

# **Draft Zoning Code and District Map Amendment: Frequently Asked Questions**

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## **1. What is zoning?**

Zoning laws control most aspects of property development including:

- the uses allowed on a property;
- the minimum size of a lot;
- how tall buildings can be;
- what percentage of the lot buildings can cover and/or how much open space is required;
- parking requirements;
- the density for all development; and
- which uses require a public hearing and how much public review is required for something to be approved.

## **2. Why is the County Council rewriting the zoning code?**

The zoning code has not been comprehensively rewritten in over 30 years. During that time, the County has grown and changed substantially and many of the zoning laws have become antiquated. Piecemeal updates to the code over the last several decades have resulted in a document with more than 1200 pages, more than 120 zones, more than 400 footnotes, and many confusing, and sometimes contradictory, provisions.

As our road, forest conservation, and stormwater rules have evolved, our zoning ordinance has not kept up. In basic sustainability terms, our zoning ordinance has rules that not only encourage sprawl into our greenfields, but foster it by not allowing mixed-use, compact development in targeted locations.

Almost anyone involved or interested in the development process in Montgomery County cites the difficulty with using and understanding the current zoning ordinance. For these reasons, the County Council tasked the Planning Department with undertaking a comprehensive rewrite of the zoning code in 2007 with the following basic goals in mind:

- simplify and consolidate;
- improve clarity and consistency;

- accommodate changing markets and demographics, while protecting established neighborhoods;
- reflect more sustainable policy goals; and
- provide the tools necessary to shift from greenfield development to infill, mixed-use development.

### **3. Why adopt both the new text of the zoning ordinance and the new zoning map at the same time?**

The County Council expects to adopt both the zoning text and zoning map at the same time for several reasons. Practicality is the most important of those reasons. If the zoning map is not adopted in conjunction with the revised zoning code, the County will be operating under two separate zoning codes. This scenario would not only create a nightmare for County staff responsible for implementing and enforcing the zoning code, but it would make the development review process even more bewildering for citizens trying to understand what to expect from neighboring developments and how to participate in the process.

The zoning code in effect and the zones it establishes must match the zones that are mapped. The new code proposes zone name changes for almost all non-residential and mixed use zones. The Council cannot replace the current code and retain the current zoning maps because the non-residential zones and mixed use zones would cease to have any meaning. Failing to adopt a new map would require keeping the current code for all of the zones that are on the existing map, but not retained in the new code. That also means retaining the procedures and standards for some zones that the Planning Board has found to be out of date, while utilizing the new procedures and standards for other zones.

To adopt the code without adopting the zoning map is a recipe for confusion and administrative paralysis. There is a benefit to having the new code and the new map effective on the same date. As the Council and members of the public review the language in the draft zoning code, they can readily evaluate the implications of the zoning code for individual properties. Additionally, the new maps as recommended by the PHED Committee are more closely aligned to the density and height recommendations of master plans than current zoning.

Finally, the PHED committee recommends that the effective date for the code and the zoning map be the same day, however the Council would act on the zoning map several months after acting on the zoning text. This delay will allow time for stakeholders to continue to review the mapping and its implications before the Council votes to implement it.

#### **4. Does the draft make significant changes to zoning and uses in single-family neighborhoods?**

The draft makes only minor changes to the uses allowed in the single-family zones, while the zoning and the development standards for houses are identical to the existing code. The key changes are noted below:

- community gardens are a new use;
- a hospice with up to 8 people is proposed to be allowed without special exception approval, (small group homes (up to 8 residents) are currently allowed by right) and these two uses have similar impacts;
- a day care for seniors or persons with disabilities for 4-8 persons is proposed to be allowed without special exception approval, (family day care (up to 8 recipients) are currently allowed by right) and these two uses have similar impacts;
- guest houses are no longer allowed in R-200, R-90, R-60 or R-40; and
- two conditional use (special exception) standards for Veterinary Office/Hospital and Animal Boarding and Care are modified.

#### **5. Are all the commercial zones converting to a Commercial/Residential (C/R) zone?**

No. The majority of land in our commercial zones, about 68%, is proposed for conversion into an Employment zone, not one of the C/R zones. The draft introduces four new Employment zones that will replace many of the existing commercial zones (see the Zoning Translation table for more details). They are:

- General Retail (GR);
- Neighborhood Retail (NR);
- Life Science Center (LSC); and
- Employment Office (EOF).

The Employment zones are modeled on existing zones and proposed for areas of the County that will either continue to be auto-dominated (NR, GR) or continue to focus on predominantly non-residential office and technology uses (LSC, EOF). They generally allow more flexibility in building, circulation, and parking lot layout than the C/R zones. GR, NR, and EOF (modeled on C-2, C-1, and primarily C-0, respectively) allow a limited amount of residential development by-right, which is a change from the existing zones where residential development is only allowed by special exception or through an optional method process.

**6. Will adding residential uses to commercial zones change their height and density?**

No. The proposed remapping and translation of existing commercial zones to add residential uses will not change the height and density currently allowed. In addition, the current level of community input will remain unchanged; design controls in some cases will be enhanced, depending on the property.

**7. How will C/R zones be mapped throughout the County if they are currently allowed only with a master plan recommendation?**

When the relevant provision in the existing C/R zones was written, it was considered in a different context – one meant to ensure that Local Map Amendments could not be filed for the C/R zones. This is understandable because the C/R zones, as they were then written, were intended to be mapped in a comprehensive fashion through a Sectional or District Map Amendment. According to the opinion accompanying Zoning Text Amendment 11-01, the Council “did not intend to prejudge if that provision [requiring a master plan recommendation] might be retained or amended when it considers a rewritten zoning ordinance.”

In addition, when the District Map Amendment translates a zone to a C/R zone for the first time, the zone will include a “T.” This “T” indicates that certain aspects of the current zone are retained, mainly current rules regarding density and height. Also, if a master or sector plan has already specified density or height limitations for a property, the mapping for that property will reflect those elements.

**8. Do the new zones require the same amount of Moderately Priced Dwelling Units (MPDU) as the current code requires?**

Yes. As in the current code, a developer who proposes a project with more than 20 dwelling units must provide at least 12.5% of those units as MPDUs. Further, when any mixed-use zone is converted to a C/R zone through the implementation process, the development may exceed the residential density by up to 22% for providing up to 15% of the units as MPDUs and the bonus MPDUs may exceed the density limitation of the zone, as is also the case with the current code. Zones that convert in this manner are designated with a T (Translation) following the zone name.

Furthermore, the PHED committee recommends several incentives for MPDUs as follows:

- for developments providing more than 12.5% MPDUs, additional MPDUs will be excluded from density calculations;
- for developments providing at least 15% MPDUs, all MPDUs will be excluded from density calculations and the project may satisfy one less category of public benefits than otherwise required;
- for developments providing at least 20% MPDUs, all required public benefit points can come from providing MPDUs.
- developments providing more than 12.5% MPDUs may exceed height limitations in the zone and the master plan to the extent required to build the MPDUs;
- developments may earn additional public benefit points for providing more 2- and 3-bedroom units than otherwise required.

**9. Why are non-residential buildings allowed in R-60 and R-90 if they will introduce nonresidential uses into single-family neighborhoods?**

The PHED committee recommends deleting non-residential buildings as a building type in the residential zones.

**10. What is going on with floating zones?**

The current Zoning Ordinance allows a myriad of floating zones. The draft zoning code introduces a completely new set of floating zones: Residential Floating zones, Commercial/Residential Floating zones, Employment Floating zones, and Industrial Floating zones. If applying for a floating zone on property in a commercial or mixed use zone, there are no prerequisites for an application and the maximum density allowed is based on the size of the tract and the pre-existing Euclidean zone. If applying for a floating zone on property in a Residential zone, the proposed development must meet a number of requirements. For instance:

- For a property in a Residential zone, if a developer wants to apply for a floating zone that increases density or includes commercial uses, the floating zone must be recommended in a master plan or the application must satisfy 6 out of 15 prerequisites in 3 different categories.
- In addition, if applying for a Townhouse Floating, Apartment Floating or CRN Floating zone, the zone must be recommended for the property in a master plan or the property must front on a nonresidential street or must abut or confront property in a Residential Townhouse, Residential Multi-

Unit, Commercial/Residential, Employment, or Industrial zone. If applying for a CRT Floating, CR Floating, or Employment Floating zone, the zone must be recommended for the property in a master plan or the property must abut or confront property in a Commercial/Residential, Employment, or Industrial zone. If applying for an Industrial Floating zone, the zone must be recommended for the property in a master plan, or the subject property must abut a property in an Industrial zone. This means that these floating zones (Apartment Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating) cannot be applied for in the middle of a residential neighborhood.

- If an application satisfies the locational requirements and prerequisites, the County Council will consider the application. The Council must make specific findings before approving a floating zone such as whether the floating zone will conform with the master plan and be compatible with adjacent development (Section 8.2.1.E). These criteria are consistent with current rules. In addition, the limits on density are more restrictive than under the current floating zones, and there are new height and screening restrictions for many buildings.
- For context, the existing code, under certain circumstances, also allows R-60 and R-90 zones to be rezoned to numerous floating zones with a myriad of non-residential uses. The C-T, O-M, TS-R, TS-M, and PD zones, for example, are all floating zones that allow commercial uses and higher densities and that have been approved on residential property.
- The current code rarely requires the specific recommendation of a master plan as the sole method for a successful Local Map Amendment application (LSC, RS and Mineral Resource Recovery); the draft rewrite never requires a master plan recommendation. Of the more than 20 currently mapped floating zones, only one requires a master plan recommendation (the RS zone). A master plan recommendation may facilitate the Local Map Amendment (floating zone approval) process, but it is not a statutory requirement.

## **11. Are chickens going to take over my neighborhood?**

No. The Planning Board draft decreased the current setback requirements for structures to house backyard chickens in residential zones. The PHED committee, however, recommended that the zoning code retain the current, stringent setback requirements which are included in the PHED committee draft.

**12. How will the new code affect community input in the development review process?**

Overall, citizens will have more opportunities to participate because more development proposals adjacent to residential neighborhoods will be subject to sketch plan and site plan approval. These approvals are discretionary review processes that require public hearings with the Planning Board and provide community members an opportunity to voice their opinion on the project. Other processes, such as conditional use (existing special exception) approvals and Local Map Amendments, will have the same degree of citizen input as they do in the current code.

**13. How will the new code interact with master plans? Does the new zoning code circumvent the master plan process?**

Generally, the connection between master plans and the new code will be stronger than under the current code. Master plans will continue to provide a vision and detailed land use and zoning recommendations for specific areas of the County. The zoning code will function as a regulatory tool used to implement the master plan. The master plan will also have a stronger role in many projects developed under the new code, because site plan approval will require a new finding that the proposed development substantially conforms to the recommendations of the master plan (Sec. 8.3.4.E.5).

**14. Since the new zoning code allows residential uses in most zones, how will the County prevent more school crowding, traffic congestion, etc.?**

Many of our master plans establish staging limits that cap development until certain facilities and projects are funded. Thus, even if the zoning allows certain densities, they may not be attainable until capacity is open under a master plan stage.

Further, there are no changes to the current requirement that any development proposal, residential or otherwise, is subject to the Adequate Public Facilities Ordinance (APFO) during the subdivision or site plan approval process. The APFO is a separate set of rules, independent of the Zoning Ordinance, that requires the Planning Board to evaluate a proposed development for adequacy of public facilities in terms of transportation, schools, water, sewage, police, fire, and health services. Based on the results of APFO tests, the Planning Board may require that a developer contribute to a public facility improvement (e.g.

provide a school facility payment or fund an intersection improvement) before development may proceed. If a school cluster is under a moratorium, no residential development may be approved, regardless of zoning or master plan staging.

## **15. Timing**

The zoning code rewrite is a long-term project that has been in progress for more than four years. Public outreach and involvement has been a large and important part of the process throughout the project. The Planning Board and staff, as well as the County Council's Planning, Housing and Economic Development Committee, have worked hard to make the rewrite process as transparent as possible. Opportunities for public involvement have included:

- three County Council public hearings and 13 PHED committee worksessions
- seven Planning Board public hearings and dozens of public worksessions;
- a regularly updated website devoted to the project, including all documents;
- regular email blasts to a listserv with more than 600 recipients;
- staff attendance at more than 100 community meetings;
- two rounds of open houses conducted throughout the County with more than 200 attendees;
- open office hours at the Planning Department with project staff; and
- mailed notices to residential and commercial property owners whose zone name is proposed to change.

Further, the Planning Board established a Zoning Advisory Panel (ZAP) which served until fall 2012 when the Planning Board began its review. The ZAP was a "sounding board" for ideas throughout drafting. Many stakeholder groups, including community representatives, developers, land use attorneys, architects, academics and planners had representatives to the ZAP. All meetings were taped and open to the public.