



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

MCPB
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MEMORANDUM

TO: Montgomery County Planning Board

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Community-Based Planning Division
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SUBJECT: Twinbrook Sector Plan, TOMX ZONES, and new TMX ZONE with Building
Lot Termination (BLT) Program Provisions

RECOMMENDATION

- Defer modifications to the existing TOMX Zones and establishment of a TOMX 1 zone and a TOMX 1/TDR zone.
- Support enabling legislation and Executive Regulations required for the implementation of a BLT/TDR program including:
 - Establishing a new Transit Mixed Zone (TMX) category that supports the purchase of BLT/TDRs for use in major transit station area master plans
 - Establishing a Land Trust/Easement Program for the purchase of BLT/TDRs and to receive funds in lieu of BLT purchases
 - Establishing zoning regulations including a definition of a BLT/TDR and a BLT conversion factor, for the use of BLT/TDRs
- Support allowing time for staff to finalize the details of this recommendation, determine all required legislation required for enactment, and necessary modifications to the Twinbrook Sector Plan and Germantown Master Plan language.
- Consider modifications to the excess TDR program.
- Support consideration of excess TDR receiving capacity in the Kensington Sector Plan, and other future plans, using the concept proposed for the TMX Zone.
- Support a future minor master plan amendment and sectional map amendment for the Shady Grove Master Plan.

DISCUSSION

The Planning Board reviewed Zoning Text Amendment (ZTA) No. 08-05 at its regular meeting on May 15, 2008. That ZTA reflects the recommendations of the Draft Twinbrook Sector Plan that change the TOMX Zones. When the Board forwarded these zone changes to the County Council, it was with the understanding that research into how to incorporate use of the "building lot termination" (BLT) TDRs was ongoing and could result in a modification to the recommendations for the TOMX zones.

After extensive further research for the BLT and TDR aspects of the TOMX Zones, staff now recommends that the most effective way to accommodate BLT/TDRs is an entirely new type of TDR "receiving" zone. The proposed zone would be applicable for the Twinbrook Sector Plan, the Germantown Master Plan, and other master or sector plans in designated transit areas (such as White Flint and Gaithersburg). If adopted for these plans, staff will subsequently recommend a minor master plan amendment and sectional master plan amendment to allow use of the zone for the Shady Grove Master Plan, and sunset the original TOMX Zone now in effect in Shady Grove. This strategy is recommended because the fundamental approach proposed is substantially different from that adopted for the TOMX Zone in Shady Grove, or as originally proposed for Twinbrook.

Staff recommends the creation of the Transit Mixed Use Zone (TMX Zone) for the above stated reasons. The TMX zone parallels many aspects of the modified TOMX Zone previously proposed for the Twinbrook Sector Plan. But it differs substantially in two ways:

1. It creates a receiving zone dedicated to "buildable lot transfer" (BLT) transferable development rights (TDRs).
2. A certain percentage (10% is proposed) of any requested density above the standard method would be acquired through the purchase of BLT/TDRs, or by contribution of an equivalent amount into a trust fund that would be dedicated to the acquisition of BLT/TDRs.
3. The Trust Fund would enable the purchase of a portion of a BLT easement where a full one is not required by the development.
4. Because the BLTs will be valued substantially higher than "excess" TDRs, their value will be related to the average market rent in the planning areas for class A office space (revalued annually) for the amount of space attributed to the BLT program in the development.
5. It would be a single zone, rather than a nest of zones, that establishes a standard method and an optional method
6. Standard method densities would range from .25 FAR to .5 FAR, and Optional Method Densities would range from 1.0 FAR to 3.0 FAR. Specific densities would be set in the master or sector plan. These densities are equivalent to those in the current TS-M or CBD-1 Zone.
7. The master or sector plan would establish densities for analysis areas, but would limit or encourage heights and intensities for specific properties in the analysis areas.
8. As with the TOMX Zone, the zone would be applied only by sectional map amendment as recommended in a master or sector plan, and the plan could also recommend the distribution of uses at particular locations where the zone is applied.

The value of a BLT would be derived from a multiplier of the value of an “excess” TDR, and the equivalent size of a BLT in square feet is to be derived using the same methodology already developed for the TOMX Zone. The Research staff outlines below how these values are derived and would function in the TMX zone.

For all property in the TMX Zone, any redevelopment above the standard method would be subject to a BLT/TDR requirement. It would not be optional, as in all previous TDR receiving zones, and the requirement to purchase BLTs would be applicable for any property in any TMX Zone, not just selected sites. The BLT purchase requirement would mean:

1. A substantially reduced financial burden on sites that were to be designated for TDR receiving sites (if they choose to use TDRs),
2. A more likely use of optional method and its densities in these important transit station areas, and
3. Broader participation in the TDR program.

As currently conceived, 10 percent (10%) of any development above the standard method would be required to purchase BLTs, or contribute a set amount into a trust fund that would be created to receive these funds and purchase BLTs as they become available.

Impact on Current and Active Plans

This concept is so structurally different from the TOMX Zone that staff does not believe that it is feasible to graft it onto the TOMX/TDR Zone structure. Therefore, staff proposes to apply the TMX Zone in the Twinbrook and Germantown (and other upcoming plans) and leave the TOMX Zone as created for the Shady Grove Master Plan unaltered for the time being.

These changes will allow the zoning process to be streamlined for upcoming plans, but will require some added time for staff to finalize the details of this recommendation, determine all required legislation required for enactment, and determine necessary modifications to the Twinbrook Sector Plan and Germantown Master Plan language.

The specific recommendation for the Twinbrook Plan would be to use the TMX Zone for all properties already recommended for the TOMX-2 and TOMX-2/TDR Zones, and for the TOMX-1/TDR Zone (if the recommendation for the 1.0 FAR remains). The Plan would recommend a maximum of a 2 FAR on these properties in the optional method.

Similarly, the recommended zone for the Germantown Master Plan would be the TMX zone where the TOMX-1 and TOMX-1/TDR are currently recommended, and the Plan would recommend a maximum of a 1 FAR on these properties in the optional method.

TMX Zone Advantages

The staff recommends implementation of the BLT/TDR program for the following reasons:

1. It reduces development potential in the RDT Zone with little public investment other than administration of the Trust Fund by providing a means of extinguishing buildable development rights in the Agricultural Reserve.
2. Application of the BLT across the entire TMX zones is equitable- certain parcels are not singled out, so there is broader participation shared by any developer in the zone.
3. It reduces the effective TDR burden compared to current program.
4. It is not fiscally onerous – in examples outlined below, less than \$3.00 per square foot
5. The program is less susceptible to fluctuations in residential or commercial markets as it applies to both.
6. It allows the TMX Zone and BLT program to be fully thought out and implemented before a modification of the Shady Grove Master Plan is contemplated.
7. The zone can easily be used for all Transit-Oriented Development Areas in the county.
8. This concept could be considered for BLT application in CBD Zones, and for excess TDR application in non-transit areas.

Rationale for Making Transit Areas the Receiving Areas for BLTs

1. Transit station areas (and CBDs) are the only places where property values can support the acquisition of easement extinguishing buildable rights.
2. There is a logical connection between these types of sites, since their use in the areas near transit, where densities are increasing substantially, is clearly related to the prevention of low density suburban expansion in the Agricultural Reserve.

Concerns

The proposal does raise concerns in that it will result in a reduction in the planned capacity for excess TDRs. However, the staff believes that this can be offset in future years by the creation of additional receiving capacity for excess TDRs in upcoming master plans outside of transit station areas.

The TDR status report from March 2008 stated that 3,300 TDRs could be realized from the next four master plans, based largely on the potential in Twinbrook, Germantown, and White Flint. The existing level of receiving capacity is 5,256 TDRs, the average annual use of TDRs is 278, and the average annual rate of diminished capacity is 117. This would mean that we can estimate that in five years there would still be over 3,000 TDRs receiving capacity remaining, if no additional receiving capacity was added. This is not likely, however, as there are upcoming plans, in non-Metro served areas such as Kensington and Westbard, where added TDR capacity can be contemplated under traditional TDR zones, or through a method similar to that proposed in this report.

Staff thus recommends that the Board support consideration of proposals for excess TDR capacity in these plans, perhaps using the required contribution model proposed here.

Transferable Development Rights: Summary Receiving Area Data	
Current TDR Receiving Area Capacity	5,256
Receiving area capacity needed to plat 5,019 TDRs at a 58% use rate	8,653
Minus – current TDR Receiving Area Capacity	5,256
Equals a Receiving Area deficit of approximately	3,397
Clarksburg: estimate 842 TDRs platted over the next few years	
Receiving area capacity needed to plat 4,177 TDRs at a 58% use rate	7,202
Minus – TDR Receiving Area Capacity	4,245
Equals a Receiving Area deficit of approximately	2,957
Current TDR Receiving Capacity	5,256
Less average annual use of TDRs 278 x 5 Years 1,390	1,390
Less anticipated annual average diminished Capacity 117 x 5 Years	585
Estimated TDR Receiving Capacity in 5 Years	3,281
Potential Master Plan Areas Outside Transit Stations with TDR Potential: Kensington, Westbard	

Excess TDR Program Changes

In addition to the proposal for the RMX Zone outlined here, the staff recommends that the Board consider recommending the following changes to the existing TDR Program. This program has been in effect since 1980. Property owners have therefore been given almost thirty years to take advantage of the financial recompense offered after the 1980 downzoning to the RDT Zone. It may be time to consider limiting the applicability of this program, as the county's focus turns to a program that actually reduces density in the remaining Agricultural Reserve. The following is suggested as a valid topic of discussion:

1. Allowing until 2010 (the 30th anniversary of the program) for any property owner in the RDT Zone to sever their excess TDRs. After that time, eliminate the ability to sever further TDRs for sale in the excess TDR market.
2. Retain a market for excess TDRs for the next 15 years (until 2025), but after that time eliminate the market for excess TDRs.
3. Set a goal for the purchase and extinguishment of BLT TDRs that reduces the effective density in the RDT Zone to one dwelling for each fifty acres.
4. Consider bold initiatives to spur the use of the land preserved under these programs in the RDT Zone for local food production initiatives.
5. Sunset the "child lot" provision of the RDT Zone in 2010.

Attachment One: BLT Program Background

The BLT proposal described in the Ad Hoc Agricultural Advisory Group Report include: (1) “to reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners” and (2) “to preserve by easement as much farmland as possible”.

An understanding of the current TDR program is useful in understanding the motivation for a BLT program. In 1980, land in the Rural Density Transfer zone went from one dwelling unit per five acres to one dwelling unit per twenty-five acres. Landowners were awarded one TDR for every 5 acre increment of land. Thus, a 100 acre farm is entitled to 20 TDRs. Under the current zone, the landowner retains the right to build one house per twenty-five acres and to do so, is required to retain a TDR for each dwelling unit. In this example four TDRs must be retained; these are referred to as the buildable TDRs (BLTs). The other 16 TDRs represent no development potential to the farmer. These TDRs are often referred to as “excess” TDRs. Upon sale, these rights convey to the purchasers, the right to build an additional dwelling unit elsewhere in the County. These are the TDRs that make up the bulk of the current TDR program.

Severing and selling the “excess” TDRs has minimal impact on the potential for development within the Reserve. By severing “excess” TDRs, the landowner places his or her entire property under easement. This easement guarantees the current zoning density 1 dwelling unit per 25 acres, in perpetuity. To affect the development potential within the Agricultural Reserve, those TDRs that can be used to build (BLTs) must be removed. Thus, the recommendation for a BLT program emerged.

On March 1, 2007 the Planning Board supported the Ad Hoc Agricultural Policy Working Group recommendations including evaluation of the feasibility of creating a program by which TDRs on commercial and industrial properties will purchase buildable TDRs (called BLTs) instead of excess TDRs.

That research resulted in the recommendations in this report. And because it is likely that BLT/TDRs may not be immediately available for purchase, and because some developments will only need to purchase a portion of a BLT/TDR, the creation of a Trust Fund is proposed that would be able to purchase BLTs from interested property owners in the RDT Zone, and to receive contributions from developers in lieu of purchase. Enabling legislation is necessary for creation of such a trust fund, and provision made for its maintenance and staffing. It is also necessary to consider what other enabling legislation may be required for the implementation of this program to county code in conjunction with the zoning text amendment.

Components for Establishing a BLT Easement Program:

Step 1: Establishing conversion of “excess” TDR from dwelling unit to square feet

Step 2: Establishing conversion of TDR from residential to residential or commercial uses

Step 3: Payments in Lieu of purchasing BLTs and BLT Land Trust

Step 4: Amendments to the zoning ordinance to create mechanism to acquire BLTs and other enabling legislation

Attachment 2:

Examples of Determining BLT Fiscal Contribution

Example - Germantown:

Suppose 100,000 square feet of optional density is desired. At 40% commercial, 60% residential – 40,000 square feet commercial space and 60,000 square feet residential is proposed. 10% percent of all optional development is required to purchase BLTs.

Commercial:

- 40,000 sq. ft. x 10% = 4,000 sq. ft. required to purchase BLTs
- 4,000 sq. ft. divided by 7,500 sq. ft. (BLT) = .53 (of a BLT)
- Value of a commercially used BLT (as set for the fee-in-lieu of purchase) = \$202,500
[7,500 sq. ft. x \$27 per sq. ft. (average rental rate for Class a office space)]
- Payment required for 4,000 sq. ft. commercial density = \$108,000

Residential:

- 60,000 sq. ft. x 10% = 6,000 sq. ft. required to purchase BLTs
- 6,000 sq. ft. divided by 9,000 sq. ft. (BLT) = .67 (of a BLT)
- Value of a residentially applied BLT (as set for the fee-in-lieu of purchase) = \$135,000
[9,000 sq. ft. x \$15 per sq. ft. (average rental rate for multi-family residential unit)]
- Payment required for 6,000 sq. ft. residential density = \$90,000

Total cost equals \$198,000 thus the cost of 100,000 sq. ft. of additional density is approximately \$1.98 per sq. ft.

Example Twinbrook:

Suppose 100,000 square feet of optional density is desired. At 40% commercial, 60% residential – 40,000 square feet commercial space and 60,000 square feet residential is proposed. 10% percent of all optional development is required to purchase BLTs.

Commercial:

- 40,000 sq. ft. x 10% = 4,000 sq. ft. required to purchase BLTs
- 4,000 sq. ft. divided by 7,500 sq. ft. (BLT) = .53 (of a BLT)
- Value of a commercially used BLT (as set for the fee-in-lieu of purchase) = \$221,250
[7,500 sq. ft. x \$29.50 per sq. ft. (average rental rate for Class a office space)]
- Payment required for 4,000 sq. ft. commercial density = \$221,250 x .53 = \$118,000

Residential:

- 60,000 sq. ft. x 10% = 6,000 sq. ft. required to purchase BLTs
- 6,000 sq. ft. divided by 9,000 sq. ft. (BLT) = .67 (of a BLT)
- Value of a residentially applied BLT (as set for the fee-in-lieu of purchase) = \$171,000
[9,000 sq. ft. x \$19 per sq. ft. (average rental rate for multi-family residential unit)]
- Payment required for 6,000 sq. ft. residential density = \$114,000

Total cost equals \$232,000 thus the cost of 100,000 sq. ft. of additional density is approximately \$2.32 per sq. ft.