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Joint Hearing - MCC & PC
CTAM-9739-2024
Ex 32

April 11, 2024

By E-Mail

Jud Ashman, Mayor
and Councilmembers of the City Council of Gaithersburg

John Bauer, Chair
and Commissioners of the City of Gaithersburg Planning Commission

31 South Summit Avenue
Gaithersburg, Maryland 20877

Re: Retool Gaithersburg

Dear Mayor Ashman, Councilmembers, Chair Bauer, and Commissioners:

The attorneys of Miles & Stockbridge P.C.'s land use/zoning practice group in Rockville (the "Miles Group") wish to provide feedback on the comprehensive updates to Chapter 24 of the City of Gaithersburg City Code (the "Zoning Ordinance") as part of the Retool Gaithersburg initiative. The Miles Group strongly supports the objectives of Retool Gaithersburg, including modernizing, reorganizing, and clarifying the City of Gaithersburg's (the "City") Zoning Ordinance. The Miles Group particularly appreciates Retool Gaithersburg given the fundamental changes in land development patterns, demographic trends, economic market conditions, and public policy preferences since the Zoning Ordinance was last comprehensively revised in 1965. We are also grateful for the opportunities to participate in focus groups with City staff.

It is with this understanding that the Miles Group provides the following comments on and recommendations for the current Zoning Ordinance draft that will be discussed at the Mayor and Council's and Planning Commission's April 15, 2024 joint public hearing (the "Public Hearing Draft"). As shown below, our suggestions for the Public Hearing Draft are organized by article and section, with separate lists of more technical comments at the end. The intent of these comments is to, among

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Article 1 (Introductory Provisions)

Section 24-1.2(E) – Continuance of Approved Projects

- The Public Hearing Draft provides that "[e]lements limited to heights, densities, layouts, uses, and setbacks receiving sketch plan or schematic development plan approval prior to the effective date of this ordinance shall be honored on subsequent, associated final site development plans submitted after the effective date **and if in conflict with current ordinance provisions**." (emphasis added).
- As with Section 24-1.2(F) below, we believe this provision is problematic because applicants who have already received one or more approvals in a zone (like CD or MXD) with a multi-step entitlement process (sketch plan, schematic development plan, final site plan) should have a **choice** to proceed either under the prior version of the Zoning Ordinance or the revised version of the Zoning Ordinance to avoid any unnecessary nonconformities. This would provide appropriate flexibility, promote fairness, and recognize an applicant's reasonable investment-backed expectations. This policy would only apply to projects that have already commenced the City's multi-step entitlement process, thereby appropriately limiting applicability.
- It would also codify a policy consistent with Montgomery County (the "County"), where an application filed before the County's revised Zoning Ordinance that took effect on October 30, 2014 could be reviewed under the prior zoning standards, unless an applicant elected to be reviewed under the revised standards. The County's Zoning Ordinance also provides that application approval allows an applicant to proceed through any other required application or step in the process, including permits, under the previous standards. *See* § 7.7.1.B.1 of the Montgomery County Zoning Ordinance (the "County Zoning Ordinance," attached hereto as Exhibit "A").

Section 24-1.2(F) – Existing Application and Permits

- The Public Hearing Draft provides a complete development application submitted prior to the effective date of the revised Zoning Ordinance "shall" be reviewed under the standards of the revised Zoning Ordinance if review proceeds after two years of its submission. We believe applicants should have the **choice** to proceed either under the prior Zoning Ordinance or the revised Zoning Ordinance for the reasons discussed above.
- Additionally, this section provides that subsequent amendments or modifications "shall" be reviewed pursuant to the version of the Zoning Ordinance in effect at the time of the requested amendment/modification. Once again, we believe an applicant should have the **choice** to amend a previously approved plan under the prior Zoning Ordinance **or** the revised Zoning Ordinance. This choice should be available for a certain period of time

(e.g., 25 years) and under certain circumstances (e.g., can only permit expansions up to a certain percentage or area, with a requirement that the portion of any expansion above that threshold must comply with the revised Zoning Ordinance). These limitations would suitably phase out the applicability of the prior Zoning Ordinance.

- Allowing a **choice** to amend previously approved plans under the previous or revised version of the Zoning Ordinance is available in the County Zoning Ordinance, which permits an applicant to (i) modify an application that was pending when the revised County Zoning Ordinance was adopted under the standards and procedures of the prior County Zoning Ordinance; (ii) implement a development plan approved under the prior County Zoning Ordinance after the effective date of the revised County Zoning Ordinance; and (iii) amend a development plan approved under the prior County Zoning Ordinance under the standards and procedures of the prior County Zoning Ordinance in certain circumstances. *See* § 7.7.1.B.2 & 3 of the County Zoning Ordinance (attached hereto as Exhibit "A").[1]
- This approach is also used in the recently adopted comprehensive update to the Prince George's County Zoning Ordinance, which provides, among other things, that "until and unless the period of time under which the development approval or permit remains valid expires, the project may proceed to the next steps in the approval process (including any subdivision steps that may be necessary) and continue to be reviewed and decided under the Zoning Ordinance and Subdivision Regulations under which it was approved." *See* § 27-1703 of the Prince George's County Zoning Ordinance, attached hereto as Exhibit "A").

Article 2 (Interpretation and Measurements)

Section 24-2.3 – Rules of Measurement and Calculation

- The revised Zoning Ordinance should provide that the distance between two properties should be measured as the shortest straight line connecting the two without regard to intervening obstacles ("as the crow flies"), unless another methodology is specifically required. This will provide clarity when applying, among other things, development standards requiring a certain use to be located within or beyond a certain number of feet from something else.

[1] Specifically, the County Zoning Ordinance allows an application to amend a previously approved plan under the prior development standards and procedures until October 30, 2039 (25 years after the effective date of the revised County Zoning Ordinance).

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Section 24-2.4(C)(1) – Exclusions from Measurements

- The Public Hearing Draft appears to provide that balconies can project into a required setback only within residential zones, which we read to mean the standard residential zoning districts (R-A, R-90, R-6, RB, RP-T, R-20, R-18, R-H). For the sake of flexibility and in recognition of the scarcity of land in the City, balconies should also be able to project into a required setback in non-residential zones where residential uses are permitted (CB, CD, CBD, MXD).

Article 3 (Standard Zoning Districts)

Section 24-3.10 – Use Table: Non-Residential Zones

- The City should permit "Religious Uses" in the I-3, E-1, and E-2 zones by right, especially when uses with similar operational characteristics are permitted by right in these zones (Indoor and Outdoor Amusement and Recreational Facilities, Theaters, Educational Institutions, Day Care Center, Funeral Homes, Meeting and Banquet Halls). The Public Hearing Draft prohibits "Religious Uses" in these three zones.

Article 4 (Floating, Overlay, and Special Zoning Districts)

Section 24-4.4(C)(1) – Development Standards for the CD Zone

- The FAR bases for the CD zone included in the Public Hearing Draft should be increased from 0.25 FAR to 0.5 FAR for sites less than an acre, from 0.75 FAR to 1.0 FAR for sites between 1.0 and 1.5 acres, and from 1.0 FAR to 1.5 FAR for sites between 1.5 and 2.0 acres. This adjustment will recognize the relatively smaller size of most CD zoned lots in the City, provide base densities consistent with surrounding jurisdictions, increase the City's economic competitiveness, and encourage growth in areas targeted for redevelopment (such as the Frederick Avenue Corridor).
- The term "Project Area" in Table 24-4.4.1 is not defined in the Public Hearing Draft. This term should be defined **to include land previously dedicated by a property owner or predecessor in title for no or nominal consideration.** This provision is needed to, among other things, ensure these areas are included when calculating FAR, recognize a property owner's legal title to dedicated land, promote economic development, and align the City with other surrounding jurisdictions. Both Montgomery County and Prince George's County already include prior dedications in the property area for calculating FAR, with the exception for land conveyed to the government for more than nominal consideration. *See* § 4.1.7.A.1 of the County Zoning Ordinance; § 27-2201(a) of the Prince George's County Zoning Ordinance (both attached hereto as Exhibit "B").

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Section 24-4.6(A) – Purpose of MXD Zone

- The purpose clause of the MXD zone should be revised to plainly state that MXD zoning does not require each project in the MXD zone to include more than one use in one structure. This provision would clarify expectations and recognize that mixed-use or multi-use development can be achieved horizontally across surrounding properties or along a certain corridor.
- This recognition appears to be made in Section 24-4.6(C)(1) of the Public Hearing Draft, where MXD zoned parcels smaller than 10 acres "are not required to contain multiple uses[.]"

Sections 24-4.6(B) & (C)(1) – Minimum Locational Requirements and Development Standards for the MXD Zone

- The revised Zoning Ordinance should broaden the eligibility requirements for MXD zoning, including reducing the four Councilmember supermajority voting requirement when there is no master plan recommendation for MXD zoning and eliminating the 10-acre minimum requirement. This promotes flexibility, streamlines the development review process, and enhances economic competitiveness.

Section 24-4.6(E)(2) – Public Facilities and Utilities

- The Public Hearing Draft should be clarified to state that all **new** utility lines in the MXD zone shall be placed underground and that the developer/subdivider shall ensure final and proper completion and installation of **new** utility lines. This clarification is appropriate, as a requirement to underground **existing** utilities in all cases may be, among other things, infeasible, not supported by utility companies, and/or disproportionate to the impact of a particular development project.

Article 7 (Off-Street Parking and Loading)

Section 24-7.2(C) – Parking Requirement Schedule

- A "grocery store" use (as defined in Section 24-16.7 of the Public Hearing Draft) should have its own separate parking requirement under the "Retail and Personal Service Uses" category that is greater than 1 parking space per 250 square feet because it requires more parking as a standalone use. The parking requirements for a grocery store should be based on operational experience (e.g., 1 parking space per 100 square feet), rather than a default parking requirement that will require a parking waiver to meet industry needs.

Section 24-7.3 – Modifications of Required Parking

- The parking requirements in the Public Hearing Draft should be reduced for "unbundled" residential spaces (when parking is charged separately from rent), affordable housing, age-restricted housing, and senior housing, all of

which are policies used in the County Zoning Ordinance. *See* § 6.2.3.I of the County Zoning Ordinance (attached hereto as Exhibit "C").

- The parking reduction in the Public Hearing Draft for BRT proximity should be clarified to confirm it applies when a segment of the BRT runs in mixed traffic. This will help avoid disagreements over whether a certain form of transit technically qualifies as "BRT."

Section 24-7.4(B)(1) – Individual Residential Parking Facilities

- The City should reduce or eliminate the requirement for all projects with single-family dwelling units requiring construction of a new street or extending an existing street provide on-street parking spaces at 0.5 spaces per dwelling unit. This amount of on-street parking may not be feasible or desirable in every situation.

Section 24-7.6 – Parking Waiver by the Planning Commission

- The Zoning Ordinance should include a "catch all" criteria allowing a parking waiver to reduce or increase the number of required parking spaces "for any other good cause shown." Such a provision exists in the City of Rockville's Zoning Ordinance. *See* § 25.16.03.h(1)(f) of the City of Rockville Zoning Ordinance (attached hereto as Exhibit "D").

Article 11 (Administrative Bodies)

Section 24-11.1 – Administrative Fees, Charges, and Expenses

- A new section should be added to the Public Hearing Draft that includes a chart summarizing which administrative body (e.g, Board of Appeals, City Council, Planning Commission, Historic District Commission) has either an advisory authority and/or approval authority for certain applications (e.g., variances, sketch plans, final site plans, historic area work permits). Section 7.1.2 of the County Zoning Ordinance contains such a chart:

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Section 7.1.2. Overview of Review and Approval Authority

The following table provides an overview of the authority granted the various bodies under this Chapter. This table does not define legal responsibilities and is only provided for the convenience of the reader.

		Authority						
Approval Requested	Section Reference	Sign Review Board	DPS Director or Staff	Planning Director or Staff	Planning Board	Hearing Examiner	Board of Appeals	District Council
District Council Approvals								
Local Map Amendment	7.2.1			R	R	R		D
Corrective Map Amendment	7.2.2			R	R			D
Sectional or District Map Amendment	7.2.3			R	R			D
Zoning Text Amendment	7.2.4		R	R	R			D
Regulatory Approvals								
Conditional Use	7.3.1			R	I	D	A	
Variance	7.3.2			I	I	I	D	
Sketch Plan	7.3.3			R	D			
Site Plan	7.3.4			R	D			
Administrative Approvals								
Sign Permit	7.4.1		D			I	A	
Sign Variance	7.4.2	D				I	A	

KEY: A = Appeal D = Decision I = Review and recommendation if requested by a reviewing, deciding, or appellate body R = Review and recommendation

Article 12 (Permit and Review Procedures)

Section 24-12.4 – MXD Zones and Sketch Plan

- The Public Hearing Draft **eliminates** the currently available ability to amend a previously approved sketch plan. *See* § 24-160D.11 of the Zoning Ordinance. This should be reconsidered as it would effectively require applicants with a previously approved sketch plan to restart the entire development review process, **even to achieve a mutually desirable change**.
- In order to streamline development and promote economic development, the revised Zoning Ordinance should keep the authority for the Planning Commission to approve sketch plan amendments, as well as establish a **new ability** for the concurrent filing, review, and approval of a sketch plan amendment with a schematic development plan.

Section 24-12.5(H) – Amendments to Schematic Development Plans

- The Public Hearing Draft **eliminates** the Planning Commission's authority to approve schematic development plan amendments. *See* § 24-160D.11 of the Zoning Ordinance.
- To streamline development and promote economic development, this authority should be retained in the revised Zoning Ordinance.
- Additionally, the Zoning Ordinance should create a **new** ability for the concurrent filing, review, and approval of a schematic development plan amendment with a final site development plan.

Section 24-12.6(J) – Minor Amendments to Site Development Plans

- The revised Zoning Ordinance should broaden the eligibility for a minor amendment to a final site development plan. This can include, among other things, increasing the threshold from 500 square feet to 5,000 square feet for revisions to a non-residential building, allowing changes to commercial

development that do not modify above a certain threshold of site plan area, or permitting modifications that would not generate more than a certain number of additional peak hour trips (as is permitted in the City of Rockville). *See* § 25.05.07.c of the City of Rockville Zoning Ordinance (attached hereto as Exhibit "E").

- The revised Zoning Ordinance should plainly state that an amendment that results in a reduction of floor area or other development intensity may be approved as a minor amendment (as is permitted in the City of Rockville). *See* § 25.05.07.b of the City of Rockville Zoning Ordinance (included in Exhibit "E").
- The revised Zoning Ordinance should also plainly state that the addition or relocation of minor appurtenances such as, but not limited to, bicycle racks, seating benches, pergolas, emergency generators, transformers, refrigeration equipment, trash enclosures, sidewalks and small storage sheds, do not require an amendment (as is also permitted in the City of Rockville). *See* § 25.05.07.b of the City of Rockville Zoning Ordinance (included in Exhibit "E").

Section 24-16.4 – Definition of "Stacked Dwelling"/ "Stacked Townhome Dwelling"

- The Public Hearing Draft includes a "stacked dwelling" or "stacked townhome dwelling" in the definition of "single-family dwelling unit." As noted in the Public Hearing Draft, "stacked dwelling" or "stacked townhome dwelling" are commonly referred to as "stacked townhomes," including "two over twos." These building types are currently considered multi-family dwellings in the County. Classifying two-over-two stacked townhouses as single-family may have important implications including, but not limited to, the assessment of County impact taxes.

Notice Comments

- For ease of use and consistency, the Public Hearing Draft should be revised to include a separate standalone section on notice with a chart summarizing the notification requirements for the various application types. Section 7.5.1 of the County Zoning Ordinance contains such a chart:

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Section 7.5.1. Notice Required

Notice is required for each application according to the following table:

Application	Newspaper	Pre-Submittal Meeting	Application Sign	Application Notice	Hearing Notice	Resolution Notice	Building Permit Sign Notice	Website Posting
District Council Approvals								
Local Map Amendment			x		x			x
Corrective Map Amendment					x			x
Sectional or District Map Amendment	x							x
Zoning Text Amendment	x							x
Regulatory Approvals								
Conditional Use			x		x	x		x
Variance			x		x			
Sketch Plan		x	x	x	x	x		x
Site Plan		x	x	x	x	x		x
Signature Business Headquarters Plan		x	x	x	x	x		x
Biohealth Priority Campus Plan		x	x	x	x	x		x
Mixed-Income Housing Community		x	x	x	x	x		x
Administrative Approvals								
Building Permit							x	x
Use-and-Occupancy and Temporary Use Permit								
Sign Permit								
Sign Variance					x			
Amendments to Approvals								
Major Floating Zone Plan Amendment			x		x	x		x
Minor Floating Zone Plan Amendment			x	x				x
Major Conditional Use Amendment			x		x	x		x
Minor Conditional Use Amendment						x		x
Major Site Plan Amendment			x	x	x	x		x
Minor Site Plan Amendment				x				x
Major Signature Business Headquarters Plan Amendment			x	x	x	x		x
Minor Signature Business Headquarters Plan Amendment				x				

- This section should also plainly state that the City is responsible for: (i) providing the notice sign for posting; (ii) publishing notice on the City's website; and (iii) mailing written notices. We understand these procedures are consistent with current City practice. *See* § 24-12.15(B) (noting that the City is responsible for providing the notice sign for posting). The subsections for each application type (as applicable) should then include cross-references to the new standalone notice section. With respect to mailed notice, we note publicly available tax records (the information generally used by applicants to create notice lists) do not contain information regarding tenants and resident managers/management companies.
- If the Public Hearing Draft carries forward individual notification procedures in article subsections for each application type (as applicable), we recommend that notification information be standardized across the revised Zoning Ordinance to note the City's responsibility as it relates to notice. For example, most application types have their own "notification requirement" subsection. *See* §§ 24-4.2(D) (floating zone notification requirements); 24-9.4(C) (historic area work permit notification requirements); 24-12.1(D) (master plan notification requirements); 24-12.2(E) (zoning of annexed areas notification requirements); 24-12.3(E) (zoning map amendments and zoning text amendments notice requirements); 24-12.6(N) (site development plan notice

requirements); 24-12.7(G) (special exception notice requirements); 24-12.8(G) (variance notification requirements). Some application types reference the "notification requirements" of other application types. *See* §§ 24-12.10(C)(2) (conditional use); 24-12.11(D) (temporary use).

- Section 24-12.15(F), which is titled "Maintenance and Removal of Posted Signs," should recognize the potential for damaged or vandalized signs by providing an applicant shall be responsible for requesting a new sign provided by the City within a reasonable time of having knowledge of said damage/vandalism.

Policy Comments

- The City should incorporate within the revised Zoning Ordinance expedited/consolidated entitlement processes for projects that align with strategic goals and plans, such as developments that incorporate significant amounts of affordable housing or provide important employment opportunities. Similar policies are reflected in the County Zoning Ordinance. *See* § 3.1.6 of the County Zoning Ordinance (including uses for "Mixed-Income Housing Community," "Biohealth Priority Campus," and "Signature Business Headquarters").
- The revised Zoning Ordinance should advance the important goal of creating additional housing (especially affordable units) in the City. For example, the County Council recently adopted ZTA 24-01, which allows religious assembly uses and private educational institutions to build affordable townhouses and multi-family housing in residential detached zones.

Technical Comments

Section 24-1.2(A) – Statutory Authority and Applicability

- The Public Hearing Draft cites "Maryland Code Ann., Planning and Zoning, § 4-416" as the statutory authority for adopting the Zoning Ordinance when it likely meant to refer to Maryland Code (2013), § 4-416 of the Local Government ("LG") Article. LG § 4-416 governs an authorized municipality's exclusive jurisdiction over planning, subdivision, and zoning in areas annexed to that municipality. There appear to be additional relevant enabling statutes authorizing a municipality (such as the City) for adopting and amending zoning regulations. *See* LG § 5-213; Maryland Code (2012), Division I, Title 4 of the Land Use Article.[2]

[2] These provisions were transferred from former Articles 23A and 66B of the Maryland Code.

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Section 23-3.1 – Use Table: Residential Zones, & Section 24-4.1 – Use Table: Floating Zones

- Neither "Renting of Rooms" nor "Short Term Rentals" are defined in the Public Hearing Draft. If these uses are defined elsewhere in the City Code, those definitions should be cross-referenced in the use tables.

Sections 24-4.2(C)(3), 24-12.3(F)(2), 24-12.4(E)(1)(b), 24-12.6(G)(4)(a) – Application Process for Schematic Development or Sketch Plan Approval in Floating Zones; Review Procedure for Zoning Map Amendments and Zoning Text Amendments; Review Procedures for Rezoning to MXD and Sketch Plan Approval; Decision Criteria for Site Development Plans

- We suggest striking the language "in accordance with Chapter 20, Subdivision, of the City Code" as there should be standalone statutory authority codified in the Zoning Ordinance for such a finding.

Sections 24-3.1, 24-3.10, 24-4.1 – Use Tables for Residential Zones, Non-Residential Zones, and Floating Zones

- The Public Hearing Draft currently lists triplexes and quadplexes as separate uses. We recommend that these two dwelling types be consolidated into a "multiplex" dwelling type and allow it to contain ancillary nonresidential uses.
- Both "Day Care" and "Daycare" are used within the Public Hearing Draft. The spelling should be consistent throughout the document. *See also* §§ 24.16.6 ("Family Daycare, Large," "Family Daycare, Small") & 24.16.8 ("daycare" used in definition of "Home Based Business").
- The City should consider whether the revised Zoning Ordinance should continue to include separate standalone uses for a "Boardinghouse," "Fortunetelling businesses," and "Pawn Shops," as these uses may be captured in other uses already included in the use tables or otherwise addressed through grandfathering.

Sections 24-4.6(C)(4) & (6), Section 24-4.6(D)(2) – Development Standards and Minimum Open Area Requirements in the MXD Zone

- The Zoning Ordinance should use the term "Non-Residential density" instead of "Commercial, employment, and industrial density" that is used in the Public Hearing Draft in order to clarify the understanding that a project is not required to provide all of these uses and to simplify the MXD zone development standards. This would also be consistent with other sections of the Public Hearing Draft, as well as the County Zoning Ordinance's CR family of zones (CRN, CRT, and CR), which provide that the mapped "C" zone is the maximum **nonresidential** FAR allowed. *See* § 4.5.2.A.2.b of the County Zoning Ordinance (attached hereto as Exhibit "F").

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Sections 24-4.4, 24-4.5, 24-2.6 – CD Zone, MCD Zone, MXD Zone

- These sections of the revised Zoning Ordinance should also note that final site development plan approval is required within each respective zone (CD, MCD, MXD) as a step in the entitlement process. This is consistent with the existing Zoning Ordinance and promotes usability. *See* §§ 24-160D.9(c) & 24-160G.6(f) of the Zoning Ordinance.

Section 24-12.3(I) – Appeal Provision for Zoning Map Amendments and Zoning Text Amendments

- "Maryland Rules" should be referenced instead of "Maryland Rules of Procedure."

Section 24-12.14(H) – Appeal Provision for Use and Occupancy Permits

- The Zoning Ordinance should allow an applicant to appeal a denial of a use and occupancy permit in addition to the appeal of a suspension or revocation.

Section 24-16.18 – Definition for Retail Store with Gas

- The definition of "Retail Store with Gas" in the Public Hearing Draft should be clarified to note the size regulation is for eight **double-sided** pumps as each pump generally provides two fueling positions.

Other Miscellaneous Technical Comments

- There should be consistency in the revised Zoning Ordinance regarding the use of the terms "site plan," "final site plan," and "final site development plan."
- For ease of use and consistency, **each application type** should have its own "decision appeal procedures" subsection with a cross-reference to the applicable appeal provision. For example, some application types have such a specific "decision appeal procedures" subsection. *See* §§ 24-8.6(H) (sign permits); 24-12.7(H) (special exceptions); 24-12.8(H) (variances); 24-12.9(F) (administrative review). Others do not. *See* §§ 24-12.4 (sketch plans); 24-12.5 (schematic development plans); 24-12.6 (site development plans). In these situations, the right to appeal appears to be codified in other parts of the Public Hearing Draft. *See* §§ 24-11.3(B) (general appeal provision for City Council decisions); 24-11.4(F) (general appeal provisions for Planning Commission decisions).

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Conclusion

The Miles Group is grateful to the City for consideration of these comments. We look forward to continued participation in the public review of the revised Zoning Ordinance and are available to answer any questions.

Sincerely,

MILES & STOCKBRIDGE P.C.

Casey L. Cirner

Erin E. Girard / By: PAH

Phillip A. Hummel

Scott C. Wallace / By: PAH

Attachments

cc: Greg Mann
Rob Robinson

Section 7.7.1. Exemptions

A. Existing Structure, Site Design, or Use on October 30, 2014

1. Structure and Site Design

A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.

2. Use

a. Except for a Registered Living Unit, any use that was conforming or not nonconforming on October 29, 2014 and that would otherwise be made nonconforming by the application of zoning on October 30, 2014 is conforming, but may not expand.

b. Any allowed use, up to the density limits established by the current zoning, may be located in a building or structure deemed conforming under Section 7.7.1.A.1.

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

1. Application in Progress before October 30, 2014

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

2. Application Approved before October 30, 2014

Any structure or site design approved before October 30, 2014 may be implemented by the property owner under the terms of the applicable plan.

3. Amendment of an Approved Plan or Modification of an Application Pending before October 30, 2014

a. Until October 30, 2039, an applicant may apply to amend any previously approved plan or modify an application pending before October 30, 2014 (listed in Section 7.7.1.B.1 or Section 7.7.1.B.2) under the development standards and procedures of the property's zoning on October 29, 2014, if the amendment:

i. does not increase the approved density or building height, unless allowed under Section 7.7.1.C; and

ii. either:

Exhibit A

(a) retains at least the approved setback from property in a Residential Detached zone that is vacant or improved with a Single-Unit Living use; or

(b) satisfies the setback required by its zoning on the date the amendment or the permit is submitted; and

iii. does not increase the tract area.

b. An applicant may apply to amend the parking requirements of a previously approved application (listed in Section 7.7.1.B.1 or 7.7.1.B.2) in a manner that satisfies the parking requirements of Section 6.2.3 and Section 6.2.4.

c. Without regard to the limitations of this section, a special exception approved under the code in effect on or before October 29, 2014 may be expanded under the applicable standards and procedures of the code in effect on October 29, 2014.

4. Repair, Renovation, and Rebuilding Rights under Section 7.7.1.B

Any structure or site design implemented under Section 7.7.1.B is conforming and may be continued, renovated, repaired, or reconstructed.

5. Development with a Development Plan or Schematic Development Plan Approved before October 30, 2014

a. Any development allowed on property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment must satisfy any binding elements until:

i. the property is subject to a Sectional Map Amendment that implements a master plan approved after October 30, 2014 and obtains approval for development under the SMA-approved zoning;

ii. the property is rezoned by Local Map Amendment; or

iii. the binding element is revised by a development plan amendment under the procedures in effect on October 29, 2014.

b. Any development on a property that was zoned H-M on October 29, 2014 must include 45% green area, under the zoning in effect on October 29, 2014, until the property is subject to a Sectional Map Amendment or rezoned by Local Map Amendment. The green area required under this provision satisfies, and is not in addition to, any open space requirement of the property's zoning on October 30, 2014.

6. Density Transfers Approved before October 30, 2014

On a property that is subject to an effective density transfer easement and density transfer deed, the total density or density associated with a commercial or residential use, including any density approved by an amendment of a previously approved application listed in Section 7.7.1.B.1, may exceed that allowed by the existing zoning as long as the total density or density associated with a commercial or residential use does not exceed that allowed by the density transfer easement and density transfer deed.

C. Expansion of Floor Area

1. Limited Rights under Zoning before October 30, 2014

Until October 30, 2039, on land that is located in a Commercial/Residential, Employment, or Industrial zone, an applicant for an amendment to an existing approval or development, or a modification of an

application listed in Section 7.7.1.B.1 may increase the floor area on the site under Section 7.7.1.C.2 or 7.7.1.C.3 following the procedures and standards of the property's zoning on October 29, 2014:

a. if the building does not exceed the height limits and density of the property's zoning in effect on October 29, 2014;

b. if any building on the site is no closer to property in a Residential Detached zone that is vacant or improved with a Single-Unit Living use than any existing structure on the site on October 30, 2014, or satisfies the setbacks of the current zoning; and

c. when a site plan or site plan amendment is required by the property's zoning on October 29, 2014, a site plan or a site plan amendment is approved under the standards of site plan approval on October 29, 2014.

2. Commercial/Residential, Employment, and Industrial Zones

Existing development in a Commercial/Residential, Employment, or Industrial zone may expand by up to the lesser of 10% of the gross floor area approved for the site on October 30, 2014 or 30,000 square feet, except for properties with 2,000 square feet or less of floor area, which may expand by up to 30% of the gross floor area approved for the site on October 30, 2014. Any expansion must satisfy Section 7.7.1.C.1. The gross floor area in a pending application listed in Section 7.7.1.B.1 may be expanded up to the full amount allowed under the property's zoning on October 29, 2014, but once the application is approved, the gross floor area may expand by up to the lesser of 10% of the gross floor area or 30,000 square feet.

3. Prior Floating Zones

a. A property where the zoning on October 29, 2014 was the result of a Local Map Amendment with an approved development plan may expand as allowed under Section 7.7.1.C.3.b. Any expansion must satisfy Section 7.7.1.C.1.

b. If the District Council approves a development plan amendment larger than allowed under Section 7.7.1.C.2, the zoning of the property subject to the amendment will automatically convert and be remapped to the equivalent zone as translated under DMA G-956, with the density and height approved in the amendment.

4. Expansion above Section 7.7.1.C.2

If any expansion exceeds Section 7.7.1.C.2, then the entire expansion must satisfy the applicable standards and procedures for the current zoning. After October 30, 2039, any amendment to a previously approved application must satisfy the applicable standards and procedures for the current zoning to the extent of (a) any expansion, and (b) any other portion of an approved development associated with the expansion.

5. Without regard to the limitations of Section 7.7.1.C, a special exception approved under the code in effect on or before October 29, 2014 may be expanded under the applicable standards and procedures of the code in effect on October 29, 2014.

D. Residential Lots and Parcels

1. Residential Lot

Unless adjoining lots have merged by virtue of ownership and zoning re- quirements, DPS may issue a building permit for a detached house on any Agricultural, Residential, or Rural Residential zoned lot or parcel identified on a plat recorded before October 30, 2014, a part of lot recorded before June 1, 1958, or a deed recorded before June 1, 1958, without regard to the street frontage and lot size requirements of its zoning, except as provided in Section 7.7.1.D.3.b.

2. Pre-1958 Parcel

27-1703. Applications Pending Prior to the Effective Date of this Ordinance

Notwithstanding any other provision set forth below, all development applications, including permit applications, pending prior to the effective date of this Ordinance are subject to Section 27-1706. If the development has vested rights under Maryland law, then it may proceed under the following:

(a) Any development application, including a permit application or an application for zoning classification, that is filed and accepted prior to the effective date of this Ordinance may be reviewed and decided in accordance with the Zoning Ordinance and Subdivision Regulations in existence at the time of the acceptance of said application. An application for zoning classification decided after the effective date of this Ordinance must result in a zone set forth within this Ordinance.

(b) Development applications submitted and accepted as complete before April 1, 2022 shall be processed in good faith and shall comply with the time frames for review, approval, and completion as is established in the Zoning Ordinance and Subdivision Regulations in existence at the time of the submission and acceptance of the application. If the application fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this Ordinance.

(c) If the development application is approved, the development approval or permit shall remain valid for the period of time specified in the Zoning Ordinance under which the application was reviewed and approved. Extensions of time available under the prior Zoning Ordinance and Subdivision Regulations remain available. If the approval is for a Conceptual Site Plan (CSP), special permit, Comprehensive Sketch Plan, or Conceptual Design Plan (CDP), the approved CSP, special permit, Comprehensive Sketch Plan, or CDP shall remain valid for twenty (20) years from the effective date of this Ordinance, and shall not be subject to the indefinite time period of validity under the Zoning Ordinance under which it was approved.

(d) Until and unless the period of time under which the development approval or permit remains valid expires, the project may proceed to the next steps in the approval process (including any subdivision steps that may be necessary) and continue to be reviewed and decided under the Zoning Ordinance and Subdivision Regulations under which it was approved.

(e) Once constructed, pursuant to a development application or permit approved under the prior Zoning Ordinance or Subdivision Regulations, all buildings, uses, structures, or site features will be legal and not nonconforming and shall be exempt from the provisions of this Ordinance until they are required or elect to file a site plan or other development application (not to include any application for a change in occupancy or change in ownership). In order to maintain its not nonconforming status, properties and uses which were formerly in a Commercial Zone, Industrial Zone, the M-X-T Zone, or the M-U-I Zone, as of April 1, 2022 shall adhere to the procedures set forth in Section 27-3618, Certification of Nonconforming Use.

(f) An applicant may elect at any stage of the development review process to have the proposed development reviewed under this Ordinance.

(g) Notwithstanding Sections 27-1703(a) through (f), above, any pending Conceptual Site Plan (CSP) or Detailed Site Plan (DSP) application incorporating a request to change the boundary of an approved Transit District Overlay Zone (TDOZ) or Development District Overlay Zone (DDOZ) or change the underlying zones in a TDOZ or DDOZ must result in a zone set forth within this Ordinance. Any pending CSP or DSP application seeking only to change the list of allowed uses, building height restrictions, and/or parking standards may continue to be processed and is not subject to the tolling procedures specified in Part 19 of the prior Zoning Ordinance.

(h) Any ongoing Functional Master Plan, Area Master Plan, or Sector Plan, and any ongoing Sectional Map Amendment, initiated under the prior Zoning Ordinance may proceed to be prepared, adopted, and approved under the Zoning Ordinance regulations under which such plan(s) and Sectional Map Amendment(s) were initiated.

(CB-068-2022; CB-050-2023; CB-053-2023)

Section 4.1.7. Measurement and Exceptions

The rules in Section 4.1.7 apply to all zones unless stated otherwise.

A. Area, Lot, and Density

1. Tract

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

2. Site

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

3. Lot

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

4. Lot Area

The lot area is the geographic extent defined by lot boundaries.

5. Lot Width

a. At the Front Lot Line

The lot width at the front lot line is measured between the side lot lines, at the front lot line, along a straight line; however, if the front lot line is curved, lot width at the front lot line is measured along the chord of the front lot line.

b. At the Front Setback Line

The lot width at the front setback line is measured between the side lot lines, at the front setback line, along a straight line.

c. At the Front Building Line

The lot width at the front building line is measured between the side lot lines, at the front edge of the building, along a straight line.

Exhibit B

27-2201. Measurement

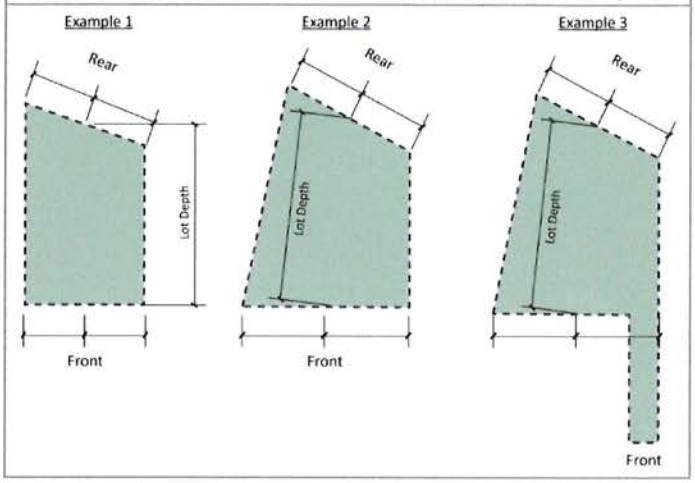
(a) Net Lot Area

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

(b) Lot Depth

The horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line of a lot. In the case of flag lots the width of the "pole" or portion of the lot only used for access to the remainder of the lot shall be ignored in determining the midpoint of both the front and rear lot lines. (see Figure 27-2201: Lot Depth Measurement Examples).

Figure 27-2201: Lot Depth Measurement Examples



(c) Lot Width

Lot width shall be determined by measuring the distance along a line delineating the minimum front setback applicable to the lot, between its intersections with the side lot lines, or for corner lots, between a corner side lot line and the opposite side lot line. (See Figure 27-2201(a): Lot Dimensions.)

(d) Lot Frontage (Width) at Front Street Line

Lot frontage (width) at the front street line shall be determined by measuring the distance of the front lot line. When frontage is curvilinear, it shall be measured along the curve. (See Figure 27-2201(a): Lot Dimensions.)

(e) Net Density (Dwelling Units per Acre)

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

(f) Floor Area Ratio

Floor area ratio (FAR) shall be determined by dividing the gross floor area (in square feet) devoted to nonresidential uses on all floors of all buildings located or proposed on a lot by the net lot area (in square feet) (see Section 27-2201(a), above). FAR standards apply only to nonresidential development.

(g) Lot Coverage

Lot coverage (expressed as a percentage of net lot area) shall be determined by measuring the total horizontal land area of the lot (in acres or square feet) covered by all buildings, covered structures, and areas used for vehicular access and parking of vehicles; dividing that coverage area by the net lot area (see Section 27-2201(a), above); and multiplying the result by 100.

2. Reduced Parking Area

a. In a Reduced Parking Area, an applicant may provide fewer parking spaces than required, after all adjustments are made under Section 6.2.3.I, only if a parking waiver under Section 6.2.10 is approved.

b. In a Reduced Parking Area, an applicant may provide more parking spaces than allowed by the maximum if all of the parking spaces provid-ed in excess of the maximum number allowed are made available to the public and are not reserved, or if a parking waiver under Section 6.2.10 is approved.

I. Adjustments to Vehicle Parking

1. In General

a. Reduced parking rates under Section 6.2.3.I are not mandatory. The maximum number of parking spaces allowed in a Parking Lot District or Reduced Parking Area is based on the baseline maximum in the parking table under Section 6.2.4.B.

b. Adjustments under Section 6.2.3.I to the minimum number of required parking spaces must not result in a reduction below 50% of the baseline parking minimum or shared parking model minimum.

2. Special Uses

a. The parking minimum resulting from a Special Uses adjustment may not be further reduced by additional adjustments under Section 6.2.3.I.

b. Restricted Housing Types

The baseline parking minimum in the parking table under Section 6.2.4.B may be reduced for restricted housing types by multiplying the following adjustment factor times the baseline minimum:

Housing Type	Adjustment Factor
MPDUs and Workforce Housing	0.50
Age-Restricted Housing	0.75
Senior Housing	0.50

c. Religious Assembly

i. The deciding body may reduce the required number of parking spaces:

(a) to 0.15 spaces per fixed seat for a Religious Assembly located within 500 feet of any commercial or industrial parking lot where sufficient spaces are available during the time of services to make up the difference; or

(b) to 0.125 per fixed seat for a Religious Assembly used by a congregation whose religious beliefs prohibit the use of motor vehicles in traveling to or from religious services conducted on their Sabbath and principal holidays. The required number of parking spaces may be off-site if the Religious Assembly is located in a Parking Lot District or Reduced Parking Area or within 500 feet of any commercial parking lot where sufficient spaces are available during the time of services or other proposed use of the building.

Exhibit C

ii. The parking space requirement does not apply to any existing building or structure located in a Commercial/Residential, Employment, or Industrial zone that is used for

Religious Assembly, if the existing parking meets the requirements for any commercial or industrial use allowed in the zone.

3. Shared Parking

a. An applicant proposing development with more than one use may submit a shared parking analysis using the Urban Land Institute Shared Parking Model (Second Edition, 2005) instead of using the parking table in Section 6.2.4.B.

b. The minimum number of required parking spaces under the shared parking model may be adjusted under Section 6.2.3.I.4 through Section 6.2.3.I.6.

4. Car-Share Space

One car-share space located near an entrance is equal to 2 required parking spaces for residential uses or 3 required parking spaces for commercial uses.

5. Unbundled Residential Space

Use	Baseline Minimum
Townhouse Living	0.75
Multi-Unit Living	
Efficiency	0.50
1 Bedroom	0.50
2 Bedroom	0.75
3+ Bedroom	0.75

6. Federal Tenants

The minimum number of parking spaces required for Office used by a federal government tenant under a long-term lease is 1.5 spaces per 1,000 square feet of Office gross floor area.

7. Adjustments Allowed Only in Commercial/Residential and Employment Zones

a. NADMS Percentage Goal

i. The baseline parking minimum or shared parking model minimum may be reduced by the Non-Auto Driver Mode Share (NADMS) percentage goal recommended in the applicable master plan, up to a maximum reduction of 20%.

ii. The baseline maximum vehicle parking standard must not be changed by the NADMS percentage goal.

iii. The NADMS percentage goal adjustment must be calculated before any other adjustment is taken.

b. Carpool/Vanpool Space

One carpool or vanpool space located near an entrance is equal to 3 required parking spaces. A carpool or vanpool space that is unoccupied after 9:30 a.m. may be made available to all vehicles if a sign is posted on the property notifying the public.

c. Bike-Share Facility

A bike-share facility with a minimum of 10 spaces may be substituted for 3 vehicle parking spaces if the bike-share facility is accepted by the Department of Transportation as part of an

approved comprehensive plan of bike-sharing stations.

d. Changing Facilities - Showers and Lockers

The deciding body may reduce the required number of vehicle parking spaces by 3 spaces for each additional changing facility provided above the minimum required under Section 6.2.6.B.3. A changing facility must include a shower and lockers.

(Legislative History: Ord. No. 18-08, § 20; Ord. No. 19-11, § 1.)

Requirements for the provision of parking facilities with respect to two (2) or more uses of the same or different types may be satisfied by the permanent allocation of the requisite number of spaces for each use in a common parking facility, cooperatively established and operated. The number of spaces so designated may not be less than the sum of the individual requirements for each use except as hereinafter provided, and all design requirements contained in this division must be complied with. A common parking facility so established must be located so that a major point of pedestrian access to such common facility is within a 500-foot walking distance of the entrance to each use served thereby. The Approving Authority may attach such conditions to the approval of a common parking facility as may be reasonable and necessary to assure that the use will be consistent with the purpose and intent of this chapter.

3. In a predominantly office, multiple-use building located in the MXTD zone with frontage on a transit station link, and not part of a previously approved project plan, the number of parking spaces required may be determined by using the parking standards for office use applied over the entire floor area of the building and not on the requirements for the individual uses. Office uses must occupy more than 75 percent of the gross floor area of the building. If the mix of uses contains one (1) or more restaurants that, in the aggregate, exceed four thousand five hundred (4,500) square feet of gross floor area, the parking requirement for the restaurant or restaurants exceeding four thousand five hundred (4,500) square feet of gross floor area, must be calculated according to the restaurant parking standard.
4. On a lot or parcel that contains a church, synagogue, or other place of worship and an affiliated private institution, the Board of Appeals, as part of the consideration of the special exception application for the private educational institution, may grant a parking reduction of up to thirty (30) percent of the total required parking for the site upon the finding that the uses on the property will not have overlapping peak hour parking requirements and the reduction will not adversely affect the site of the adjacent area.

h. *Flexible parking standards.* The Approving Authority may permit reductions in the number of parking spaces required, if certain standards and requirements are met as set forth below.

1. *Mayor and Council and Planning Commission reductions.* The Mayor and Council, in the approval of a project plan, or the Planning Commission in the approval of a site plan within the MXTD, MXCD, MXE, MXNC and PD zones, have the authority to reduce the required number of parking spaces for uses in the building or buildings to be constructed provided that:
   (a) A major point of pedestrian access to such building or buildings is within seven-tenths of a mile (3,696 feet) walking distance of a transit station entrance shown on the Washington Metropolitan Area Transit Authority Adopted Regional Rail Transit System;
   (b) There are three (3) or more bus routes in the immediate vicinity of the building or buildings; or
   (c) There is a major public parking facility available to the public within one thousand (1,000) feet of a building entrance;
   (d) Where the size of the lot is so small that meeting the parking requirement would prevent redevelopment;
   (e) Where there is a bikeway in close proximity to the site and the applicant demonstrates that the uses in the proposed development are conducive to bicycle use; or
   (f) For any other good cause shown.
2. *[Previous reductions.]* The Planning Commission may not approve a further reduction on site plans that implement all or part of a project plan where the Mayor and Council has previously granted a reduction.
3. *Reductions with proximity to a transit station.* Within any mixed-use zone where the building entrance is more than seven-tenths of a mile (3,696 feet) walking distance from a transit station entrance as shown on the Washington Metropolitan Area Transit Authority Adopted Regional Rail Transit System, a reduction of not more than ten (10) percent of the required parking spaces may be approved if a parking management plan approved by the Approving Authority will be implemented with occupancy of the building or buildings using such features as car and van pooling and public or private transit. A Transportation Demand Management strategy must be submitted with the goal of reducing parking demand by the building to meet the amount of reduction requested. The effectiveness of this plan must be demonstrated periodically after the use has been operating, as determined by the Approving Authority.
4. *Multiple-unit residential projects.* For multiple-unit residential projects, a condition of approval of a project plan or site plan may limit parking below the normal requirements set forth in the tables in subsection 25.16.03.d. above.
5.

Exhibit D

Sec. 25.05.07. - Amendments to approved development.

a. *Application required.* Except as otherwise provided, an application to amend any previously approved development must be filed with the Chief of Zoning in accordance with the provisions of this article.

b. *Minor amendments to approved development.*

1. Any application for an amendment which does not significantly deviate from the terms and conditions of the original approval and would effectively carry out the intent of the Approving Authority's original approval may be considered and acted upon by the Chief of Zoning under the provisions for a level 1 site plan as set forth in section 25.07.04.

(a) Such application may be approved if it results in a minimal effect on the overall design, layout, quality, or intent of the plan and is limited to minor adjustments to site engineering, parking or loading areas, landscaping, sidewalks, recreational facilities, recreational areas, public use space, or open area in a manner that does not alter basic elements of the site plan nor cause a safety hazard. Landscaping maintenance does not require an amendment application under this section. The addition or relocation of minor appurtenances such as, but not limited to, bicycle racks, seating benches, pergolas, emergency generators, transformers, refrigeration equipment, trash enclosures, sidewalks and small storage sheds, does not require an amendment application, but must not alter the basic elements of the site plan nor cause a safety hazard.

2. An amendment that results in a reduction of floor area or other development intensity may be approved as a minor amendment.

3. A change in the types of uses on the site that is in conformance with the findings of the initial approval and does not increase the parking requirement may also be approved as a minor amendment.

4. Minor amendments are not subject to the provisions for pre-application staff meetings, area meetings, and the notice provisions of section 25.05.03 or article 7.

5. Where the Chief of Zoning determines that the proposed amendment is not minor, it is classified as a major amendment and the application is reviewed and acted on by the Approving Authority as an amendment to the original development approval.

6. Implementation period. The approval of a minor amendment is subject to the implementation provisions of section 25.07.06.

c. *Minor amendments for commercial redevelopment.*

1. To encourage and expedite the re-use and redevelopment of existing commercial structures subject to approved project plans or site plans, or within a Planned Development, the Chief of Zoning may accept an application for a minor amendment for commercial redevelopment

Exhibit E

under the provisions for a minor amendment to approved development in subsection 25.05.07.b above, subject to the following requirements.

(a) The property must be in the I-L, MXTD, MXCD, or MXE zone and must be subject to a valid and approved project plan, site plan or use permit or the equivalent development approval.

(b) The limits of disturbance of the amendment must be at least three hundred (300) feet from the nearest single-family detached or attached residential use, as measured from the nearest property line. This requirement does not apply if one of the following transportation rights-of-way: Interstate 270, MD 355, MD 586 and the Metro/CSX rail right-of-way, or any adjacent parcel of land intended to provide a buffer or open space, is located between the residential use and the proposed improvement.

(c) The property must not be in a historic district.

(d) The application may only include commercial, office, or industrial uses.

(e) The application may include new buildings or building additions, subject to the limitations below.

(f) Notwithstanding subsection 25.05.07.b.4, written notice will be provided by the City to all property owners, civic associations and homeowners associations within five hundred (500) feet of the subject property in accordance with subsection 25.05.03.c. Electronic notice of the filing of an application under this section will also be provided to the Planning Commission and Mayor and Council.

2. The Chief of Zoning may approve a minor amendment for commercial redevelopment if the application meets the project plan or site plan approval findings in section 25.07.01 as appropriate; the requirements of subsection c.1., above; and the following additional findings:

(a) For amendments to a site plan, the application does not result in a comprehensive change to more than twenty (20) percent of the site plan area, or otherwise change the essential character and impact of the development.

(b) The application does not generate more than twenty-nine (29) additional peak hour trips.

(c) The application does not expand any existing zoning nonconformity.

(d) The application will not result in more than five thousand (5,000) square feet of floor area being added to the site.

(e) For amendments to a project plan or planned development, the amendment will not cause the following:

1. An increase in overall project density;
2. A change in permitted uses or mix of uses; and
3. A deviation from any of the required conditions.

Section 4.5.2. Density and Height Allocation

A. Density and Height Limits

1. Density is calculated as an allowed floor area ratio (FAR).

2. Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:

a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C or Section 4.5.2.D;

b. The number following the C is the maximum nonresidential FAR allowed, unless additional FAR is allowed under Section 3.5.8.D or Section 4.5.4.B.5;

c. The number following the R is the maximum residential FAR allowed unless additional residential FAR is allowed under Section 3.5.8.D, Section 4.5.2.C, or Section 4.5.2.D; and

d. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 3.5.8.D, Section 4.5.2.C, Section 4.5.2.D, Section 4.5.2.A.2.e. or Section 4.5.4.B.5.

e. With Planning Board approval, any Optional Method project in a CR zone that includes the provision of a major public facility under Section 4.7.3.A may add the height of any floor mostly used for above grade parking to the maximum height otherwise allowed, when the major public facility diminishes the ability of the applicant to provide parking at or below grade.

3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under Section 4.5.2.C, Section 4.5.2.D, Section 4.5.2.A.2.e, Section 4.5.4.B.5., or an Overlay Zone:

Zone	Total FAR (max)	C FAR (max)	R FAR (max)	Height (max)
CRN	0.25 to 1.5	0.00 to 1.5	0.00 to 1.5	25' to 65'
CRT	0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'
CR	0.5 to 8.0	0.25 to 7.5	0.25 to 7.5	35' to 300'

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.5.2.A.3.

B. FAR Averaging

1. Only standard method development projects that require site plan approval or optional method development projects can average FAR between properties.

2. FAR may be averaged over 2 or more directly abutting or confronting properties in one or more Commercial/Residential zones if:

a. the properties are under the same site plan, sketch plan, Signature Business Headquarters plan, or Biohealth Priority Campus plan; however, if a sketch plan, Signature Business Headquarters plan, or Biohealth Priority Campus plan is required, density averaging must be shown on the applicable plan;

b. the resulting properties are created by the same preliminary subdivision plan or satisfy a phasing plan established by an approved sketch plan, Signature Business Headquarters plan, or