots and structures

Article 2: Section #	Section Name	Analysis
24-11	Nonconforming carports and garages	<ul style="list-style-type: none"> □ It is positive that this language allows for continued use and maintenance of carports and garages that were in existence on August 1, 1975 but that are not in compliance with current codes.
24-11.1	Townhouses	<ul style="list-style-type: none"> □ It is positive that this language allows for continued use and maintenance of townhouses that were in existence on March 20, 1978 but that are not in compliance with current codes.
24-15	Nonconforming Lots of Record	<ul style="list-style-type: none"> □ It is positive that this language allows for nonconforming lots to be constructed with a one-family dwelling - with certain setback minimums - even if the lot does not comply with current standards. This allows some previously passed-over or challenging sites to be developed, in turn utilizing public infrastructure that may already run past these sites.
24-16	Exceptions for Certain Dimensional Nonconformities	<ul style="list-style-type: none"> □ It is positive that this language prevents government actions (e.g., expanding a right-of-way that causes a property to not meet applicable dimensional standards) from causing a property to become nonconforming. This allows for the continued maintenance and investment in properties that are affected by government actions.
24-18	Nonconforming structures.	<ul style="list-style-type: none"> □ Subpart (b) does not consider complete losses from “Acts of God” or fires. The part may create unbuildable lots.
24-20	Repairs and Maintenance	<ul style="list-style-type: none"> □ This language raises a concern. Although it is positive that this language allows repair and replacement of nonbearing walls and other fixtures and systems to any portion of a structure that is devoted to a nonconforming use, it limits those changes to not exceed ten percent of the current replacement value of the structure. This replacement value determination may be challenging to implement through a consistent and efficient methodology. The zoning code up to this point in the language does not include such a methodology for identifying the replacement value.
24-21.1	Enlargements, Relocation, Replacement, Repair, or Alteration of Nonconforming Structures	<ul style="list-style-type: none"> □ It is positive that this provision allows for the planning commission to permit a nonconforming structure/use to be enlarged, expanded, replaced, or otherwise altered. □ This language raises a concern that the standards and criteria for the planning commission’s decision on such a request lack specificity.

Article 3 – Regulations applicable to particular zones

Article 3: Section #	Section Name	Analysis
Division 1A – General		
24-22	Permitted and Special Exception Uses	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that Section 24-22(a)(3) allows for interpretation by the city manager of uses not specifically listed. This can make investment into Gaithersburg for an innovative business idea substantially quicker (and make Gaithersburg more competitive in that regard). <input type="checkbox"/> Consider organizing permitted uses in a consistent manner, rather than collecting use permissions for some districts and not others. A consolidated comprehensive use table can provide greater administrative efficiency and can set clearer expectations for property owners and people who reference the zoning code. <input type="checkbox"/> There may be some missing information in this section: The table in Sec. 24-22(c) includes a footnote #5 that does not appear to be referenced in the table.
24-22.2	Accessory Dwellings	<ul style="list-style-type: none"> <input type="checkbox"/> This language presents some limited positive opportunities for additional housing, and it presents some concerns due to complex wording and criteria. It is positive that this provision allows one accessory dwelling, however it is evident the provisions were written to accommodate one specific project on a lot that existed on or before 11/21/1988. It may be challenging to administer this section. Consider exploring allowing ADU's in the R-90 zone and removing this section. This provision may only allow for a very limited set of additional housing options. <input type="checkbox"/> Additional language in this section presents some concerns. It may not be practically enforceable to determine if all occupants in a dwelling unit are related by blood or marriage. Consider not requiring blood tests or reviews of marriage records as criteria for permitting housing options.
Division 1 – R-A Zone, Low Density Residential		
24-24	Uses Permitted by Right	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that this language allows renting of rooms by the occupant of a dwelling by right. <input type="checkbox"/> It is positive that this language allows short-term rentals by right. <input type="checkbox"/> It is positive that this language allows home-based businesses and family day care facilities by right.

Article 3: Section #	Section Name	Analysis
24-26	Dimensional Restrictions	<ul style="list-style-type: none"> □ It is concerning that this language requires a minimum lot size of 100,000 square feet generally; a minimum of 20,000 square feet for single-family detached dwellings. Consider reducing the minimum required lot size □ It is concerning that this language restricts lot coverage by all buildings to be no greater than 25% of the lot area for residential uses. This severely limits the land in Gaithersburg (that is mapped as part of this district) that can be developed. Consider increasing the maximum allowed lot coverage.
Division 2 – R-90 Zone, Medium Density Residential		
24-28	Uses Permitted by Right	<ul style="list-style-type: none"> □ It is positive that this language allows renting of rooms by the occupant of a dwelling by right. □ It is positive that this language allows short-term rentals by right. □ It is positive that this language allows home-based businesses and family day care facilities by right. □ It is positive that this language allows for housing for the elderly.
24-29	Uses Permitted as Special Exceptions	<ul style="list-style-type: none"> □ It is positive that this language in Subpart (2) allows for conversion of existing structures into "not more than 3 dwelling units" with limitations. However, it is concerning that the criterion is challenging if not impossible to meet. For example, one standard requires a structure to be at least 20 years old. If other uses are not viable, 20 years would be a long time for a building to be underutilized. Consider removing this section. □ It is concerning that this language in Subpart (3) sets forth that boarding and rooming houses are subject to 'temporary' special exceptions and renewable every 3 years. These provisions add too much uncertainty to make this a viable use. Consider either set clear standards that a boarding and rooming house applicant may meet indefinitely like the majority of other uses or consider prohibiting this use.
24-30	Cluster Development	<ul style="list-style-type: none"> □ This development option requires all site plans and amendments to be approved by Planning Commission, regardless of size or scope. This requires undue process for small amendments which can typically be processed by Staff. Consider removing this section or consolidating with the overall R-90 requirements.

Article 3: Section #	Section Name	Analysis
24-32	Dimensional Restrictions	<ul style="list-style-type: none"> □ It is unclear if there is a positive or concerning effect caused by the language in Subpart (a) which requires a minimum lot area of 9,000 square feet for single-family dwellings. Consider exploring how this figure relates to the average existing lot size in Gaithersburg (exclusive of outliers). Consider also exploring how this figure relates to the lot size that is affordable to the average household in Gaithersburg. □ It is positive that Subpart (b) allows for limited infill on lots that don't meet current width standards.
Division 3 – R-6 Zone, Medium Density Residential		
24-34	Area Requirements	<ul style="list-style-type: none"> □ Subpart (a): the planning commission may waive the minimum area requirement "if the proposed tract abuts an existing or approved development in this zone and will provide a compatible extension of the existing or approved development." Consider implementing clarified standards to determine what is or is not "compatible."
24-36	Building and Dimensional Restrictions	<ul style="list-style-type: none"> □ The language in Subpart (d) restricts buildings from being constructed within 20 feet of "any outside boundary line if other than a street right-of-way line." This provision does not encourage integrated neighborhoods and communities by creating artificial boundaries between neighborhoods of different zones. Consider removing, adding this restriction to all lots regardless of an outside boundary, or clarifying this language with clear definitions and/or diagrams to provide for clear expectations and consistent interpretation.
24-37	Street Design	<ul style="list-style-type: none"> □ This section is not required within a specific zone, as all new streets are required to be in conformance with the City's street standards (Chapter 19). Further, this section is not included in all other zoning districts creating inconsistencies within the Zoning Code. This section should be removed.
Division 3A- RB Zone, Residential Buffer		
24-38	Purposes of Zone	<ul style="list-style-type: none"> □ The language here is concerning and creates an unnecessarily challenging and ambiguous environment for prospective developers and investors. Consider replacing references to the "desirability" of a proposed development with clear standards that are objectively measured. This in turn will set clear expectations, allow for efficient administration, and encourage consistent outcomes.

Article 3:		
Section #	Section Name	Analysis
24-40	Development Requirements and Residential Use	<ul style="list-style-type: none"> □ It is positive that Subpart (a) allows for the planning commission to waive "any development requirement to permit the use of an existing building or structure to the extent necessary to relieve any hardship" This language allows for the continued use of a property that may be nonconforming or facing a hardship. However, the language leaves out a clear mechanism for seeking and/or approving such a waiver. Consider clarifying if this waiver would follow the same process as a variance request, or develop a clear process and set of criteria for such a waiver request. □ The language in Subpart (a)(4) <i>Building Character</i> presents challenges due to vagueness. Consider clarifying what it means for a building to have the "appearance of a residential structure." This standard should be removed. □ It is positive that Subpart (c) references and allows for development that follows the Traditional Neighborhood Design. This subpart should be reorganized to be consistent with other Divisions.
24-41	Site Plan Review and Landscape Plan	<ul style="list-style-type: none"> □ It is concerning that this language requires all plans within this district to be reviewed by the planning commission. It is unclear why this zone would be treated differently than other zones. This section should be removed and instead all site plans and amendments should be processed similar to other zones.
Division 4 – RP-T Zone, Medium Density Residential		
24-43	Permitted Uses	<ul style="list-style-type: none"> □ It is positive that this language allows for one-unit and multi-unit residential development by right.
24-48	Open Space	<ul style="list-style-type: none"> □ It is concerning that this language requires "at least 50% of the land area of any project in this zone remaining after the dedication of streets to public use shall be devoted to open space." Language like this requires significant amounts of land, time, and capital – pushing land ownership and development far out of reach of the average person or household in Gaithersburg. Consider unlocking all developable land within Gaithersburg so more of the population can participate in shaping the city, building community, and building equity.
24-50	Street Design	<ul style="list-style-type: none"> □ This section is not required within a specific zone, as all new streets are required to be in conformance with the City's street standards (Chapter 19). Further, this section is not included in all other zoning districts creating inconsistencies within the Zoning Code. This section should be removed.

Article 3: Section #	Section Name	Analysis
24-52	Frontage on Public Streets	<ul style="list-style-type: none"> It is positive that this language allows for development to be built that is accessed from a public right-of-way exclusively over private walkways or driveways. This increases flexibility for developing challenging sites, and potentially increases housing options.
24-54	Applicant to Furnish Bylaws, Articles of Incorporation, Etc., of Homeowner's Association Applicable to Property	<ul style="list-style-type: none"> It is unclear and concerning that this language requires a homeowner's association. If Gaithersburg does not enforce private agreements, then consider not requiring applicants to enter into private agreements as a condition of approving a government-issued permit. Further, this section is redundant since a draft copy of any proposed homeowners association by-laws, articles of incorporation, covenants and restrictions are required to be provided pursuant to the Site Plan submission requirements outlined in Section 24-169. This section should be removed and all site plan submission requirements should be referenced in one Code Section, which increases the usability of the Zoning Code.
Division 5 – R-20 Zone, Medium Density Residential		
24-55	Purpose of Zone	<ul style="list-style-type: none"> It is positive that the purpose statement for this zone includes "reducing hazards to the living environment." Consider incorporating similar language to the other districts and zones.
24-56	Uses Permitted by Right	<ul style="list-style-type: none"> It is positive that this language allows for one-unit and multi-unit residential development by right. Cross-referencing the RP-T zone should be removed since it creates confusion and require staff to spend additional time explaining the code rather than administering it.
24-62	Maximum Lot Coverage	<ul style="list-style-type: none"> It is concerning that this language restricts maximum lot coverage to 40%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for renting or owning a dwelling unit. Consider increasing the maximum allowed lot coverage.
24-63	Minimum Green Space	<ul style="list-style-type: none"> It is concerning that this language requires at least 50% of a lot to be green space. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for renting or owning a dwelling unit. Consider significantly reducing this requirement.

Article 3: Section #	Section Name	Analysis
24-64.1	Townhouse Locations	<ul style="list-style-type: none"> □ This language causes concerns due to its vagueness. The open field of possible interpretations can lead to inconsistent outcomes. In one interpretation where this would require offsets of the vertical plane between attached dwellings, this provision may only serve to drive up housing costs without achieving an implied goal of encouraging strong design and street presence. Consider removing this language, or consider replacing this language with a clear required design element or a menu of options that provide room for creativity and varying budgets.
24-64.2	Street Design	<ul style="list-style-type: none"> □ This section is not required within a specific zone, as all new streets are required to be in conformance with the City's street standards (Chapter 19). Further, this section is not included in all other zoning districts creating inconsistencies within the Zoning Code. This section should be removed.
24-64.3	Frontage on Public Streets	<ul style="list-style-type: none"> □ It is positive that this language allows for development to be built that is accessed from a public right-of-way exclusively over private walkways or driveways. This increases flexibility for developing challenging sites, and potentially increases housing options.
Division 6 – R-18 Zone, Medium Density Planned Residential		
24-66	Permitted Uses	<ul style="list-style-type: none"> □ It is positive that this section permits multi-unit housing, townhomes, and housing for the elderly. □ Consider exploring allowing additional housing types not currently allowed by right to meet the goal of providing a greater variety of housing options.
24-66A	Uses Permitted as Special Exceptions	<ul style="list-style-type: none"> □ It is positive that this section allows child/adult care centers within this district, but it is concerning that this use is only permitted as a special exception and only within the ground floor of a multi-unit residential development. Consider permitting these types of uses by-right.
24-69	Townhouses	<ul style="list-style-type: none"> □ It is positive that Subpart (f) of this section seems to provide clarity related to Section 24-64.1. Consider consolidating these sections. The townhouse regulations should be explored to determine if they are still applicable.

Article 3:		
Section #	Section Name	Analysis
24-71	Green Area Requirements	<ul style="list-style-type: none"> □ It is concerning that this language at least 50% of a lot to be green space. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for renting or owning a dwelling unit. Consider significantly reducing this requirement.
Division 7 – R-H Zone, High Density Residential		
24-75	Permitted Uses	<ul style="list-style-type: none"> □ It is positive that this section permits multi-unit housing, townhomes, housing for the elderly, and family day care facilities (up to 8 individuals). □ Consider exploring allowing additional housing types not currently allowed by right to meet the goal of providing a greater variety of housing options.
24-75A	Uses Permitted as Special Exceptions	<ul style="list-style-type: none"> □ It is positive that this section allows child/adult care centers within this district, but it is concerning that this use is only permitted as a special exception and only within the ground floor of a multi-unit residential development. Consider permitting these types of uses by-right.
24-77.1	Street Design	<ul style="list-style-type: none"> □ This section is not required within a specific zone, as all new streets are required to be in conformance with the City’s street standards (Chapter 19). Further, this section is not included in all other zoning districts creating inconsistencies within the Zoning Code. This section should be removed.
24-79	Reduction of Minimum Requirements	<ul style="list-style-type: none"> □ It is positive that this section provides flexibility through the Planning Commission to change development requirements. But it is concerning that this section lacks clear and objective criteria for the Planning Commission’s consideration in such a request. It is further concerning that this section speculates that the minimum requirements of Sections 24-77 and 24-78 may “not [be] required in the public interest.” If these those provisions may not be required in the public interest, consider removing them altogether. For those pieces of these sections that are important, consider developing clear and objective criteria to make their administration more efficient and to encourage consistent outcomes.

Article 3:		
Section #	Section Name	Analysis
24-82	Loading Dock Areas	<ul style="list-style-type: none"> □ It is concerning that this section may conflict with standards for loading docks and parking areas that are provided in a separate article of the zoning ordinance. Further, the requirement that loading dock areas “shall have easy access to elevators” does not provide enforceable clarity. Consider removing this section and applying the more-thorough standards in Article XI (Off-street parking) in their place.
Division 8 – R-O Zone, Planned Residential		
	R-O Zone	<ul style="list-style-type: none"> □ The R-O Zone is currently not mapped and should be deleted from the zoning code.
Division 9 – CB Zone, Commercial Buffer		
24-93	Permitted and Special Exception Uses	<ul style="list-style-type: none"> □ It is positive that this district allows single-unit dwellings by right. □ It is concerning that multi-unit dwellings are only permitted by special exception and only where they are “part of buildings intended for other permitted or special exception uses” within this zone. Consider exploring allowing additional housing types not currently allowed by right to meet the goal of providing a greater variety of housing options □ Permitted and special exception uses are not listed in Division 9 but instead cross-referenced in Section 24-22. All allowable uses should be outlined in the specific zone and cross-referencing should be eliminated. Further, the allowable uses under Section 24-22 are overall specific and outdated. Consider consolidating the allowable uses into broader use categories.

Article 3: Section #	Section Name	Analysis
24-94	Development Requirements	<ul style="list-style-type: none"> □ It is positive that Subpart (a) allows for the planning commission to waive "any development requirement to permit the use of an existing building or structure to the extent necessary to relieve any hardship...". This language allows for the continued use of a property that may be nonconforming or facing a hardship. However, the language leaves out a clear mechanism for seeking and/or approving such a waiver. Consider clarifying if this waiver would follow the same process as a variance request or develop a clear process and set of criteria for such a waiver request. □ It is concerning that the language in Subpart (2) restricts maximum lot coverage to 35%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for developing land or renting a building. Consider increasing the maximum allowed lot coverage. □ It is concerning that Subpart (5) sets two different density allowances between one-unit dwellings and multi-unit dwellings. This can create some unnecessary complexity where a one-unit dwelling is converted to a multi-unit dwelling, as permitted by-right within this district. Consider not applying different density limitations to uses permitted by right in the same district.
24-95	Site Plan Review and Landscape Plan	<ul style="list-style-type: none"> □ It is concerning that this language requires all plans within this district to be reviewed by the planning commission. It is unclear why this zone would be treated differently than other zones. This section should be removed and instead all site plans and amendments should be processed similar to other zones.
Division 10 – C-P Zone, Commercial Office Park		
	C-P Zone	<ul style="list-style-type: none"> □ The C-P Zone is currently not mapped and should be deleted from the zoning code.
Division 11 – C-1 Zone, Local Commercial		
24-111	Uses Permitted by Right	<ul style="list-style-type: none"> □ It is concerning that the language in Subpart (13) includes hyper-specific dimensional standards that are applied specifically to automobile filling stations. This is different from the manner in which most other uses are treated in the zoning code. Consider moving this language to a use-specific standards section.

Article 3:		
Section #	Section Name	Analysis
24-112	Uses Permitted as Special Exceptions	<ul style="list-style-type: none"> □ This section treats “parking lots and garages” as a use with its own use permissions. Because parking lots typically command a lot of physical real estate and require specific infrastructure (such as curb cuts and maneuvering space), consider regulating parking lots throughout Gaithersburg consistently as a distinct use of land with its own permissions and dimensional standards.
24-115	Lot Coverage	<ul style="list-style-type: none"> □ It is concerning that this section restricts maximum lot coverage to 40%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for developing land or renting a building. Consider increasing the maximum allowed lot coverage.
Division 12 – C-2 Zone, General Commercial		
24-117	Uses Permitted by Right	<ul style="list-style-type: none"> □ It is concerning that Subpart (15) of this section regulates car washes in a substantially different manner from most other uses. This appears to be one of the only uses that has a limited lot coverage (maximum of 12%) that is separate from the generally applied lot coverage limit of the zone. Additionally, this section applies material standards to this use where other uses do not have a material standards requirement. Consider removing these specific provisions or moving this language to a use-specific standards section. □ It is concerning that the language in Subpart (13) includes hyper-specific dimensional standards that are applied specifically to automobile filling stations. This is different from the manner in which most other uses are treated in the zoning code. Consider moving this language to a use-specific standards section. □ There is a concerning language in this section that is not numbered but that follows Subpart (30). This language requires the city council to find that "a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing residents and workers in the city." The concern is caused by the vagueness and the lack of clear and objective criteria for making such a decision. Consider removing this language altogether. If there is a practical purpose for this language, consider developing objective criteria to foster efficient administration and consistent outcomes.

Article 3:		
Section #	Section Name	Analysis
24-121	High-Rise Optional Approval	<ul style="list-style-type: none"> □ The language in Subpart (A)(3) is concerning and creates an unnecessarily challenging and ambiguous environment for prospective developers and investors. Consider replacing references to the “desirability” of a proposed development with clear standards that are objectively measured. This in turn will set clear expectations, allow for efficient administration, and encourage consistent outcomes. □ It is concerning that the process for high-rise optional approval is spelled out similar to a development plan, but that this language potentially overlaps with that process. This may create administrative inefficiencies. Consider consolidating this language into the development plan procedures that apply across the zoning code to simplify (and shorten) the code and set clearer expectations. □ A(4) remove cross references and define requirements □ It is positive that Subpart (C)(1)(b) requires as part of the basis for consideration and findings, "Whether the buildings, walkways, and parking areas are so located and of sufficient dimension to provide for adequate light, air, pedestrian circulation, and necessary vehicular access." Although limited to a specific type of application, this required consideration in the design can help support pedestrian safety.
Division 13 – C-3 Zone, Highway Commercial		
	C-3 Zone	The C-3 Zone is currently not mapped and should be deleted from the zoning code.
Division 14 – I-1 Zone, Light Industrial		
24-136	Uses Permitted by Right	<ul style="list-style-type: none"> □ It is positive that these permitted uses list provides detail, but it is concerning that the permitted uses list treats use permissions in a distinct manner from other such lists. Consider developing a consistent level of specificity across all permitted use tables. Consider developing one comprehensive principal use permissions table, and drawing excerpt tables within each zone or district from the comprehensive table. This will improve administrative efficiency, set clearer expectations, and reach multiple perspectives from which a user may approach the zoning code.

Article 3:		
Section #	Section Name	Analysis
24-139	Setback Requirements	<ul style="list-style-type: none"> It is concerning that this language prevents buildings within this zone from being closer than 75 feet to a lot line of land zoned residential that contains a dwelling unit; but there does not appear to be a reciprocal requirement that dwelling units need to be at least 75 feet removed from buildings within this zone. This language may create nonconformities, making adaptive reuse of previous investments into Gaithersburg unnecessarily challenging. Consider confirming if this language does or does not create nonconformities and consider implementing a reciprocal requirement on dwelling units to prevent the creation of additional nonconformities.
24-141B	Open Storage Restrictions	<ul style="list-style-type: none"> It is positive that this language provides clear standards regarding open storage restrictions. Consider expanding the applicability of this section across the entire zoning code.
Division 15 – I-3 Zone, Industrial and Office Park		
24-143	Uses Permitted by Right	<ul style="list-style-type: none"> It is positive that this section permits child/adult day care centers by right. The section cross-references allowable uses in the E-1 zone. Cross-referencing should be removed since it creates confusion and require staff to spend additional time explaining the code rather than administering it.
24-144	Uses Permitted as Special Exceptions	<ul style="list-style-type: none"> It is concerning that this language leaves open an interpretation where a legally established business may be made into a nonconformity by an external force: a separate property owner within 1,000 feet constructing a school or church; or a separate property rezoning their property to a residential zone. Consider clarifying that the date of receipt of a complete application marks the date from which a check is completed for specified development types within 1,000 feet of the proposed use.
24-145	Lots	<ul style="list-style-type: none"> It is concerning that this section requires a minimum lot size of 2 acres. Consider exploring if this requirement is competitive with neighboring/regional jurisdictions. Where this minimum lot size likely exceeds the land area affordable to the average household in Gaithersburg, consider unlocking all developable land within Gaithersburg so more of the population can participate in shaping the city, building community, and building equity.

Article 3:		
Section #	Section Name	Analysis
24-148	Lot Coverage	<ul style="list-style-type: none"> It is concerning that this section restricts maximum lot coverage to 25%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for developing land or renting a building. Consider increasing the maximum allowed lot coverage.
Division 16 – I-4 Zone, General Industrial		
	I-4 Zone	<ul style="list-style-type: none"> The I-4 Zone is currently not mapped and should be deleted from the zoning code.
Division 17 – E-1 Zone, Urban Employment		
24-155	Minimum Lot Area	<ul style="list-style-type: none"> It is concerning that this section requires a minimum lot size of one acre. Consider exploring if this requirement is competitive with neighboring/regional jurisdictions. Where this minimum lot size likely exceeds the land area affordable to the average household in Gaithersburg, consider unlocking all developable land within Gaithersburg so more of the population can participate in shaping the city, building community, and building equity.
24-159	Maximum Lot Coverage	<ul style="list-style-type: none"> It is concerning that this section restricts maximum lot coverage to 50%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for developing land or renting a building. Consider increasing the maximum allowed lot coverage.
Division 18 – E-2 Zone, Moderate Intensity Industrial Park		
20-160A	Permitted Uses	<ul style="list-style-type: none"> The section cross-references allowable uses in the E-1 zone, except general office. Cross-referencing should be removed since it creates confusion and require staff to spend additional time explaining the code rather than administering it.
24-160C	Development Standards and Requirements	<ul style="list-style-type: none"> It is concerning that this section doesn't establish unique development standards (and instead refers readers to the dimensional standards for a separate district). Consider providing this information directly. If there aren't substantive differences between this district and the referenced district, consider consolidating them for ease of administration.

Article 3: Section #			Section Name	Analysis
Division 19 – MXD Zone, Mixed Use Development				
24- 160D.1	Purposes and Objectives of Zone	<ul style="list-style-type: none"> □ It is positive that Subpart (f) of this section encourages thoughtful design of "pedestrian and other nonvehicular circulation systems" □ Subpart (d) places emphasis on "residential environment" This is an undefined term and creates uncertainty with solely non-residential infill opportunities. This further conflicts with last sentence which reads as if a MXD project must include all various uses. This subpart reflects only large scale greenfield development and not "built out" infill development. 		
24- 160D.2	Minimum Location and Development Requirements	<ul style="list-style-type: none"> □ It is positive that this language allows "parcels or tracts less than the minimum acreage may be permitted if they are contiguous to an existing MXD zone and may be harmoniously integrated into the MXD area." This concept affords flexibility. However, it is concerning that there are no clear standards to determine what is considered "harmoniously integrated." Consider incorporating clear pass/fail objective criteria that may be determined administratively to provide for administrative efficiencies, to set clear expectations, and to foster consistent outcomes. □ Subpart (e) should be removed as signage should be allowed to be unique to the associated business or neighborhood and not thematic. 		

Article 3: Section #	Section Name	Analysis
24-160D.3	Uses Permitted	<ul style="list-style-type: none"> □ It is positive that Subpart (a) allows that "all types of residential uses allowed by right in Chapter 24 [the entire zoning ordinance] of this City Code shall be permitted." □ Subpart (a) (3) is redundant and not needed □ Subpart (a)(4) is antiquated in design principle does not reflect modern vertical mixed use and should be removed and not require the City Council to make findings □ It is concerning that Subpart (a)(5)(vi)(aa) requires "at least one dwelling unit on a lot containing an urban cottage shall be occupied by an owner of the lot." These types of provisions are difficult, if not impossible, to enforce. If the intent of this language is to prevent a multi-unit use, then this is made moot because multi-unit uses are permitted by-right within this zone. Consider removing this requirement. Where the building code and/or fire code establishes occupancy limits, the zoning code does not need to provide separate, potentially conflicting standards. Consider moving those requirements out of the zoning code and into the building and/or fire code. □ Subpart (a) (5) should be deleted if accessory dwelling unit standards are developed across various zoning districts □ Remove cross referencing in subpart (b) and list permitted uses. □ It is concerning that Subpart (b)(2) provides complex language regarding maximum percentages of use types. This seems to unnecessarily restrict flexibility. Consider removing these provisions or clarifying how a use can exceed 100%. □ It is concerning that Subpart (d) limits family day care facilities to special exception uses. Consider allowing these by-right; especially near employment uses.
24-160D.4	Density and Intensity of Development	<ul style="list-style-type: none"> □ It is concerning that Subpart (b) establishes two different maximum FARs for different parts of the same zone. Consider allowing the zone to be the focal point of the □ ? Is this distinction of age of MXD zones mapped and readily accessible? This seems to add an unnecessary layer
24-160D.5	Compatibility standards	<ul style="list-style-type: none"> □ This section limits infill redevelopment opportunities otherwise permissible in other zoning districts

Article 3:		
Section #	Section Name	Analysis
24-160D.6	Minimum green area, landscaping and amenity requirements	<ul style="list-style-type: none"> <input type="checkbox"/> Subpart (a) does not reflect or address calculations in vertical mixed-use, a currently more common development pattern, nor allows for prorating across larger projects. <input type="checkbox"/> Subpart (b)(3) is excessive legal process and should be removed
24-160D.7	Public Facilities and Utilities	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that Subpart (d) requires an analysis of the capacity of existing and proposed public facilities. However, it is concerning that this language does not include clear and objective standards for determining that “all public facilities are either presently adequate to serve the development requested for approval or will be provided or in place by the completion of the construction of the development.” Consider incorporating a reference here to Article XV (Adequate Public Facilities).
24-160D.8	Parking Requirements	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that Subpart (a) includes a reference to pedestrian circulation as a consideration of parking space requirements.
24-160D.9	Application and Processing Procedures	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that the language in Subpart (b)(1)d. may require all privately owned properties within this district to be subject to a "homeowner's association or other organization."
24-160D.10	Findings Required	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that the language in Subpart (a)(3) and (b)(4) does not include clear standards to determine what is considered “internally and externally compatible and harmonious with existing and planned land uses.” Consider incorporating clear pass/fail objective criteria that may be determined administratively to provide for administrative efficiencies, to set clear expectations, and to foster consistent outcomes. <input type="checkbox"/> Subpart (c) should be removed as this is excessive procedures that are required under other sections of the City Code
24-160D.12	Regulations adopted as part of schematic development plans.	<ul style="list-style-type: none"> <input type="checkbox"/> Consider allowing the Planning Commission and City Council to waive minimum and maximum development standards through the adoption of project specific regulatory design standards
24-160E.2	Uses and Special exceptions Allowed	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that this zone appears to provide new distinctions between types of hotels than other districts up to this point in the zoning code. Consider consolidating these distinctions to provide for consistent application and interpretation of these provisions across the zoning code.

Article 3:		
Section #	Section Name	Analysis
24-160E.3	Development Standards	<ul style="list-style-type: none"> □ It is concerning that this section restricts maximum lot coverage to 25%. This severely limits the land in Gaithersburg (mapped within this district) that can be developed and may unnecessarily increases the entry costs for developing land or renting a building. Consider increasing the maximum allowed lot coverage.
Division 20 – H-M Zone, Hotel-Motel		
	H-M Zone	<ul style="list-style-type: none"> □ The H-M Zone is currently not mapped and should be deleted from the zoning code.
Division 21 – CBD Zone, Central Business District		
24-160F.2	Uses Allowed	<ul style="list-style-type: none"> □ It is concerning that subpart (a) does not establish a clear list of permitted use and/or special exception use and/or conditional use permissions. Instead, it provides that “All uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts, unless otherwise designated [in] subsections (b), (c) and (d) as a prohibited, special exception, or conditional use.” This requires unnecessary cross referencing that may create confusion and require staff to spend additional time explaining the code rather than administering it. Consider altering this language (and similar language in other zones) to provide a clear set of permitted uses that pulls from a consistent set of definitions. If zones do not differ in their permitted uses, consider combining such zones to decrease the length of the zoning ordinance, increase the user friendliness, set clear and concise standards, and support equitable, efficient, consistent outcomes. □ It is positive that this language appears to allow all types of residential uses by-right. □ It is concerning that Subpart (c) limits family day care facilities to special exception uses. Consider allowing these by-right; especially near employment uses.

Article 3: Section #	Section Name	Analysis
24-160F.4	Development Standards	<ul style="list-style-type: none"> □ It is concerning that Subpart (a) limits all heights to maximum of 4 stories, although a waiver is possible. Consider increasing the maximum height to address the City’s transition from greenfield development to predominantly infill redevelopment, reflecting a more urban, mixed-use development pattern. □ Subpart (b) regulates 15 foot setbacks for buildings abutting a lot with an existing building containing a window. Consider removing or updating the setback requirements to better promote the purpose of the CBD zone. □ It is positive that this language does not include a maximum limitation on lot coverage.
24-160F.5	Waiver of Development Standards	<ul style="list-style-type: none"> □ It is concerning that Subpart (a)(2) grants waivers of dimensional standards based in part on the “caliber of user.” Consider removing this language as it will lead to inequitable outcomes. □ It is positive that Subparts (a) and (b) allow for waivers of heights and setbacks – providing a relief mechanism for unique situations – but it is concerning that there are not clear criteria. Consider allowing smaller setbacks and/or taller buildings by right to better implement the Olde Towne Master Plan.
24-160F.7	Parking Requirements	<ul style="list-style-type: none"> □ It is concerning that this language requires vehicular parking in the CBD/Olde Towne District. Consider providing standards for parking when it is voluntarily provided, but consider removing requirements for parking provisions in areas of Gaithersburg that were historically developed for pedestrians.
24-160F.8	Existing Buildings	<ul style="list-style-type: none"> □ It is positive that this language allows for the structural alteration, restoration, repair, and enlargement of existing buildings – specifically treating them as conforming instead of nonconforming – “to a size and intensity existing on the property or by approved building permit preceding the adoption of this ordinance.” This language provides great flexibility and security of investments towards adaptive reuse of existing buildings.

Article 3: Section # Section Name Analysis		
Division 22 – CD Zone, Corridor Development		
24-160G.2	Uses Allowed	<ul style="list-style-type: none"> □ It is concerning that subpart (a) does not establish a clear list of permitted use and/or special exception use and/or conditional use permissions. Instead, it provides that “All uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts, unless otherwise designated [in] subsections (b), (c) and (d) as a prohibited, special exception, or conditional use.” This requires unnecessary cross referencing that may create confusion and require staff to spend additional time explaining the code rather than administering it. Consider altering this language (and similar language in other zones) to provide a clear set of permitted uses that pulls from a consistent set of definitions. If zones do not differ in their permitted uses, consider combining such zones to decrease the length of the zoning ordinance, increase the user friendliness, set clear and concise standards, and support equitable, efficient, consistent outcomes.
24-160G.3	Minimum Location Requirements	<ul style="list-style-type: none"> □ It is positive that subpart (b) provides flexibility for the location of uses to vary from the strict application of specified areas within the applicable master plan. As master plans age and conditions on the ground and in the market change, this kind of provision affords critical flexibility for sensitive adjustments to previously approved plans and continued investment towards infill development.
24-160G.4	Development Standards	<ul style="list-style-type: none"> □ The height restrictions in feet, in subpart (a) do not reflect modern construction requirements and should be amended or removed. Consider removing height restriction altogether. □ It is positive that Subpart (c)(1) requires buildings, structures, or portions thereof to not be constructed on land approved through a planning document for a “right-of-way or walkway, sidewalk, or bikeway.” □ It is positive that Subpart (e)(3) requires that “all parking areas shall contain dedicated pedestrian ways from street and parking areas to building entrances.” □ It is positive that Subpart (e)(5) requires that “direct pedestrian access from rear lot parking areas to the closes public street shall be provided.” □ The parking requirements in subpart (e) are excessive and may hinder redevelopment opportunities

Article 3: Section #	Section Name	Analysis
24-160G.5	Waiver of Development Standards	<ul style="list-style-type: none"> □ It is concerning that Subpart (a) distinguishes different districts within this zone – residential, commercial, and employment. This may create an unnecessary layer of regulations that complicate an applicant’s understanding of the expectations – while also making administration of the ordinance less efficient. Consider clarifying this language so that this zone is treated consistently as one zone. □ It is concerning that Subpart (c)(3) does not provide clear standards for determining what is or is not a detrimental impact to light and air. Consider implementing clear, objective standards to support the intent of this provision and to make its enforcement efficient and consistent.
24-160G.6	Procedure for application and approval	<ul style="list-style-type: none"> □ Subparts (d) and (e) state the same thing verbatim. □ The recorded covenant requirement in subpart (f)(6) excessive legal process and should be removed.
24-160G.7	Findings required	<ul style="list-style-type: none"> □ The findings required in subpart (b) can be reduced and simplified.

Article 4 – Supplementary Zone Regulations

Article 4: Section #	Section Name	Analysis
24-161	Olde Towne District	<ul style="list-style-type: none"> □ It is concerning that Subpart (b) of this section authorizes the City Council to establish “special regulations, requirements, and waivers of existing regulations and requirements of [the zoning ordinance]” via an adopted document outside of the zoning ordinance. Establishing land development regulations in this manner can create inconsistencies and unnecessary complexity, reducing the effectiveness and user friendliness of the code and burdening property owners with an additional source to turn to before they can learn the extent of regulations that apply to their property. Consider incorporating all use permissions, dimensional standards, and application procedural provisions into the zoning code in a clear and concise format to increase administrative efficiency and foster consistent outcomes.

Article 4: Section #	Section Name	Analysis
24-163	Accessory Structures and Garages	<ul style="list-style-type: none"> <li data-bbox="703 289 1455 520">□ It is concerning that this section establishes standards for accessory structures that overlap and seemingly conflict with separate standards established in several individual zones. Consider consolidating and clarifying these potentially overlapping provisions to set clear expectations and allow for efficient use of the ordinance. <li data-bbox="703 527 1455 789">□ It is concerning that Subpart (b)(4) does not provide clear criteria to determine what is or is not “consistent with the design of the neighborhood.” Consider removing this language or development clear pass/fail objective criteria that may be determined administratively to provide for administrative efficiencies, to set clear expectations, and to foster consistent outcomes. <li data-bbox="703 795 1455 926">□ It is concerning that Subpart (c) has potentially far-reaching differing interpretations. Consider clarifying if Subpart (c) applies to all standards of Section 24-163 or if it applies only to Subpart (a) and (b).
24-164	Number of Main Structures on One Lot	<ul style="list-style-type: none"> <li data-bbox="703 934 1455 1129">□ It is concerning that this section specifies a treatment of one-unit dwellings that may cause confusion by specifying that “not more than one [one-unit] dwelling shall be permitted on any one lot.” Consider removing this provision to allow accessory dwelling units within these zones.
24-165	Certain Structures Excluded from Height Control	<ul style="list-style-type: none"> <li data-bbox="703 1184 1409 1415">□ It is positive that this section allows buildings and housing to utilize the full extent of permitted sizes without being penalized by mechanical systems, chimneys, and the like; potentially providing critical flexibility for housing opportunities. Explore considering additional exempted projections and structures based off modern building standards.

Article 4: Section #	Section Name	Analysis
24-167	Fences and Walls	<ul style="list-style-type: none"> □ It is concerning that Subpart (7) of this section requires that applicants who seek to build fences and walls that are over the permitted height limit “must provide, by mail or personal delivery, written notice ... to all owners of property abutting the proposed fence or wall within two business days after filing the request with the City.” The remainder of this provision does not clarify if such a request is subject to a variance, and does not clarify what purpose the notice serves. Consider removing this provision and referencing the variance procedures instead, if appropriate. Alternatively, consider expanding this provision to set clear expectations for all involved parties may help staff consistently enforce this provision in an equitable and efficient manner.
24-167A	Satellite Antennas and Towers, Poles, Antennas, and/or Other Structures Intended for Use in Connection with Transmission or Receipt of Radio or Television Signals, Telecommunications Facilities	<ul style="list-style-type: none"> □ It is concerning that Subpart (a)(4)(iii) references "meters" instead of "feet" for the measurement. Consider replacing this with “feet” to be consistent with other measurement standards used throughout the zoning code.
24-167B	Bed and Breakfast	<ul style="list-style-type: none"> □ It is concerning that Subparts (2) and (3) of this section appear to overlap and conflict with one another. Subpart (2) regulates bed and breakfast uses “where the use contains not more than two guest bedrooms” as a home occupation. Subpart (3) regulates bed and breakfast uses “where the use contains two or more guest bedrooms” as a special exception use subject to approval by the Board of Appeals. Consider clarifying which set of provisions apply if a bed and breakfast contains exactly two guest bedrooms. □ It is concerning that Subpart (5) requires information that may be sensitive, invasive, unnecessary, and unequally applied to other similar uses where guests stay in rooms on property they do not own. Consider not requiring a detailed register of all guests.

Article 5 – Site Development Plans

Article 5: Section #	Section Name	Analysis
24-168	When Required	<ul style="list-style-type: none"> □ It is concerning that this section appears to require every construction in the city to be reviewed by the Planning Commission, which may be onerous and excessive especially if this review is separate from build permit reviews. If a plan meets clear standards of the zoning ordinance, consider removing the requirement of this section and consider allowing professional City staff to be authorized to administratively approve such plans. Implementing such a shift requires clear standards (which is the recommended approach), can speed up permitting timeframes for work that clearly meets such standards, and can help produce more consistent outcomes for Gaithersburg – while making the city more competitive for attracting development.
24-168A	Residential Site Plans, When Required	<ul style="list-style-type: none"> □ It is concerning that this section is separate from 24-168. Consider combining these sections into one to simplify and clarify the purpose and administration of these provisions.
24-169	Submission; Fee; Requirements of Plan	<ul style="list-style-type: none"> □ It is concerning that this section references several types of development plan submissions but does not tie these submissions to separately introduced application types found elsewhere in the zoning ordinance. It is unclear from these provisions when such submissions are required and what purposes they serve. Consider revising this section substantially to use language consistent with the remainder of the zoning ordinance. Alternatively, if this section is intentionally introducing additional types of submissions, consider clarifying the purpose and applicability of these new submission types to set clear expectations and improve their effectiveness at producing consistent outcomes. □ It is concerning is Subpart (c)(9) that the City requires a draft of the homeowner’s association by-laws. This implies that a property is required to be subject to a homeowner’s association
24-170	General Conditions	<ul style="list-style-type: none"> □ Findings based on compatible with adjacent properties and neighborhoods can lead to inequitable outcomes. The Planning Commission’s findings of approval should be amended to ensure are all approvals are rooted in clear and objective standards.

24-171	Site Plan Review	<ul style="list-style-type: none"> □ It is concerning that Subpart (1) appears to effectively grant the Planning Commission power to design a privately owned site. Subpart (1)(j) states in part, “The fact that a site plan complies with all of the stated general regulations, development standards or other requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site development plan is, in fact compatible with adjacent land uses and development and, in itself, shall not be sufficient to require approval of the site plan.” This seemingly speaks to an issue with the zoning code, not the submitted work, and potentially allows the Planning Commission to disapprove a site plan for no other reason than personal tastes. Consider setting clear, objective standards to set clear expectations and foster consistent outcomes. □ Consider clarifying minor amendments determinations by including a reference to Section 24-172A subpart (b).
24-172A	Amendment to Site Development Plan	<ul style="list-style-type: none"> □ All commercial square footage increases, regardless of size, require Planning Commission approval. Consider allowing Planning Staff to process small commercial square footage increases as a minor amendment.
24-174	Waiver of Required Information	<ul style="list-style-type: none"> □ It is positive that this section provides critical flexibility, cost savings, and time savings by allowing applicants to not produce or include unnecessary information in a submitted application. This in turn allows professional staff to tailor submission requirements for the unique aspects of the site and any proposed changes.

Article 6 – Administration and Enforcement of Chapter

Article 6: Section #	Section Name	Analysis
24-175	Duties of city manager	<ul style="list-style-type: none"> <input type="checkbox"/> Remove gender label
24-177	Building Permits	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that Subpart (b) appears to be focused on a set price point of construction. Consider replacing this with criteria that focuses on the type of construction (multi-story; wood frame; platform; etc.). <input type="checkbox"/> It is concerning that Subpart (e) seems to require a professional survey after completion of all work except one-unit residential additions. If this has proven necessary or important for enforcement work, consider not exempting residential additions. If this has not proven necessary or important for enforcement work, consider not requiring this.
24-178	Use and Occupancy Permits for New, Altered, or Nonconforming Uses	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that Subpart (a) appears to establish a new permit type: “use and occupancy permit.” Consider clarifying if this is one permit or two separate permits and implement consistent language throughout the zoning code. <input type="checkbox"/> It is concerning that Subpart (c) appears to establish a temporary occupancy permit where such a permit may not have been explicitly referenced in other portions of the zoning code. If this permit is useful, consider clarifying the purpose of this type of permit, and consider referencing it consistently throughout the zoning code in appropriate locations. <input type="checkbox"/> It is positive that Subpart (f) allows for the appeal of a suspension or revocation of a use and occupancy permit.
24-178A	Special Regulations for Olde Towne District	<ul style="list-style-type: none"> <input type="checkbox"/> It is concerning that Subpart (c) appears to establish a new permit type: “conditional use and occupancy permit.” Consider clarifying if this is one permit or two separate permits and implement consistent language throughout the zoning code.
24-180	Requests for Interpretation of Chapter	<ul style="list-style-type: none"> <input type="checkbox"/> It is positive that this section allows for the city manager or their designee to supply an interpretation of a proposed use in comparison with applicable zoning ordinance regulations. This in turn allows someone with a unique business/use idea to potentially invest in Gaithersburg with greater ease.

Article 6: Section #	Section Name	Analysis
24-181	Duties of City Manager, Board of Appeals, Council, and Courts on Matters of Appeal, Amendment, Etc.	<ul style="list-style-type: none"> □ It is positive that this section sets a clear framework on the duties of the City Council as it relates to the zoning code. However, it is concerning that this language seemingly conflicts with other sections of the code. Consider deferring all procedural/administrative references throughout the zoning code to this Article 6 to foster consistency and efficiency. (remove gender specific term) □ Change reference from Article 66b to Land Use Article
24-183	Complaints Regarding Violations	<ul style="list-style-type: none"> □ It is concerning that this section establishes an expectation that the planning department will "immediately investigate and take action thereon" following a complaint. If this is not realistic, consider setting a more practical expectation.

Article 7 – Board of Appeals

Article7: Section #	Section Name	Analysis
24-189	Findings required	<ul style="list-style-type: none"> □ Subpart (b) outlines the required findings for the Board of Appeals to grant a special exception. Findings based on morals of residents can lead to inequitable outcomes. Update all findings for clear pass/fail objectives to ensure all approvals are based on clear and equitable standards. □ Subpart (c) allows the Board of Appeals to grant variances upon “proof by the evidence of record” but does not set clear standards and criteria for granting a variance. Include clear and equitable standards for the granting of a variance to ensure such decisions are not arbitrary and capricious.

Article 8 – Amendment Procedure

Article 8: Section #	Section Name	Analysis
24-196	Map Amendments	<ul style="list-style-type: none"> It is concerning that Subpart (c) in part requires an applicant to assemble information that City staff has access to; namely: “the application number of any map amendment application involving all or part of the property which has been acted upon in any manner by the City Council or the District Council for the Maryland-Washington Regional District in Montgomery County during the three years immediately prior to the filing of the application.”
24-198	Optional Method of Application for Local Map Amendments	<ul style="list-style-type: none"> The covenants in subpart (b) should be removed as they add legal hurdles and diminish future redevelopment opportunities as further rezoning is not common.

Articles 9 through 16

Articles 9-16: Section #	Section Name	Analysis
Article IX - Signs		
24-209	Definitions	<ul style="list-style-type: none"> It is positive that this section appears to provide a thorough set of definitions regarding signage. This is critical for interpretation, for consistent administration, and for setting clear expectations for all interested parties.
24-210	Applicability, Minimum Requirements, and Severability	<ul style="list-style-type: none"> Consider exempting menu boards as signs

Articles 9-16: Section #	Section Name	Analysis
24-210A	General Provisions	<ul style="list-style-type: none"> □ It is positive that Subpart (1) provides a concise and clear explanation of area computation with examples. This method of describing a regulation and providing an example makes the work of understanding the ordinance (and administering the ordinance) easier, increasing the likelihood of consistent outcomes.
Article X – Home Based Businesses		
Article X.	Home Based Businesses	<ul style="list-style-type: none"> □ It is positive that this article allows home-based businesses. This can give critical flexibility to homeowners, helping them afford their house.
Article XI – Off-Street Parking and Loading		
Sec. 24-218. -	General requirements.	<ul style="list-style-type: none"> □ Reduce minimum driveway lengths as they add unnecessary paving □ Establish minimum driveway widths

Articles 9-16: Section #	Section Name	Analysis
24-219	Parking Requirement Schedule	<ul style="list-style-type: none"> <li data-bbox="802 296 1468 562">□ It is concerning that Subpart (a)(4) of this section provides that no on-site parking is required for a change in use or redevelopment of improved property in the Olde Towne District until after February 23, 2025. Consider not placing a sunset date on this type of provision – particularly in parts of Gaithersburg that were historically developed to prioritize people. <li data-bbox="802 569 1468 800">□ Subpart (a)(5) requires motorcycles spaces within new parking lots. While required, it is concerning that the Code lacks information on standard dimensions and if motorcycle spaces count towards required minimum parking. Consider removing motorcycle requirements or add additional standards. <li data-bbox="802 806 1468 1073">□ It is positive that Subpart (a)(5) requires 1 bicycle space for each 25 parking spaces required. This provision takes a small step towards requiring private bicycle infrastructure, in turn supporting future bicycle connectivity. Consider increasing the ratio of required bicycle parking spaces to support bicycle connectivity. <li data-bbox="802 1079 1468 1373">□ It is concerning that Subpart (b) requires 1 parking space per 225 sq.ft. of gross floor area for retail/commercial establishments. This effectively means that for every 100 square feet of commercial space, a property owner/developer has to provide 88 square feet of parking. Consider significantly reducing the ratio of required asphalt coverage to give flexibility to property owners. <li data-bbox="802 1379 1468 1549">□ The parking ordinance lacks standards for EV chargers and curb side management. Consider including a required number of EV chargers within commercial parking lots and establishing standards for curb site management.

Articles 9-16: Section #	Section Name	Analysis
24-222A	Parking Waivers	<ul style="list-style-type: none"> □ It is positive that Subsection (a)(1) potentially allows for the removal of parking minimum requirements. Consider not requiring parking in historically walkable areas of Gaithersburg to increase the amount of land available for productive, tax-generating, job-generating, culture-enhancing, community-building places. □ It is positive that Subpart (a)(7) allows the Planning Commission to waive parking requirements where “the development provides bicycle ... and/or other non-traditional vehicle parking spaces and facilities in lieu of required automotive parking.” This language may provide some critical flexibility for supporting multi-modal safety and connectivity. This provision would be strengthened by establishing clear examples or standards of design elements that provide effective multi-modal infrastructure.
Article XII – Preservation of Historic Resources		
24-224	Definitions	<ul style="list-style-type: none"> □ It is concerning that the definition of “demolition by neglect” includes the following language: “The willful failure to provide ordinary and necessary maintenance and repair to a designated historic site or a historic resource ... <u>not caused by financial inability</u> ...” (emphasis added). Even if a property owner's finances cause them to be unable to maintain a property, consider including such a scenario within the definition of “demolition by neglect.” If this language is desired, consider changing the phrase to “demolition by <u>willful</u> neglect,” and consider developing a clear and objective set of criteria to determine a property owner’s financial capabilities.
24-225	Historic District Commission	<ul style="list-style-type: none"> □ It is concerning that the 5th paragraph of this section includes: “Members of the commission may be removed after public hearing by the city council for inefficiency, neglect of duty, or malfeasance in office.” Consider updating to reflect Maryland Land Use law (section 8-202) which allows a member to be removed by the appointing authority for incompetence, misconduct, failure to attend meetings, or convicted of a crime.

Articles 9-16: Section #	Section Name	Analysis
24-231.1	Undue Economic Hardship for Designated Buildings and Structures	<input type="checkbox"/> It is concerning that Subpart (a)(2)(ii) allows the Historic District Commission to approve a demolition application for a historic resource or property if the retention of the site or structure would “not be in the best interests of a majority of persons in the community.” The designation of the building itself has already clarified that it is in the community interest – demolition of a designated structure should be based on a legal, technical definition of economic hardship and structural deficiencies.
Article XIV – City Planning Commission		
24-240	Powers and Duties	<input type="checkbox"/> Remove reference to Article 66B.
Article XVI – Affordable Housing Requirements		
24-252	Requirement to Build and Sell Affordable Housing In For Sale Developments	<input type="checkbox"/> It is positive that Subparts (a) and (b) require 7.5% of housing units in certain developments to have affordability measures. These are impactful provisions that chip away at the housing affordability crisis facing the region.
24-253	Requirement to Build and Lease Affordable Housing in Rental Developments	<input type="checkbox"/> Requires 15% of total units in certain developments to have affordability measures.
24-254	Materials, Appearance, and Distribution of Affordable Housing Units	<input type="checkbox"/> It is positive that these standards require integration of affordable units throughout a development - and prohibits treating construction materials of the affordable units different from other units.
24-256	Waiver of Affordable Housing Requirements	<input type="checkbox"/> This provision granting waiver of the affordable housing requirements partially or in its entirety should be reviewed in greater depth. The criteria for approval of such a waiver is slim.

Recommendations

The following section highlights many of ZoneCo's initial recommendations derived from the analysis above. The recommendations in this section are categorized by the strategic plan objectives and general observations listed in previous sections.

Housing Options: Provide a diversity of accessible housing options.

Recommendation **Division 1 (R-A Zone)** It appears that a limited amount of housing is mapped within the existing R-A zone, and instead it contains several institutional uses. At 20,000 sf, the minimum lot size is substantial and therefore this zoning district should not apply to any newly developed housing given that the minimum lot size conflicts with several goals from the Strategic Plan to provide a broader, more affordable supply of housing. Consider whether the R-A Zone could be combined with the R-90 to streamline administration/conciseness.

Recommendation The provisions in **Sec. 24-64.1 (R-20 Zone, Townhouse Locations)** lack clear standards. These provisions require offsets of the vertical plane between every two attached townhouses. A provision like this may only serve to drive up housing costs without necessarily achieving the implied goal of encouraging good design and street presence, since a finished exterior wall has a higher cost of construction than an interior party wall. Further, this kind of provision undercuts the objective of increasing housing options if these provisions (and similar provisions collectively) push the price of housing further out of reach of the average household.

It also leaves open the effectiveness and consistent application of this provision up to lobbying efforts and political winds, raising a question: "In what situations should this provision be waived?"

Recommendation **Sec. 24-160D.3. (MXD Zone, Use Permitted).** Urban cottages are permitted in the MXD. A unified strategy should be developed for ADUs, which would permit them in specific instances/conditions or in specific zones where a property has enough space to accommodate one without excessive coverage of the lot's pervious surfaces or existing yard. Parking facilities should be considered, among other regulations like maximum unit size, maximum height, design consistency, occupancy/short-term rental permission or prohibition, etc.

Recommendation **Sec. 24-160F.4 (CBD Zone, Development Standards)** for the CBD Zone in subpart (a) limits all heights to a maximum of four stories (with waivers possible). It is possible that new housing provision, and the economic feasibility of new multi-unit housing, might require more vertical construction. Furthermore, elevators are typically required in commercial and mixed-use structures that are over two stories tall, but the costs for an elevator core in a building can rarely be justified for adding just one or two floors (for a total of three or four floors). This provision may be unintentionally limiting the viability of multi-story buildings in this zone, making infill development too costly. This provision can have the same effect for adaptive reuse of existing buildings that may be required by modern construction Codes to add elevator service. Increasing this height maximum should be explored.

Recommendation Regarding site development plans, **Sec. 24-170 (Site Development Plans, General Conditions)** establishes conditions for approval that are very similar to those required in the review of conditional uses and special exception uses. These requirements may create uncertainty. Clear standards set clear expectations and can be administered equitably and effectively by professional staff outside of public hearings – while also shortening the timelines of zoning approvals, producing consistent outcomes, increasing Gaithersburg’s competitiveness, and attracting the development that supports the vision of Gaithersburg. Explore how subjectivity in the review of findings can be reduced.

It should also be noted that review processes can counter the fact that zoning codes and design standards often operate with broad brush strokes when it comes to form/design. Board/Commission-based review processes can sometimes better review nuance in development proposals. However, equity issues can be created if certain types of development, like low-income housing and multi-family development, see greater scrutiny, denials, or imposed conditions. We are not implying this is the case in Gaithersburg, however, this is an equity issue of which we should be aware.

Recommendation **Sec. 24-256 (Affordable Housing Requirements, Waiver of Affordable Housing Requirements)** allows the affordable housing requirements of Article XVI to be partially or completely waived by directly elected officials. In many communities, affordable housing is challenging to develop due to neighbor or community opposition, or sometimes developers do not want to bear the additional burden that can come with the administration of providing affordable units. The instances when the waivers have been utilized should be reviewed to assess how often and in what instances it is being granted.

Infill and Adaptive Reuse: Support and enhance infill development and adaptive reuse.

Recommendation Some interpretations of **Sec. 24-8 (In General, Applicability of Zone Regulations)** subpart (c), which states “No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this chapter, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building,” may preempt Gaithersburg from approving shared vehicular parking facilities across separate buildings or lots. This seems unintentional given the objective to support infill development/adaptive reuse and given the provisions in **Sec. 24-219 (Off-Street Parking and Loading, Parking Requirement Schedule)** subpart (c). This potential preemption should be removed or clarified to set clear expectations.

Recommendation **Sec. 24-20 (Nonconforming Uses, Lots and Structure, Repairs and Maintenance)** allows the repair and replacement of nonbearing walls and other fixtures and systems to any portion of a structure that is devoted to a nonconforming use, so long as those changes do not exceed 10% of the current replacement value of the structure. While this provision conceptually allows for adaptive reuse of existing investments in Gaithersburg, it does not provide a clear methodology for identifying the current replacement value of a structure. This must be addressed with clear, equitable standards to make its administration efficient and produce consistent outcomes.

Recommendation **Sec. 24-21.1 (Nonconforming Uses, Lots and Structure, Enlargements, Relocation, Replacement, Repair, or Alteration of Nonconforming Structures)** allows for the Planning Commission to permit a nonconforming structure to be enlarged, expanded, or replaced through a public hearing process. The standards and criteria for such an approval seem relaxed and raise the question: “If certain nonconforming structures commonly receive approval for substantial changes, why not adapt the Code so they are considered conforming?” Such a change would legalize more of the investments already made in Gaithersburg, simplify the Code, and produce more consistent outcomes.

Recommendation **Sec. 24-38 to 24-41. (RB Zone).** The RB zone is intended to act as a buffer zone between residential uses and non-retail commercial/office uses. Some of the intentions of the district do not seem well-founded, given that the most appropriate buffer would be small-scale services and neighborhood amenities that can be utilized by residents, but would not be overly auto-oriented and traffic generating. Furthermore, the development patterns and location of the RB do not indicate the Zone is acting as a buffer to residential areas. The development pattern in the RB is seemingly auto-oriented office buildings and large-footprint multi-tenant buildings.

Recommendation **Sec. 160.G.2. (CD Zone, Permitted Uses).** The breadth of use permissions given by the following statement is probably excessively wide: “All uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited except..”. Several prohibited uses are then listed. There should be more specificity around permitted uses, for example, a single-family home or scrap yard would not be compatible with other uses found within the existing CD Zone, but they would seemingly be permitted.

Recommendation **Sec. 160.G.4. – 160.G5. (CD Zone, Development Standards).** It is not fully clear why uses would have different development standards in the CD Zone given that they will be located within the same district, whereby visual compatibility should be pursued regardless of use. Furthermore, for the waiver of standards, specifically pertaining to height for a development is often more related to economic feasibility than a master plan and will therefore likely be challenging to pursue. More concrete form-conscious standards could assist with more predictable outcomes in the CD Zone, especially given the array of permitted uses in this district.

Equity Barriers: Advance equitable outcomes of its zoning Code for people who are currently within the community and for people who may one day choose to be part of the community.

Recommendation In **Sec. 24-1 (In General, Definitions)**, Gaithersburg’s zoning Code defines “family” as: “One or more persons occupying a single housekeeping unit and using common cooking facilities; provided, that unless all members are related by blood or marriage, no such family shall contain over five (5) persons.” Not only are definitions like these impractical to enforce, but they can be discriminatory and inequitable for non-blood-related families of choice. State-adopted building Codes or fire Codes typically include occupancy limits based on the building classification, size, and life safety or egress features. Gaithersburg would remove a barrier for equity by focusing its zoning Code on buildings and uses and removing provisions that attempt to regulate relationships between people, including the definition of “family.”

Recommendation **Sec. 24-22.2 (Regulations Applicable to Particular Zones, Generally, Accessory Dwellings)** includes language that limits the occupants of an accessory dwelling to blood or marriage relatives of the occupant of the primary dwelling. This isn’t practically enforceable, and it unreasonably restricts some property owners from receiving supplemental income on their property for the fact that they do not wish to rent to blood or marriage relatives. Where this provision is attempted to be enforced, it undercuts the efforts of Gaithersburg to support infill development and adaptive reuse. This provision also raises a question: “If the property owner sells the property while a household is renting an accessory dwelling on the property, will Gaithersburg require the renter to vacate their unit?” The term family should not be used within the Zoning Code as it then requires a definition, which is problematic define and enforce.

Recommendation **Sec. 24-26 (R-A Zone, Dimensional Restrictions)** The R-A Zone requires a minimum lot size of 100,000 square feet generally, but a minimum lot size of 20,000 square feet for one-unit detached dwellings. These requirements can be excessive and can price out the average household from owning property in Gaithersburg.

Recommendation In the E-1 Zone, **Sec. 24-155 (E-1 Zone, Minimum Lot Area)** requires lots sizes to be at least one acre in area. **Sec. 24-159 (E-1 Zone, Maximum Lot Coverage)** limits coverage of the lot by buildings to no more than 50% of the total area. These provisions significantly limit the amount of land that can be productively used, and they raise the entry fee for owning and developing land in Gaithersburg, pushing such opportunities further out of reach of the average small business. These provisions raise a question: “If there are uses permitted within this zone, why limit them so significantly on land zoned for them?” “Should Gaithersburg’s land use regulations effectively limit development opportunities only to those without substantial capital or access to significant financing?”

Regulatory Processes: Simplify, streamline, or eliminate processes that place uncertainty and unnecessary regulatory costs between a person and their investments in Gaithersburg.

Recommendation **Sec. 24-32 (R-90 Zone, Dimensional Restrictions)** Based on test mapping of lot sizes in the historic portions of the R-90, it appears that the minimum lot standards are creating non-conformities within the more historic portions of the district, which should be rectified. Further to that, some of the minimum development standards are probably prohibitively large for developing true cluster developments, which are condoned within this section.

Recommendation **Sec. 24-117 (C-2 Zone, Uses Permitted by Right)** Car washes, though permitted use in several zones, should have special use standards given that they can cause issues related to congestion and runoff. Remove the 12% lot coverage maximum in favor of more tangible mitigating standards in the form of special use regulations.

Recommendation **Divisions 14 and 16 (The I-1 Zone and I-3 Zone)** The industrial uses listed in the zoning code are antiquated and do not reflect modern industrial uses. The updated code should include modern industrial, research, and warehousing uses and definitions. This is especially pertinent given the modern bio-medical uses in Gaithersburg.

Recommendation In the MXD Zone, **Sec. 24-160D.4 (MXD Zone, Density and Intensity of Development)** subpart (b) establishes two different maximum FAR allowances for different parts of the same zone. Some of those distinctions are based on the type of use, some distinctions are based on the size of the land, and other distinctions are based on the date by which land was zoned MXD. This provision further allows the City Council to waive floor area ratio standards “when necessary to incorporate environmental site design or implement the master plan.” These layers and loopholes weaken the standards and can lead to inconsistent decisions.” The Code would be simplified by providing a clear, concise standard that applies district wide to improve the efficiency of administration and increase the likelihood of consistent outcomes.

Recommendation In the MXD Zone, **Sec. 24-160D.10 (MXD Zone, Findings Required)** subpart (a)(3) states that “The City Council shall approve MXD zoning and the accompanying sketch plan only upon finding that ... the application and sketch plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned areas and adjacent areas.” Likewise, subpart (b)(4) states that “The City Council shall approve a schematic development plan only upon the finding that ... the plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned area and adjacent areas.” There are no clear standards included for meeting or failing to meet this requirement. This provision should be expanded upon with clear standards tailored to the vision Gaithersburg has set for itself, in turn establishing clear expectations and increasing the likelihood of consistent outcomes.

Recommendation **Sec. 24-160F.5 (CBD Zone, Waiver of Development Standards)** subpart (a)(2) gives the City Council authority to grant waivers of the dimensional standards for height in the CBD Zone based on the “caliber of user.” This provision has troubling implications for treating everyone equitable. Decision making around land use and development should not hinge on the desirability of a user. Clear standards set clear expectations and can be administered equitably and effectively.

Recommendation Regarding the Olde Towne District, **Sec. 24-161 (Supplementary Zone Regulations, Olde Towne District)** subpart (b) authorizes the City Council to establish “special regulations, requirements, and waivers of existing regulations and requirements of [the zoning ordinance]” via an adopted document outside of the zoning ordinance. Establishing land development regulations in this manner could create inconsistencies and unnecessary complexity, reducing the effectiveness and user friendliness of the Code and burdening property owners with an additional source to turn to before they can learn the extent of regulations that apply to their property. Ensure that Olde Towne design guidelines are keeping pace of objectives, trends/building innovation, and desired aesthetics.

Recommendation **Sec. 24-167B (Supplementary Zone Regulations, Bed and Breakfast)** subparts (2) and (3) seem to overlap. Subpart (2) regulates bed and breakfast uses “where the use contains not more than two guest bedrooms” as a home occupation. Subpart (3) regulates bed and breakfast uses “where the use contains two or more guest bedrooms” as a special exception use subject to approval by the Board of Appeals. This raises a question: which set of provisions apply if a bed and breakfast contains exactly two guest bedrooms?” This should be clarified to set clear expectations and avoid confusion. Separately, subpart (5) of this section seems invasive and excessive. Where such a requirement for a detailed register of all guests does not apply to hotel uses, this seems to add an unnecessary and complex layer of regulation to bed and breakfast uses.

Recommendation **Sec. 24-196 (Amendment Procedure, Map Amendments)** subpart (c) in part requires an applicant to assemble information that City staff has access to; namely “the application number of any map amendment application involving all or part of the property which has been acted upon in any manner by the City Council or the District Council for the Maryland-Washington Regional District in Montgomery County during the three years immediately prior to the filing of the application.” This implies that staff will likely be assisting the applicant in finding all required information and map amendments. Therefore, consider removing the burden of information gathering from the applicant and further to this, reflect the additional time burden on staff within the application fee.

Recommendation **Sec. 24-219 (Off-Street Parking and Loading, Parking Requirement Schedule)** subpart (a)(4) provides that no on-site parking is required for a change in use or redevelopment of improved property in the Olde Towne District until after February 23, 2025. This provision, and others like it that sunset after a certain date, raises a question: “Why not allow this provision indefinitely?” It seems unlikely that a substantive shift will occur on February 24, 2025, causing property in the Olde Towne District to require more parking than the day before. This provision may add an unnecessary layer of regulation that undercuts Gaithersburg’s objectives of creating more housing options, supporting infill and adaptive reuse, and increasing pedestrian and multi-modal scale and connectivity. To be sure, a developer may still choose to provide parking even if the zoning ordinance does not set a minimum (and up to any maximum amount of parking a zoning ordinance may set).

Organization and Usability

Recommendation **Sec. 24-85 to 24-91 (R-O Zone)** The R-O Zone is not currently mapped and should be removed from the zoning code in order to streamline information and remove unnecessary passages.

Recommendation **Sec. 24-102 to 24-109 (C-P Zone)** The CP Zone is currently not mapped and should be deleted from the code.

Recommendation In the C-1 Zone, **Sec. 24-111 (C-1 Zone, Uses Permitted by Right)** subpart (13) specifies several dimensional standards that are applied specifically and only to automobile filling stations. This is substantively different from the way most other uses are treated throughout the zoning ordinance. Requirements such as these may be better organized into use-specific standards that apply consistently to a type of use in any district where they are approved.

Recommendation **Sec. 24-122 to 24-135.1 (C-3 Zone)** The C-3 Zone is currently not mapped and should be deleted from the code.

Recommendation **Sec. 24-139 (I-1 Zone, Setback Requirements)** for the I-1 Zone requires buildings to be no closer than 75 feet to a lot line of land zoned residential that contains a dwelling unit. This raises a question: “Are there existing buildings in the I-1 Zone that are made nonconforming by this provision?” Although **Article II (Nonconforming Uses, Lots, and Structures)** provides standards and limitations for altering nonconformities, this section can still limit adaptive reuse of existing structures; leaving effected buildings to be underutilized or vacant, while sending potential investment elsewhere. Upon utilizing mapping to measure setbacks in the I-1 Zone, some I-1 properties were found to have non-conforming setbacks.

Recommendation **Sec. 24-150A – 24-150C (I-4 Zone)** The I-4 Zone is currently not mapped and should be deleted from the code.

Recommendation **Sec. 24-160C (E-2 Zone, Development Standards and Requirements)**

the E-2 Zone does not establish unique development standards. Instead, this section directs a reader to the dimensional standards for the E-1 Zone. This raises a question: “Does there need to be an E-1 and E-2 Zone (instead of just one E Zone)?” Removing layers and overlapping provisions such as this can simplify the Code, making its administration more efficient while supporting consistent outcomes.

Recommendation **Sec. 24-160E.1 to 24-160E.5 (H-M Zone)** The H-M Zone is currently not mapped and should be deleted from the code.

Recommendation Separately, subpart (b) of **Sec. 24-219 (Off-Street Parking and Loading, Parking Requirement Schedule)** requires 1 vehicular parking space per 225 square feet of gross floor area for retail/commercial establishments. Any retail or commercial establishment that is built to those standards must provide 88 square feet of vehicular parking for every 100 square feet of commercial space. This requires a large consumption of land for temporary storage of personal vehicles and is effective in spreading out the places that pedestrians and bicyclists would want to go further apart from each other. In turn, this strongly discourages connections or requires travel by foot or bicycle for longer distances along routes that prioritize vehicular access.

Recommendation **Sec. 24-231.1 (Preservation of Historic Resources, Undue Economic Hardship for Designated Buildings and Structures)** in subpart (a)(2)(ii) provides that the Historic District Commission may consider an application for demolition if the retention of the site or structure would “not be in the best interests of a majority of persons in the community.” Generally speaking, the designation of the building answers the question regarding whether the structure’s preservation is in the best interest of the community, therefore this question should not be part of the establishment of economic hardship. The city should employ a legal and technical definition of what constitutes an economic hardship. Furthermore, demolition permission of a designated building could be granted in cases where there are structural problems. Many historic ordinances will provide technical standards of what constitutes a structural deficiency severe enough to warrant demolition of a historic structure.

Language and Consistency

Recommendation **Sec. 24-112 (C-1 Zone, Uses Permitted)** the C-1 Zone is the only district in the zoning ordinance to list “parking lots and garages” as a use with permissions. Parking lots and garages can take up a substantial amount of land in any jurisdiction that requires or allows significant amounts of parking, and for that reason should be regulated as a use. Treating parking lots and garages as a use consistently throughout the zoning Code will help establish clear expectations and support more consistent outcomes.

Recommendation **Sec. 24-167A (Supplementary Zone Regulations, Satellite Antennas and Towers, Poles, Antennas, and/or Other Structures Intended for Use in Connection with Transmission or Receipt of Radio or Television Signals, Telecommunications Facilities)** subpart (a)(3) sets forth a maximum that “one satellite antenna may be permitted for each building.” Where other types of dwellings are allowed a satellite antenna for each unit, this limitation on multi-unit dwellings subjects such uses to more restrictive standards and runs afoul of the Federal Communications Commission’s “Over-the-Air Reception Devices Rule” where this limitation precludes a person from receiving or transmitting an acceptable quality signal from an antenna covered under the rule (so long as there is dedicated space like a balcony or patio assigned to the unit within a multi-unit structure). Other provisions within this section may sufficiently limit the size and placement of antennas, making the additional restriction on multi-unit dwellings excessive and unnecessary.

Procedural Clarity

Recommendation **Sec. 24-8A (In General, Applicability of Special Conditions)** references a menu of applications and decisions that can be made by the City Council or Board of Appeals for properties identified in a master plan:

1. Local map amendment
2. Sketch plan
3. Schematic development plan
4. Concept plan (CD Zone)
5. Optional method application
6. Special exception
7. Amendment of special exception

This list does not include other types of reviews and approvals found elsewhere in the zoning ordinance including: conditional use applications, variance applications, high-rise optional approvals, minor waivers for sign packages, guidelines approval for sign packages, minor waivers for building signs, minor waivers for geographic signs, major waivers for monument signs, sign permits, parking waivers, concept site development plan approval, preliminary site development plan approval, final site development plan approval, historic area work permits (individual certificate), historic area work permits (master certificate), and administrative approvals. Many of these types of applications require similar information, require similar notification procedures (where a public hearing is required), and result in similar decisions: a plan is approved or disapproved based on the applicable standards. The sheer number of these processes unnecessarily complicates the zoning Code and can be consolidated and simplified. A concise set of procedures with sensitive flexibility to adapt to novel situations can lead to more consistent outcomes and set significantly clearer expectations for all interested parties.

Recommendation **Sec. 24-22 (Regulations Applicable to Particular Zones, Generally, Permitted and Special Exception Uses)** establishes use permissions in a manner that is inconsistent with most other districts. While it is generally more accessible to put information in tables (as this section provides), such a format should be applied consistently throughout the zoning ordinance to set clear expectations, make the administration of the Code more efficient, and produce more consistent outcomes. Separately, this section raises a question: “Is there a substantive difference between ‘special exception uses’ and ‘conditional uses?’” Conditional uses go before the City Council for decisions; special exception uses go before the board of appeals. Otherwise, the information and notice procedures required appear to be substantively similar. Such processes can be consolidated and even simplified to make the zoning ordinance more efficient in producing outcomes that support the vision Gaithersburg has set for itself. Subpart (a)(3) allows for the City Manager to interpret proposed uses that are not specifically defined. This is a critical function of modern zoning Codes that provides impactful flexibility for inviting innovative businesses into Gaithersburg. Additionally, the table in **Sec. 24-22** subpart (c) includes a footnote #5 that does not have corresponding information.

Recommendation **Sec. 24-38 (RB Zone, Purposes of Zone)** for the RB Zone states in the last paragraph: “The fact that an application for the RB Zone complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the resulting development would be compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of the application.” Likewise, for the C-2 Zone **Sec. 24-121 (C-2 Zone, High-Rise Optional Approval)** subpart (A)(3) has similar but slightly different language: “The fact that the development plan submitted meets all the purposes and requirements of this section shall not be deemed to create a presumption that the proposed development would be desirable or compatible and shall not be sufficient to require the approval of the application.”

Recommendation These provisions in **Sec. 24-38 (RB Zone, Purposes of Zone)** and **Sec. 24-121 (C-2 Zone, High-Rise Optional Approval)** create an unnecessarily challenging and ambiguous environment for prospective developers and investors. A zoning Code must provide clear standards to effectively support the objectives of Gaithersburg. Likewise, approval or disapproval of a development must hinge on clear standards. Approval can’t hinge on desirability of a development. Clear standards set clear expectations and can be administered equitably and effectively by professional staff – while also shortening the timelines of zoning approvals, increasing Gaithersburg’s competitiveness, and consistently attracting more of the development that supports the vision Gaithersburg has set for itself.

Recommendation **Sec. 24-40 (RB Zone, Development Requirements and Residential Use)**

the RB Zone allows for the Planning Commission to waive “any development requirement to permit the use of an existing building or structure to the extent necessary to relieve any hardship.” This can be a powerful provision for providing flexibility and allowing the continued use or adaptive reuse of a property that may be nonconforming or facing a hardship. However, this provision lacks a clear operational mechanism for seeking such relief. If it operates like a variance, then tying this section to the variance process would provide clarity. As a counterpoint, subpart (a)(4) of this section, titled “Building Character,” is vague in its requirement for a building to have the “appearance of a residential structure.” This can make attempts to adaptively reuse an existing investment in Gaithersburg challenging and lead to inconsistent outcomes.

Recommendation **Sec. 24-79 (R-H Zone, Reduction of Minimum Requirements)**

the R-H Zone states, “The Planning Commission, at the time of site development plan approval, shall be authorized to reduce the minimum requirements of sections 24-77 and 24-78 where the characteristics of the site or the adjacent site are such that compliance with such minimum requirements is not required in the public interest.” This raises a question: “If minimum requirements of this section may not be ‘required in the public interest,’ then why require them?” Further, this section does not provide criteria for the Planning Commission’s consideration in such a request. In turn, this reduces the effectiveness and efficiency of the zoning ordinance and can increase the frequency of inconsistent decisions.

Recommendation **Sec. 24-82 (R-H Zone, Loading Dock Areas)**

does not appear to serve a clear purpose: “Loading dock areas in the R-H Zone shall be at least fifty (50) feet by twelve (12) feet and shall have easy access to elevators.” Where standards for loading docks and parking areas are already provided in a separate article of the zoning ordinance, this provision can make such a provision more difficult to find for a prospective developer. Further, the requirement to “have easy access to elevators” does not provide enforceable criteria for review.

Recommendation **Sec. 24-121 (C-2 Zone, High-Rise Optional Approval)**

the C-2 Zone includes in subpart (A)(3): “The fact that the development plan submitted meets all the purposes and requirements of this section shall not be deemed to create a presumption that the proposed development would be desirable or compatible and shall not be sufficient to require the approval of the application.” This provision can create an uncertain environment for prospective developers and investors. A zoning Code must provide clear standards to effectively support the objectives of Gaithersburg. Approval can’t hinge on desirability of a development. Clear pass/fail standards will set clear expectations and can make the administration of this section (and others) more equitable and efficient while setting a foundation for consistent outcomes.

Recommendation **Sec. 24-144 (I-3 Zone, Uses Permitted as Special Exceptions)** the I-3 Zone permits pawnshops as a special exception use with a condition that such a use may “not be located within 1,000 feet of the boundaries of property containing a school, church, religious facility, or any other pawnshop or any residentially zoned property, including property in the MXD zone designated on an approved schematic development plan or sketch plan for residential use...”. This provision, and provisions that are similar to it, should specify that the date of receipt of a complete application for such a use sets forth the date upon which the use must comply with this condition. In other words, were a church or school to be constructed within 1,000 feet of an existing pawnshop, such construction would not cause the City to revoke an occupancy license for a legally established pawnshop.

Recommendation **Sec. 24-151 (E-1 Zone, Permitted Uses)** subpart (6) in the E-1 Zone sets forth that “wholesale businesses, related warehouses and non-processing storage and distribution uses, except self-service storage facilities, bulk storage of chemicals, petroleum products and other inflammable, explosive or noxious materials, and that any existing self-service storage facility permitted before May 5, 2014 shall be considered a conforming use for ten (10) years from the May 25, 2014 effective date of Text Amendment CTAM-4779-2014.” This provision does not make clear what happens after May 25, 2024, and raises some questions: “Will these uses no longer be permitted?” “Will existing instances of such uses be deemed nonconforming?” “Will Gaithersburg revoke occupational licenses for such uses?” Without additional clarity, this provision will create confusion among code users about the legality of the operation of businesses that were legally established.

Recommendation In the MXD Zone, **Sec. 24-160D.9 (MXD Zone, Application and Processing Procedures)** subpart (b)(1)(d.) appears to require that all areas be subject to a “homeowner’s association or other organization.” If this interpretation is accurate, then it seems out of place for a zoning ordinance to require private agreements. If this interpretation is inaccurate, then this provision should be amended to clarify that a homeowner’s association or other organization is not required as a condition of approval of a submitted application. **Sec. 24-169 (Site Development Plans, Submission; Fee; Requirements of Plan)** subpart (c)(9) includes a similar requirement for providing draft homeowner’s association bylaws.

Recommendation **Sec. 24-160F.5 (CBD Zone, Waiver of Development Standards)** subpart (a)(2) gives the City Council authority to grant waivers of the dimensional standards for height in the CBD Zone based on the “caliber of user.” This provision has troubling implications for treating everyone equitable and raises questions: “What does caliber of user mean?” “Which calibers of users are worthy or unworthy of a waiver?” “Is a granted waiver tied to a specific user instead of to a building design or plot of land?” Decision making around land use and development should not hinge on the desirability of a user. Clear standards set clear expectations and can be administered equitably and effectively by professional staff – while also shortening the timelines of zoning approvals, increasing Gaithersburg’s competitiveness, and consistently attracting more of the development that supports the vision Gaithersburg has set for itself.

Recommendation **Sec. 24-167 (Supplementary Zone Regulations, Fences and Walls)**

subpart (7) references applicants who seek to build fences and walls that are over the permitted height limit. Such applicants “must provide, by mail or personal delivery, written notice ... to all owners of property abutting the proposed fence or wall within two business days after filing the request with the City.” The remainder of this provision does not clarify if such a request is subject to a variance which raises questions: “What purpose does this notice serve?” “What rights do neighboring property owners have upon receipt of such a notice?” “In what timeframe will the City make a decision on such an application?” Two business days may be reasonable for alerting neighboring property owners to the submission of a request that breaks with adopted standards. But if the decision on such an application happens shortly thereafter, this timeframe may be inequitable for giving affected neighbors their expected opportunity to voice concerns. Expanding this provision to set clear expectations for all involved parties may help staff consistently enforce this provision in an equitable and efficient manner.

Recommendation **Sec. 24-168 (Site Development Plans, When Required)**

seems to require every construction in the city to be reviewed by the Planning Commission, which may be onerous and excessive especially if this review is separate from building permit reviews. This stipulation raises a question: “If a plan meets clear standards of the zoning ordinance, why wouldn’t professional City staff be authorized to administratively approve such plans?” Implementing such a shift requires clear standards (which is the recommended approach), can speed up permitting timeframes for work that clearly meets such standards, and can help produce more consistent outcomes for Gaithersburg – while making the city more competitive for attracting development.

Recommendation **Sec. 24-169 (Site Development Plans, Submission; Fee; Requirements of Plan)**

references several types of development plan submissions but does not tie these submissions to separately introduced application types found elsewhere in the zoning ordinance. It is unclear from these provisions when such submissions are required and what purposes they serve. This section should use language consistent with the remainder of the zoning ordinance. Alternatively, if this section is intentionally introducing additional types of submissions, the purpose and applicability of these submission types should be added to set clear expectations and improve their effectiveness at producing consistent outcomes.