

Montgomery County Zoning Code Rewrite Small Group Discussion and Online Survey Report

Submitted by Justice and Sustainability Associates, LLC
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Overview

In September 2008, the Montgomery County Planning Department convened a series of small group discussions and hosted an online survey to gather input regarding the rewrite of the County zoning code. The Planning Department hired Justice and Sustainability Associates, LLC (JSA) to design, facilitate and document the small group discussions. This report summarizes the small group discussion process and online survey responses.

Small Group Discussions

The goal of the small group discussions was to engage a range of stakeholders from throughout Montgomery County and to record their comments to inform the zoning code rewrite. 122 people participated in the small group discussions. The small group discussions were organized by professional affiliation, with separate groups for civic and community groups, government staff, and land use professionals. JSA acted as impartial facilitator in these discussions, managing time, leading discussions to address all questions, ensuring equal opportunity of participation, and seeking clarity of inputs by reframing comments and discussions.

Participants were not prompted to come to an agreement or reach consensus. Comments were summarized onto flipcharts or onto a laptop computer. The comment summaries do not represent verbatim transcripts of the discussions. Participants were asked to clarify or correct the summarization process in the course of the meetings. Participants were also given the opportunity to submit written responses to discussion questions. JSA's role in this process was solely to design, implement and document public and stakeholder participation in the zoning code rewrite. JSA makes no policy recommendations and is impartial regarding the outcome of the small group discussion process and the zoning code rewrite.

Stakeholder comments were recorded without attribution. JSA holds in strict confidence the identity of stakeholders making specific remarks. Small group discussions with non-governmental participants were held without Planning Department staff present. This was done to eliminate the possibility that the presence of Planning Department staff could make participants feel that they need to limit or modify their views and opinions. Planning Board members were interviewed either individually or in groups of two.

Online Survey

The Planning Department designed and hosted a zoning code rewrite survey on its Web site to supplement the input from the Small Group Discussions. The survey was designed to provide an opportunity for the public to comment on issues related to the zoning code rewrite. The survey was not designed to provide statistically significant results. Survey comments are compiled in this report without attribution. Survey participants were given the option to include their contact information for further updates on the zoning code rewrite process. The survey was available online at: http://www.daicsearch.org/planning_board/surveys/zr_survey.asp

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Public and Stakeholder Outreach

The Planning Department solicited public and stakeholder participation in the small group discussions and online survey through a variety of means. The survey was publicized via a Planning Department press release, newsletter, and media coverage on WTOP radio and in the Washington Business Journal. Invitations to participate in small group discussions were sent to civic associations, community non-profits, municipal governments, County government staff and officials, institutional leaders, builders, developers, land use lawyers and consultants. People who completed the survey and provided their contact information were invited to participate in the small group discussions as the schedule permitted.

Schedule

September 2 – Planning Department
September 3 – Planning Department (2 sessions)
September 8 – Municipalities, institutions (hospitals, houses of worship, etc.)
September 9 – Executive Branch agencies
September 10 – Hearing Examiners, Board of Appeals, People’s Counsel
September 12 – Developers, builders, consultants
September 13 – Civic/community
September 15 – Private attorneys (A.M.)
September 15 – Planning Board members (P.M.)
September 15 – Civic/community (P.M.)
September 16 – Builders, developers, consultants (P.M.)
September 16 – Planning Board members (P.M.)
September 16 – Civic/community (P.M.)
September 17 – Council staff & aides

Small Group Discussion Questions

1. What works and what does not work in our current code? Of the items that are not working, what are the greatest problems? What provisions are consistently difficult to interpret?
2. What do you think are the most successful aspects of the code?
3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch?
4. What suggestions do you have to make the code more user-friendly? What do you think of the use of graphic illustrations to help define the form allowed in a particular zone?
5. Would you prefer a larger number of zones with a few allowed uses or a significantly reduced number of zones with a more flexible range of uses?
6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation?
7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and

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Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards?

8. Do you find footnotes to be helpful or confusing? Do you have any alternative suggestions?
9. Records indicate that accessory apartments are the most frequent type of special exception brought before the County, and that they are almost always approved. What do you think about allowing accessory apartments as a permitted use with standards?
10. It has been suggested that it would be beneficial if zoning text amendments could be considered as a group. In that manner, all impacts could be assessed during the review process in order to address the possibilities of inconsistencies and unintended consequences. What are your thoughts on limiting the submission of zoning text amendments to twice a year?
11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite?
12. Do you have any other suggestions or concerns that have not been mentioned?
13. Is it clear what different government entity roles are in the zoning and development process? [*This question was only asked in the three Planning Department small groups.*]
14. What are your thoughts on the current zoning districts? Are there zones that are outdated and no longer used? Are there opportunities to consolidate or eliminate?

Online Survey Questions

1. What is the single greatest concern you have with the Zoning Code?
2. In your opinion, what are other major flaws or weaknesses of the Zoning Code?
3. What are the most successful aspects of the code?
4. How do you prefer to get information about the Zoning Code?
5. Would you use online mapping (GIS) to find information about a property?
6. Does the code make it clear which decision-making body is required to make each type of decision involving development or zoning?
7. What issues or uses do you feel the code could more adequately address?
8. In some cases, the zoning code is more permissive (e.g. building heights) than the county's master plans. Do you think this: Permits Greater Flexibility or Creates Confusion?
9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

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Small Group Discussion Comment Summary

1. What works and what does not work in our current code? Of the items that are not working, what are the greatest problems? What provisions are consistently difficult to interpret?

- Lack of definitions, interchangeable words – for exam. “Retail”
- Already part of glossary.
- Need definitions added.
- CBD zones- Master Plan is unclear; needs more specificity – primarily is central zone
- Zoning codes are aged and maybe not appropriate anymore.
- Old standards inhibit progress. Legislated development takes away flexibility.
- Too many footnotes, fuzzy area.
- Lots of “fixing” of code, but then end up with inconsistencies.
- Zoning code is so integrated in other things – TDR, Master Plan. Must avoid unintended consequences when changing the code.
- Have concise codes – maybe a summary – so it is easier to understand. Reduce cross-references.
- Electric format would enable links between documents.
- TDR is different to interpret.
- TDR / MPDU calculations, housing requirements are complicated.
- ZTA is leading – tail wagging the dog.
- Master Plan – is it “guideline” or is it a firm requirement?
- Some jurisdictions substantial impairment.
- Today’s needs are different than the ordinance code.
- Leaves lots to interpretation.
- Lack of clarity – by making text more concise, you might not get clarity. Glossary would help not leave items up for interpretation.
- Park Exception has been repeatedly rewritten and now it is a mess.
- Confusion without an official definition for “floating zone”. List all zones & their types.
- Exceptions allow for relations of standards.
- Waiver provision within exceptions.
- Anomaly zones – town sector zones – only used 2 places.
- Density bonus needs to be interpreted more clearly.
- Example- Waivers- special exception – would be great if it said x shade trees on site plan, therefore you meet exception.
- Room for rewrite-“conservation subdivision” to maintain appearance of a subdivision.
- Maybe comparison of conservation subdivision to TDR program
- Current zoning was created via spot-patches. Too many references to other parts of document. Never can be sure if you have the right zoning answer
- Everything is rewritten and tweaked too much so it’s no longer understandable
- Zoning amendments don’t get applied universally. Usually we create a specialized zone.

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- Zoning designed 1950's, 1960's, but not geared to handle current scenarios
- Zones designed to meet particular developers
- Difference between what people think is in code and what is actually in there. Constant amendments contribute to this
- Look to other jurisdictions for best practices, i.e. form-based
- No provision for amendments complying with plan developments. Amendments should be required to comply with original intent of that planned development
- Hospitals, schools and park facilities having to go through special exceptions. They should be considered a "use".
- Some special exceptions should not be special exceptions
- Maps do not show Zoning within roads. It becomes difficult to create center lines. Clearly articulate road beds
- Less square feet in industrial area than some residential areas. Density is something to monitor in new code
- Revision process is antiquated. It lacks a technology base
- New user difficulty in understanding
- Repetition of sections may not be needed
- Utilize appendix/back up doc for details
- Difficulty interpreting zoning updates. Electronic ones are different as well. Multiple versions exist.
- Should be automatic time-based updates. Currently there is a 3-month lag time
- Land use tables are redundant and sometimes conflict one another. Have more general categories
- Footnotes complicate zoning process with exceptions
- Current code is result of past 30 years. Patches/changes have multiple effects on other parts of the code. You never can be sure of final interpretation
- Language must be very clear in new code
- User-friendly look-up table with reference (index) to sections/page number of code
- Previous chart used to work well (quick reference table). Chart would be larger with more zones today
- Challenge to get enough green area/water maintenance. No current requirements relate to green space specifically
- Definition section for code would be useful in understanding code (ex: single family home).
- Italicize defined words in document.
- Electronic form should be linked.
- Lack of specific zones for healthcare sector
- Commercial revitalization zone does not effectively address urban development issues
- Zoning code often confusing
- New plans need new zoning codes to achieve goals of Master Plans – X Purposes.
- Often the master plan has been effective despite the challenges/complexity of the code.

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- Zones have been created so that the built environment does not reflect the master plans.
- To modify the zoning approach, i.e. “sport zoning”, there will have to be a very clear grandfather clause.
- Zones today reflect uses rather than impacts, form, appearance. Ex: Hardware store impact vs. use.
- There is no effective way to deal with impacts on federal land – feds use tramps; local planning
- Lack of capacity to control impacts outside the master plan/zoning code
- Current zoning is suburban in approach, but some areas are urban.
- The breadth of the issues in the region are difficult to address with one code.
- CBD – local and more flexible.
- Transit – floating zone requirement of legislative approval. Review consistency/conflicts in situations where there are multiple zoning approaches
- Alternate zoning approach can create “uniqueness”.
- The process for zoning impedes creative development, i.e. time, cost, knowledge
- Does not address mansionization and in-fill
- Impervious vs. pervious surfaces not addressed.
- My biggest quibble is that it is not readable, or accessible to the average person.
- We have certain philosophy of where we want to go. Our codes encourage development instead of what we want. For example, there is more regulatory burden for smart growth than for by right development. For example, in the central business district zones there should be a level playing field of regulatory burden, particularly if we want to encourage density. If you want to get into the specifics of CBD zones, 20% open space set-asides create lots of pocket parks. Building setbacks change the building line. If you want first floor retail, setbacks hurt visibility for that. It seems that the zoning code requirements don’t give us what we want.
- One issue is to look at how the zoning code addresses the renovation and expansion of existing properties. It doesn’t currently do that well.
- The zoning code doesn’t talk about public utilities. The code handles utilities differently in CBDs than in new developments. In new developments they want the facilities closer to the street, but we want them to have their own easement. In CBDs we allow utilities in the public right of way.
- Zoning flies in the face of sound fire protection. Setbacks make it hard to reach buildings. Height and density can make access difficult. Construction methodology can also make for a high risk of conflagration when you have a close concentration of buildings.
- The zoning code doesn’t incentivize affordable housing. Zoning text amendments have made changes, but it is a band aid. The zoning code isn’t effective at recognizing the need for affordable housing, and in some cases conflicts with master plans.

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- I think the code is too complicated for the average person. It is difficult enough for us who use it every single day. For finding out what is allowed and not allowed, it needs to be simplified. As we see problems or issues we make changes without looking at the zoning code in its entirety.
- The MPDU density bonus provisions are very confusing. Even Park and Planning doesn't understand them. The problem is interpretation.
- Difficult to interpret and ordinances contradict each other.
- Questions that come to us are in 3-5 different places in ordinance. Definitions are often key because definitions determine whether a particular building/lot fall under particular zone.
- Often have to read all 5 sections to try to pull them all together for one particular questions. Takes a lot of time and after you've finished, you aren't sure you've gotten everything.
- The standards we are supposed to apply are pretty clear. Sometimes they are odd because of their shape (often public land easement, etc.). Mostly what is a lot? What is a lot line?
- Special exception area is more complicated. It's a misnomer. Puts expectation gloss on something the courts won't support. Special exceptions should actually be called a conditional use.
- Proliferation of zones. We are not in charge of deciding how a property should be zoned.
- Curious how we regulate development in agriculture zone—by sewer category. Council unwilling/unable to give direction in this, so it goes to sewer category.
- Greatest problem is lack of enforcement. Should be brought up with DPS. Staffing issue regarding inspection. No one is there to advocate for rule changes.
- Needs to be a mechanism to understand overlay zones over other zones. Overlay zones should be folded into some other zoning structure.
- Sometimes the party's stakes are high on outcome of report. When it comes to us it's a recommendation of hearing examiner. No draft report is circulated among parties. When report is issued, it's the first time the parties have seen it. When it comes to us, they often want to make corrections/edits to the report. They will move for oral argument or to reopen the record, but our rules don't allow for that. I would find it helpful if the board were in position to have that report with written comments/objections from the parties instead of being under pressure to grant more of our precious time for oral argument. I want to the parties to have an opportunity to comment.
- Have us make a decision, then if they have objection, they should go to board of appeals. This would reduce the layers.
- People use request for oral argument as opportunity to submit the whole argument.
- Difficult to get rid of oral argument—we will probably end up with both written submissions and oral arguments. Then you'd have to offer it to everyone, which would get us a lot of submissions.

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- Extent of powers of board of appeals regarding setting of activities off site. Example: comment that board might not have authority to set condition to require screening offsite even if neighbors wanted screening offsite. Example: apt case whether or not BOA could limit parking of vans on side of public streets. Bitter testimony by neighbors of what is going on in front of their house.
- When granting special exceptions, must look at impact and ability to be enforced. Sometime it's unenforceable.
- Established building line is problematic for variances. Setback requirements for neighboring properties—often side-by-side they are not conforming.
- Make variance standards not so tight/narrow.
- Criteria for variances are easy to apply, but because of disjunctive nature of test you don't progress through nature of property.
- Because of text amendments the code is no longer unified.
- The current zoning ordinance is riddled with inconsistent provisions and incomplete or missing definitions. The provisions that fail to set out clear criteria are the greatest sources of headaches. The problem is not so much that individual provisions are difficult to interpret as that it is sometimes impossible to harmonize different provisions that are supposed to work together.
- TDR and MPDU requirements are difficult to interpret - support by requirements outside of zoning code.
- Non-green field requirements are different to understand without reading entire code.
- Older Euclidian zones not set up for infill. Always conflicts with Master Plan and zoning requirements. Conflict issue – it does not work when you do understand it.
- Code needs to be flexible to accommodate community ideas.
- Current zones of our date – do not allow for implementation of Master Plan.
- ZTAs add complexity. It happens because zoning does not accommodate Master Plan. Also, at odds with policy/politics.
- Uses are arbitrary – not consistent with leasing market.
- Use-based code should be open to question.
- Focus attention in zones you can actually change political barriers. Focus on areas at long transit corridors. This is probably only 20% of the county. For the Ag Reserve and established residential, these are, in reality, off the table.
- Residential zones house industrial uses – so if they move, they have to have someplace to go.
- Take major transportation corridor and put more businesses there – say, “This is where we expect change and we will not let deteriorate.”
- We never step back and look at this is not a suburban county any longer.
- If start from scratch, is there a new Master Plan with it?
- Hard to find provisions of code.
- Understanding ZTA- how they overlap, what they mean.
- Like Euclidean zoning- provides stability with zoning –able to predict outcomes.

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- Policy area review is too subjective- reduces quality of life of residents. Form-based zone adds additional subjectivity and reduces predictability. Buyers, users of code should be able to know what they're getting into.
- Zoning codes are old fashioned. Need smart growth & form-based for mixed uses. Euclidean zones hamper this because they were designed to have one type of use in one place.
- Lack of consistency. ZTAs always being thrown in for specific developers. Zoning should be used for predictability of neighborhoods-ZTAs inhibit that.
- With ZTAs, must look in multiple places to see full effect of that one ZTA.
- Opposed to ZTA – brought in for 1 developer – written very narrowly. Some ZTAs force businesses out of places they have been for years.
- So many ZTAs cause confusion, though changes are needed because times change.
- Prince Georges County revised code then immediately passed ZTAs – not efficient. Should make code easier to read where ZTAs are not needed. Need flexibility but not too broad.
- ZTA process should be more transparent.
- Smart growth is where we want to head. Satellite cities are in original code. Smart growth is putting growth where infrastructure can support it. ZTAs are designed to correct errors, but create conflicts of code and confusion for vendors.
- Should include grandfathering in policies to help people who are already there.
- Should be consistent with Master Plan.
- Inherent/non-inherent provisions
- MPDU calculations / TDR Difficult to interpret
- Intentional misinterpretation of the code is difficult to remedy. Ex: planning staff don't acknowledge precedence
- Lack of prediction of the interpretation of the code: be poorly written but often reflects person interpretation of code
- Unclear ID of zoning admin. For consistent interpretation (ex: use)
- Inconsistent different between sections of ordinance e.g.: building height
- Number of footnotes and applied in inconsistent ways
- Final decision making authority of the steps along the process can be unclear
- Variances s/b reevaluated-criteria rules impede process (s/b addressed via zoning ordinance; too many special exceptions; down numbers and made process simpler
- May be that we don't need variances/perhaps special exceptions
- Multiple process that overlap but achieve same outcome/Duplication of Process Historic
- Preservation, subdivision, special exception=one approval doesn't translate
- Eliminate/simplify or make elective project plan
- Amount of process often out of proportion with the decision to be made
- Footnotes reflect the multiple layers of "special interest" legislation or other changes over time that have remained part of the code
- Subjects scattered throughout code.
- Some references conflicting

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- No cross-referencing
- Not user-friendly
- We do not have a zone code. Every time it becomes an inconvenience they write a ZTA. Imagine an encyclopedia written in 1900, will all the rest of the footnotes.
- There are concepts inconsistently applied. Ex: Neighborhood (for accessory apartments interpretation, etc.) In defense of online version, you can do searches.
- Too many zones
- We could not figure out how they were structurally setup
- Zones embedded within zones
- I would have a problem without an attorney.
- They are not new zones all the time – addition to the ZTA problem
- I am concerned that a new direction will be so flexible, that it will be about nothing.
- It has some vigor, I do not want baby out with bath water.
- No way for neighborhood to initiate review, or planning – be a neighborhood process.
- Multiple agency interpretations may not be inclusive, consistent, and sensitive in executive office get weight of code itself.
- What is its goal? The rewrite should establish the code's purpose and organize it accordingly. Decision-making is Board and Council personality driven.
- Link to court cases. Include a wiki to relevant discussions and resources.
- Link and term definitions.
- It allows a text search.
- Make sure definitions are tied to appropriate sections.
- Tables work, but still do not define the zones.
- Allow proactive community input.
- Enforcement is strictly discretionary
- It is not enforced unless the political will is there.
- You should be able to enjoin the county to enforce the code.
- If there are complaints, there are no requirements to enforce.
- This is a function of staffing, funding and high-level commitment.
- Overlay zones are different to interpret
- There are terms that are not well-defined, ex: neighborhood; green space
- Varying standards between sections of code, ex: setbacks, FAR, height. What is intent vs. application?
- There should be a flow chart. Is the priority land-use management? If so, the code should logically flow with decision-logic tables – to find an objective resolution.
- Antiquated, written in 50's car-oriented focus. Now own introduction is stressed. It treats a walkable downtown as an exception to a car-oriented environment. We should look at a mix in uses for lot size and weight. More focus on walkable street grids.
- Not all the code was written in the 50's. There are some recent mixed-use zones. We now have many variations – better to have one zone with different densities and uses.

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- Development – requested amendments have complicated the code with many amendments.
- Keep some aspects of successful Euclidean zones. They keep industry land prices in check.
- Getting to full build-out, no infill zoning. If you want to encourage tear down for energy-efficiency, have a clear-cut Euclidean geometry with clear ideas of what you can do for replacement.
- County was built for cars. Very little walk able shopping. We have a code that does not permit small stores.
- Zone is not set up for infill. Should address things in a company way. Not constant ZTAs.
- Look more systematically at zones for mixed use and infill. Example: Olney Town Center. Writing the TMX zone has showed things that need to be updated in CBD zone. Give CBD and transit station zones top priority. Next, commercial zones and appropriate mix of uses (Aspen Hill). Next, parking.
- I observe that in Wheaton, there are buildings being built with blocks all paved. County has put in a request that commercial buildings be green. Park and Planning acts inconsistently. We have so many exceptions that we have no real zoning.
- I have been on the Permitting Services Board. Inter-agency conflicts are a major preoccupation, time-consuming and costly process, with little coordination. Biggest problem- no coordination.
- Zoning code is now worse than the tax code.
- You cannot search the code outline.
- Challenge of urbanizing with car-oriented zones.
- How to look at private lands impact on public realms.
- Perhaps a form-based approach, looking at public impact.
- Zoning code rewrite should not be conducted by private companies. Government staff should be running these meetings.
- Doesn't coordinate with DPS's codes/definitions/rules. Items defined in 2 places with 2 conflicting definitions. There should be interagency coordination regarding things such as accessory structures, and rear/front yards.
- Master plans create zones as they go along. They should use a more universal system for zones
- Lack of predictability of zone use, meaning, application w/constant new zone development
- Lack of certainty: proliferation of zones, policies creating new interpretations, sometimes during the process at the Board's discretion/policy directives
- Staff interpretations are inconsistent/unpredictable
- Planning commission doesn't involve the rest of the County / zoning of master plans
- Flexibility extended to Park and Planning should be extended to developers, property owner, etc. Bulk and height regulations are too rigid.
- Zones should be more compatible in use, zoning, greater clarity
- MPDUs are confusing to apply. Calculations of MPDUs can conflict with the Master Plan.
- In general much of the code is left to personal interpretation and is unclear.

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- Change in staff, institutional memory etc. creates holes and variance in decision making
- Expensive and time consuming process for answers
- Too long, detailed, and too many uses. Very hard to follow because of the length.
- It's as close to special aid legislation as you can get; which makes it very long. It's good that it's not overly broad, but it's erred on the side of too much detail. Cross-sections make it complicated to find an answer to individual questions.
- Too much fine detail, too deep of a level of prescription. It was meant to protect people, but because you can't find it, it is not serving that purpose.
- Some of the code can be interpreted multiple ways; so you end up in a fight over the correct interpretation.
- The open to interpretation issue is due to political compromises and sometimes people can't agree on any precise wording.
- Because of its size, it's inaccessible. Would be good to have an index.
- Needs a great e-version, searchable words, definitions, highlights, cross-references. Also include "Where do I start" page.
- Laws are innately complex, so if the zoning is made user-friendly it will not be functional. It needs to be a highly complex technical document.
- Meaning is often unclear, typically you need to have a lawyer help you understand it. Park and Planning should have more accessible information about zoning.
- In current electronic version, search-ability is not useful. For one word you'll get 1000 hits.
- The layout does not seem logical; the tables do not match the text.
- Old versions used to have tabs/dividers that were useful, but now they've taken them out.
- Summary tables were useful if you didn't want to read the entire text.
- Some zones (low density residential) work better than others (industrial).
- The layering of changes creates loopholes and ambiguities.
- The difficulty of interpretation is really due to ambiguities and loopholes.
- The current codes don't reflect the goals that we are trying to achieve, e.g. sustainability.
- It is an antiquated code from a past era. You have to go back and forth in the code to find answers and often you cannot find the answers.
- It is difficult to interpret what you can in fact do with regards to land use in general.
- The code isn't facilitating what we're trying to do. Where Montgomery is today was not projected for. Rockville Pike is an example of the patchwork approach. We don't have an appropriate code to look at the areas in total.
- It is over-particularized, poorly drafted and anachronistic. It will give you specific definitions of what you can do here and there, but that's the problem.
- Special exceptions for intensive horticultural uses should be looked at. These uses have heavy impacts.
- The Commission on People with Disabilities wants to address things that divide and exclude people.
 - Look at the need to age in place
 - Front steps preclude access

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- Visitability as a minimum standard (no-step entrances at a minimum)
- Universal design is the ultimate
- Pavers and brick sidewalks are a threat to people with disabilities. They should be banned in the path of travel.
- We've not made a place to accommodate people with disabilities.
- Look at substance, form and process. The code is riddled with single use provisions, even in CBDs. Reorganize the code so that it is user-friendly, so that you could use it and participate without a lawyer.
- All communities have faced these open-space requirements
- The difficulty of interpretation is a general problem due to the lack of consistency throughout the code. The things that work are the simplest zones that are in the code: standard Euclidean zones. Floating zones don't work very well anymore. Partly because the rezoning process has become very attenuated. The hearing examiner process parses every syllable.

When the hearing examiner and Council impose binding conditions on rezoning which may be imposed on the applicant, who may not have any real intention of developing in the near future. By the time the plan comes to the Board, the binding conditions on the plan are no longer desirable. Ex: Rockville Pike required low height regulations along the Pike with greater heights outside. Now with the new master plan the need has arisen to have higher height requirements along the Pike. The developer is frustrated because the original binding conditions restrain the development since the process has taken so long. Market and tastes change, approvals don't happen.

This is a function of historical and cultural change that has occurred in the county that wants to see the final product at the earliest possible moment. Members of the County Council, the hearing examiner, etc. want to know as much as possible as early as possible.

To remedy this, get rid of floating zones. They encourage placement of binding conditions. They add cost and greater challenges than the simplified zones as in Euclidean zones. Optional method zones (Euclidean zones with internal floating zones) have made the need for floating zones virtually obsolete. There are some cases for floating zones -- where redevelopment of a C1 or C2 property is difficult to pursue, for example.

- The enabling law and our own local law harkens back to the 1920s zoning code under Hoover. A lot of the current challenges emanated from that approach because it segregated use options, e.g. the pig in the parlor notion. But now that we're so far down the line, that approach isn't really applicable since much of the work doesn't happen on "raw" land. It's a lot of redevelopment. The days of being able to do what you want, as a matter of right, within a defined land space is really a description of a by-gone era.

What we need to do is site plans in Euclidean zones. It would be nice to have real clarity about what is allowed or to be given the formal ability to do it. This would provide the tools to do infill development.

- Maryland probably has one of the strongest pro-public land use regimes of any state.
- Using the number of text amendments to measure the quality of the code, it seems clear that the zoning code is ineffective. It reveals the conflict between what is wanted for land development, but is not permitted by the stringency of the current code.

Montgomery County Zoning Code Rewrite Small Group Discussion and Online Survey Report

1. What works and what does not work in our current code? Of the items that are not working, what are the greatest problems? What provisions are consistently difficult to interpret? *[Continued]*

- Sometimes the unintended consequence of the text amendments can have very dramatic results. There was a proposed text amendment that addressed split zones that would have affected 800 properties.
- The zoning code is not working in residential area with regard to in-fill and tear-down. This is a serious problem. We've had an active committee to deal with this through ZTAs.
- The zoning ordinance is so large and complex that now we are going from quick fix to quick fix. This means the overall code is ineffective.
- The 70s zoning ordinance required fewer text amendments and there were only 40-50 zones.
- Some zones don't work well because they have never been applied.
- Transit station area zones of the 70s that were floating zones are being addressed with new text amendments.
- We have a large number of planned development zones. They don't work because they are floating zones and can only be used when recommended by master plans.
- One zone should have clear linkages between the master plan and the zone.
- While we have established by law the linkage between zoning and planning, we don't have the demand that site plans and master plans are linked where subdivisions are.

2. What do you think are the most successful aspects of the code?

- Need zoning ordinance that deals with every type of zoning need.
- Our zoning is – 100 years old, so we need to look at what is missing, etc.
- Have minimum or maximum for each zone.
- Update zoning code for consistency with Master Plan.
- Table format is much better for developers now than the cumulative was.
- There has been an attempt to label zones (R=residential, X=mixed) so that it's logically linked
- Zones fit large classes; ex: regarding agricultural and rural zones
- Large subdivisions are well-served
- Not a lot of development in agricultural area because of zoning protection
- Transit oriented development is well-served. TOD/CBD zones have done well. Recently we've seen pressure to develop those.
- "Sustainable code"- sustainability built into the zoning code
- Clustering uses so you can maintain large amounts of residential, green space, etc. Floating zones could be clustered
- Some extensive good language in special exception section. 'Inherent' language is poorly written
- Overlay zones address specific issues e.g. environmental parameters
- High level of success in built environment looking like Master Plan.
- Work well in residential area is more stable.
- Cluster development on transit routes.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

2. What do you think are the most successful aspects of the code? [Continued]

- Ease of establishing home based businesses.
- It is detailed.
- It keeps the attorneys busy.
- It slows down development.
- The basic organization (single family, multifamily, commercial, etc.) of the text does help on a basic level.
- To the extent that there are MPDU standards in single family zones, I think that is a good thing for affordable housing.
- It provides clear directions for single family homes.
- The residential section gives you clear guidelines.
- It has lasted a while and been open for adaptation when it didn't work. We've done well in following the comprehensive plan, but you can only go so long doing the band aid approach. Post-Clarksburg everyone is afraid to use the old methods to be versatile.
- The fact that housing is permitted in most zones.
- Hearing examiner/ hearing process for the past 4 years. Would never have been board member without the hearing examiner. W/o that person, we would have had days and days of unlimited hearings.
- Floating zones and the general special exception provisions actually work quite well. The variance provisions are clear and provide clearly articulated criteria.
- Has desire for businesses/people to locate here.
- Has shaped county in good way
- Most residents love to live here – good planning and zoning thus far.
- Can get it online.
- Has evolved over time for reason.
- Acknowledgment of its complexity not on endorsement of its utility.
- Kentlands are a positive
- Served its purpose until it got too complex. Even lawyers disagree on interpretation.
- Euclidean zoning works, but growth policy is radically changing communities. Must be citizen participation.
- Zoning for agriculture fundamentals area is good – keeps development out.
- Plain language ordinance was good effort though it was not maintained.
- Weakness in transit system/infrastructure
- Need to do more to cut down green house emissions.
- Table of Contents
- Structure and organization are logical
- Tables, e.g. table of land use
- Reference excerpt from historical ordinance when applicable
- General organization of the code
- The code does allow TDRs and often worthwhile policy goals.
- It gives you expectations, particularly in residential areas.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

2. What do you think are the most successful aspects of the code? [Continued]

- Town sector zone (from 1965). Montgomery Village and Churchill use them. The open spaces are publicly used. It is walkable and beautiful after 40 years. This is a zone that works. In 2015, someone can buy the land to rezone it. We would like to return it to perpetuity.
- Code has dealt with a diverse county (urban, suburb, rural).
- Most successful components understandable by all.
- The new TMX zone has a lot of successful elements.
- Success = ease of understanding. What can I build? R90 is clear.
- To make housing affordable, keep it simple. Relative to NYC boroughs, Montgomery County is not urban (relative to walk able, transit).
- Use NYC code in our example.
- We do not want the mixed use (example: Houston).
- Infill is one thing. You cannot change R90 to do mixed use. People have an expectation.
- MPDUs
- Residential zones such as R90 R60
- Option to submit a development plan with Master Plan used to be a good approach
- Charts work RE-2, RE-1
- Footnotes are kept to a minimum
- Standard zones are simple and straight forward. They establish a predictable/base land value
- Agricultural zones achieve the objective, preserve agricultural land. By contrast, industrial zones are not working properly.
- The code does what it's supposed to do.
- It does need flexibility.
- It's the most easily changed piece of land use documentation.
- What has been successful is the creation of a difficult environment to develop in this county. It's the culmination of a suburban zoning code. We need to urbanize and start over. From developer and/or community perspectives it doesn't deliver what the expectations are.
- The most successful elements are the CBD zones because they allow the most flexibility in their interpretation. Also successful are the R30, R60, R200 zones. This contrasts with difficult to interpret provisions for special exceptions.
- You put in all of the stuff that should have been addressed correctly by the zoning too late. Height, setbacks, and mass should be addressed at the project plan, but are addressed after the site plan. A binding elements debate ensues.
- Residential zones work pretty effectively. Zones are clear and very conventional. No big thrust to change
- Floating townhouse zones work reasonably well, but are somewhat rigid. They serve two principle purposes, as buffers between commercial and residential and/or residential and transportation corridors.
- Successful aspects include CBD zones, initial success of TDR, and Euclidean residential zones. The number of residential zones is probably excessive.
- The ag reserve is a national model, yet we still face McMansionization pressures. Fragmentation of farmland through residential subdivision has gotten worse.

Montgomery County Zoning Code Rewrite Small Group Discussion and Online Survey Report

3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch?

- Rewrite from scratch.
- Tweaking it will leave us with same code.
- Need to rewrite every 20 years.
- There is a reason for having the language as is
 - Throwing out whole thing is not time efficient.
 - Will require lots of staff interpretation of grandfather clauses (not good for hospitals).
- Grandfathering is not always appropriate. Example- parking.
- We need to look at success of other jurisdictions of rewriting code from scratch.
 - “Scratch” = looking at sections/formats using old codes as reference.
- County by county might be a better process than addressing entire jurisdiction at once.
- From scratch for the academic exercise and then compare that with what we have.
- Use what we have but substantially revise text
 - Use basic zones and names from old text
- Rewrite with linkages to past codes
 - Just don't create new gaps
 - Keep institutional goals and wisdom
 - Monitor amount of grandfathering
- Either significant revision or complete rewrite
 - Need to bring it current and responsive to the public's needs
- Hard to start from scratch
- Zoning tied to master plans
- Would require massive PR campaign
- Not starting from scratch would end up in patching
- With adequate budget we could start from scratch. The code has lived its natural life
- Could link existing zones to new zones. We already reference older codes from 1950's
- Heartburn in responding to the public
- Accelerated track leaves important stakeholders behind
- Should be longer/inclusive process
- There should be a new document running parallel to existing code, functioning as a Beta version. This would link the 2 docs
- Begin from scratch. That's the only way that you are going to codify what you want and make sure that everything you want is in there. Just modifying and revising it is similar to what we are doing now. It has good info, but should be simplified and re-written. Some land tables have 50 footnotes – many with very limited relevance. It would add clarity and be easily understood by the people who use and enforce it.
- I agree with that. There is a lot of stuff you could transfer, but there is a lot of repetition, like the council looking at the TMX zone. The only difference between TMX and the CBD zone is the building lot termination program. Why are you doing all this just to add another program?

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch? [Continued]

- We do have too many zones. I was part of the zoning code rewrite in the late 90's. What they attempted was a rewrite from scratch. They took sections, starting with special exceptions, and started to rewrite them from scratch. It was a disaster. It might have been worse. It made sense to do it that way. Don't let politicians get involved, but you don't have a choice. It is just the nature of the process.
- I think that this Council is sincere about plain English and simplifying the code and making it more understandable.
- Throw it out, start over. It's been amended 5000 times, full of inconsistencies.
- Tougher to amend it than rewrite it.
- Not in position to answer question yet; chicken / egg question.
- Giving up the devil we know for the devil we don't know. We can all speculate a new code would be better to understand, but it might not be. If it were a rewrite, I would want a model with a track record to copy and make sure the communities are similar to ours.
- Finding models is a great way to start. Other communities have done recent rewrites.
- 32 years ago Rockville rewrote code. It's a little premature for a complete rewrite.
- Should include in ordinance when rewrite took place. Dates of amendments should be included automatically in this.
- We're not ready to answer that question yet. First we need to know what goals the zoning ordinance is being designed to achieve. That has not yet been articulated. Are there areas of the County where change is being targeted? If so, what sort of change and in what form? Are we actually going to implement a consistent approach to the Ag Reserve or continue to allow zoning by sewer category? How are land use and transportation planning being coordinated? How do we handle incentives for affordable housing? Etc., etc. These policy-level discussions must occur before we can undertake an overhaul of the zoning ordinance. We're just pushing on a string otherwise.
- Some zones are unchangeable because of political realities, ex: Chevy Chase.
- Rockville rewriting from scratch and is taking lots of time.
- 80% of land area you cannot touch politically.
- When ordinance was conceived, issues and vision were different than today.
- Mixing zones could be a hot button R60/R90.
- If you do not touch the current codes, the form of communities will change in negative way – people/residents will not be satisfied.
- I believe we need to provide a Form-Based code as a supplement with any of the options mentioned above.
- Rewrite from scratch. Start top level organization. All the revisions have created lots of confusion.
- Some standards need repair and less ambiguity, but do not need to rewrite everything. Do not want to lose character of communities.
- Rewrite from scratch will not lose everything, but will just correct confusions.
- Skeptical of starting from scratch. Use what is there and make it simple.
- Can rearrange what does not work, but do not neglect value of basic fundamentals of current code.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch? [Continued]

- Land use attorneys get lots of business for rewriting. Would not really benefit residents.
- Against re-write/simplify or revise current code
- Rewrite could cause significant unintended outcomes/update and modernize code: uses, standards/take out some of the old process
- If form based code, then totally different discussion
- CBD Tweak/TSR start over, mixed use site plan/complete revise special exception
- Revise and clarify “non-conforming use”
- Total re-write is creating unintended consequences in similar projects
- Grandfathering of uses-how to make a use that was conforming before still conforming.
- Revise. You must analyze and understand. To start from scratch will take a long time without clear guidance for developers.
- State goal of code, then do your analysis.
- I am afraid of a rewrite. We would rather (as a civic association) fight a few battles, rather than take on the whole rewrite. We have limited resources.
- They should look at the Clarion report.
- A rewrite is interesting and scary.
- We have R90s and C1s. Does everything get redeveloped? There is a real implementation problem.
- Old shopping centers could be reduced, but many have legal/ownership obstacles to redevelopment. The concept that everything will be a TMX is not real. Rather, clean up the older zones (C1,C2) and improve permeability, parking ratios, and require site plans. Strengthen old codes without the necessity of a prime owner getting agreement from lessees on a financial package.
- Zones from scratch may give you a code that is contemporo-centric. Tradition may have staying power. Current trends may have a short shelf-life.
- With a rewrite we would have so many grandfathering issues that there would not be much change.
- TMX gives power to Planning Board. I would rather see power to neighborhoods and residents.
- Form-based scares me because of the concept “as long as it looks like this, we do not care what happens inside.” We should have a focus on use.
- Challenge of a rewrite is that you would get bogged down in detail. It is recipe for mischief.
- How could you divide it so it is more organized? Revise to keep organization.
- Balance flexibility for new issues without creating new loopholes.
- How do you take the complex package and create a diagram for the whole thing? Where do you start? Most contentious issues? You cannot look at them in isolation.
- Political reality will drive the revision/rewrite choice
- Who looks out for the today/tomorrow 2-3 year timeline?
- I do not see how you could rewrite from scratch.
- If you had a broader framework it might be easier to restructure.
- Mistake to let developers control zoning rewrite.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch? [Continued]

- You need to identify a bigger picture to guide revision. Start with framework.
- Remember that developers are profit-seeking. We need to look at current market demand. What does the market want? The practical challenge of from scratch (although ideal) is too much.
- It will be a mixture. Strip out exceptions. Maybe form-based appropriate to some small areas (likely Metro). Other than that, streamline Euclidean zone approach.
- I dislike codes. I think they are bad when you have granted so many exceptions that the code has no consistency. People are treated unfairly and irrationally. I do think there is a function for codes – do no harm.
- Model of 10 Commandments – “You shall” or “You shall not”, then flesh it out. Articulate principles first.
- Once you have a code, you cannot rewrite from scratch. If you get rid of FAR, you have no logic to build, and might develop weird-looking buildings that do not work. Do not get away from Euclidean.
- Some revisions are necessary but total rewrite could lead to unexpected outcomes
- No re-write. Simplify or clarify.
- Revision is easier to track what has changed
- Revise. Enhance what exists and coordinate with other agencies
- Economic cost involved in re-write would be too great (for parties throughout the County)
- Revision protects some level of predictability
- Rollin, is this a down zoning process?
- Revise and modify—there are parts that need to be updated. Beginning from scratch is too scary. What we have is a known quantity so if we get a whole new document we won’t know what the determining factors would be or what you would build from.
- If you’re willing to change substance, start from scratch instead of amending it. Come up with a different code.
- We need to freshly look at everything we’re doing and how we’re doing it. Maybe we could keep particular sections if it’s working well, but we need to re-write the ones that are not working.
- A lot of uses are undefinable. We should collapse the land use tables.
- Simplification will result in lists/tables that are collapsed and the code will be more permissive.
- Starting over sounds really exciting; for a zoning consumer, it would be more of a level playing field.
- Substantive change is different than form change.
- The code is like the Ten Commandments or Torah—if you thrown them out, will it not fundamentally change everything?
- Rewriting the code would help us figure out the ‘ten commandments’ of the zoning code. Make sure we don’t throw out the important ones.
- Want the code to be oriented around environmental and health concerns. The communities should be walkable, etc.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

3. Generally, are you in favor of continuing with the code we have in place, revising and modifying what we have, or beginning a rewrite from scratch? [Continued]

- If you simplify code so you can't distinguish a bakery from a pharmacy, how do you maintain character of communities?
- Would have to be grandfathering to old code for people who are already doing uses in current code.
- Rewrite. Year after year, ZTA after ZTA, wrapping new words around failing words isn't working. Where does the county need to be? Look at all of the relevant issues and figure out what we need to craft and create that. It's a piecemeal attempt at zoning. Sustainability is a much more comprehensive environment and for that reason alone we need to start over. The challenge to this is that the citizenry views the current zoning as a tool that protects their interests and gives the government a standard. Government will fear that doing this will threaten the outcomes and be "too easy."
- Best of all worlds: total re-write, but it is not practical. "This is Montgomery County". I advocate for a clean up of minor CBD zone problems so that they permit mixed-use more effectively.
- Modify floating zones so that they are more flexible: planned development zones, floating townhouses zone clarification.
- Aim for greater efficiency of current system.
- Realistically, we can't dump everything. The structure is pretty good. But, we do need a very thorough revision.
- Revisit the relationship between master plans and zones.
- Probably need to add a step to planning and zoning to include: master plan, sector plan for general recommendations (sparse and directive), then a set of design guidelines that set out the steps to achieve the master plan, then the zones that establish the individual uses. The purpose is to avoid the particularity of master plans which often become out of date and to avoid the rigidity of the zoning process that is not flexible to changes, timelines, etc.
- Remember that developers are profit-seeking. We need to look at current market demand. What does the market want? The practical challenge of rewriting from scratch (although ideal) is too much. Embrace urbanism, and look at setbacks too.
- Revise/modify.
- Rewrite from scratch. Clean slate would be ideal, but challenging and unrealistic.
- Revise/modify. The public attachment to current/established codes would make a rewrite politically impractical
- Revise/modify. Grandfathering would be a huge issue for a rewrite
- Revise/modify and add new codes that are reflective of current development/planning approaches.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

4. What suggestions do you have to make the code more user-friendly? What do you think of the use of graphic illustrations to help define the form allowed in a particular zone?

- Put graphics into zoning text or have attachment.
- Are graphics useful? - Sometimes raises status quos about graphics we do have.
- FL jurisdiction uses text and graphics – only text has regulatory weight.
 - Pictures show what community is supposed to look like.
- Capture key elements of how designs are supposed to look.
- Good to have graphics to help interpret text but make it clear that text has regulatory meaning.
- In some cases, yes
- Form-based codes-to define how far from street, height of building
- Yes, use illustrations-show what we are trying to convey with pictures and not just text
- Maybe give it regulatory weight and certainly illustrative
- As long as text is with the pictures, it could be regulatory weighted
- Avoid perception of undue zoning attorney influence on the process
- Illustrations as regulatory could be problematic as each property differs environmentally. “Rural by Design” book
- Lack of illustrative references contributes to ambiguity and unclear form/outcome
- Clarify intent via illustrations
- Use pictures with employment zones
- Pictures complicate process if they are misleading to the public
- Graphics can be embedded in text and reduce text (measurement, etc.)
- Pictures work well if you establish upfront what standards are for various scenarios. Otherwise you mislead readers.
- Some uses would be definition of form and some are illustrative as general theme
- Pictures to clarify zoning
- Illustrative vs. predictive
- Problems with predictive quality of pictures
- Pictures for specific standards, required. Example – where to measure height, side lot, etc.
- Pictures for particular users – general public.
- Where there is ambiguity in words, pictures may be useful (Example: mathematical, basic explanations).
- S/B designed to be general.
- Sometimes pictures (in Master Plans) get in the way of good design.
- Kentlands – good example.
- Clarion Report
- Index
- Use plain English. It has to be understandable by the general public. I think graphic illustrations are great. We have them for the sign regulations. I don’t know how many people use them. We used them to revise the sign sections.
- The numbering system drives me nuts. 2.2.2 is after 2.13.2. It doesn’t make sense.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

4. What suggestions do you have to make the code more user-friendly? What do you think of the use of graphic illustrations to help define the form allowed in a particular zone? [Continued]

- A picture is worth of a thousand words. Use graphics for clarification. With the road code, we required an operational base every 300 feet. We were able to clarify what the language meant, particularly in measurement, ex: where are you measuring from or to.
- It removes some of the ambiguity in understanding the regulations. This was an issue in Clarksburg. Some of that could have been avoided in Clarksburg.
- The zoning office has put illustrations on line on how to measure height.
- The illustrations in the sign regulations have worked well for interpretation.
- There have been interpretation problems with master plans. How binding is the pretty picture?
- Streetscape or architecture will depend on the style of the time, cost of materials, etc. The pictures in a master plan may not be relevant at another time.
- I don't think you should use graphics for illustrative purposes at all for things like design guidelines, etc. Measuring height is different. Illustrations can be helpful when used for definitive purposes.
- Not every project goes to site plans, so the illustrations are helpful if they aren't going to site plan.
- But site plan doesn't address height.
- If there is something that applies to a lot of different zones, make sure it is referenced across the zones, so that it won't be overlooked, as is often done with workforce housing.
- A form based approach would have to show in some manner what a form based development looks like. You wouldn't have to do it in a straight R60 zone. Things are pretty clear.
- I don't think state law would allow a form based zoning ordinance because of the state law requiring uniformity.
- My problem with form based is that function follows form. What if the market won't allow that form?
- There is a basic fundamental problem. Before, we segregated land uses. We've gotten away from that. We need to codify how far we have come.
- Make it more user-friendly and clear about where to find documents referenced in the code.
- Make it user-friendly with portfolio views. Should be electronically updated. Master plans should be automatically electronic and word searchable.
- Go to form-based.
- Electronic code would help us find information easier. Wouldn't have to carry around the zoning ordinance everywhere in paper copy.
- Graphics would be helpful—building height. DPS uses graphics for zoning code interpretations.
- Make sure graphics are illustrative and not exclusive.
- Diagrams and illustrations are a great help - the old adage about a picture being worth 1000 words applies in abundance. Many difficulties in interpretation can be eliminated by the use of clear graphic examples. DPS has issued some Zoning Interpretation Policies that use graphics effectively: <http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp>

Montgomery County Zoning Code Rewrite Small Group Discussion and Online Survey Report

- General improvements to the design and layout of the code will help - i.e., better headings, clear and succinct statements of policy AND CLEAR CROSS-REFERENCING.
- Graphics help people understand measurement if standards.
- White Flint used graphics and they turned out well.
- With form-based code as supplements the graphics would help with clarity.
- Depends on audience – graphics would help first-time user. For more experienced users-clarify any inconsistencies.
- Make code smaller.
- Tenants and builders have different needs and lawyers.
- Need to include the Master Plan and Zoning Map in the Zoning Ordinance.
- [Graphics] would help a great deal. I believe a Form- Based Code would be ideal. I could easily see developers meeting code requirements, but providing a product that does not accomplish what residents or the County might not have envisioned for a given area. A Form-Based Code would help to a certain degree eliminate potential confusion or misunderstandings between developer, the County, and residents.
- Graphics further complicate code – can be used improperly to favor developers who are “right” politically.
- Definitions would replace graphics if they were cleaner.
- Standards should be defined for all zones clearly across the board. Illustration should not define the code. You should be able to find what you’re looking for.
- Would like to see a map of zoning code in addition to regular index.
- Maybe an accompanying user-friendly document without statutory weight.
- Illustrations good for simplifying – could be used to clarify words with no regulations.
- Suspicious of illustrations – easily idealized building. Should be picture of actual building.
- Encourage use of technology to clarify. Click on link and get definition of word.
- Technology must allow for fewer changes or for changes to be made more rapidly.
- Flow charts would be helpful for process, calculations, examples for calculations
- Unify the organization and definition of the codes: purpose, criteria, standards
- Helpful in sign ordinance
- Could be helpful in parking
- Not useful in non-form based zoning
- Graphics can be helpful to define standards requirements.
- If graphics are too complex/simple, they can be too subjective.
- They can be helpful, but should not be the law.
- Graphics could be useful for height step-downs in new town centers. They are useful because they visualize concepts (i.e. buffering) or the application of a specific development plan.
- Flow-charts-Index
- Glossary
- Cross-referencing
- Decision-logic charts
- Brief summary up front giving overview for novice.
- Get rid of participation exceptions.
- Yes to graphic illustrations

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

4. What suggestions do you have to make the code more user-friendly? What do you think of the use of graphic illustrations to help define the form allowed in a particular zone? [Continued]

- NYC gave a great graphic guide (not the zone code itself). User-friendly with examples.
- We do have some useful graphics (in chapter 59, from DPS).
- The American Legal Publishing site is not user-friendly.
- Website – impossible to find definitions and cross-references.
- Example of user-friendly - In most codes, they have an annotated version with legislative history and court references. You need this to make a compelling argument.
- Graphics limit creativity in building design. Designs change, concepts change, ex: LEED.
- Plain English
- DPS graphic interpretations of code are sometimes useful (for measurements and standards)
- Graphics need to be understood as advisory and can be altered with approval / level of interpretation
- Out of place height characteristics could be valuable in certain contexts
- Graphics would not be useful. Graphics is just one person's word or idea. It's very subjective.
- Some zoning concepts are difficult to understand, so graphics would be useful in explaining the code. The graphics would not necessarily have to be in the code.
- A public information document without regulatory weight would be a good idea.
- Attorneys might not want the graphics, but other staffers with different backgrounds would probably want graphics.
- Graphics means a lot more than pictures. It's not as easy as pasting a picture in a document, but if we use graphics, we should think outside the box.
- Take better use of modern technology. Would run the risk of making it to where you could only use it electronically. Have links to word definitions.
- Graphics can often save you a lot of words. For example, how do you measure height?
- An engineer would say illustrations are not subjective. For things in the code, some can't picture the descriptions with words only.
- We could have 3 zones and graphic forms that would illustrate the zones. Differentiation within those zones would be illustrated with graphics.
- Simplifying the process to meet the objectives.
- Use of graphics to illustrate height, shadowing, etc.
- Reduce the number of zones, and simplify. The remaining zones should have basic categories: CBD, transit related zones, etc.
- Simplify floating townhouse zones and increase flexibility. Planned development communities should be simplified and made more flexible
- It is helpful to use graphics to describe massing concepts.
- Graphics can be used to measure some standards, e.g. minimum lot size, height, setbacks, etc. But they are not always useful depending on situation.
- I am open to the use of graphics and tables for clarification of zoning codes. This could include the use of illustrations of land use, buildings, etc. Whatever will work.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

4. What suggestions do you have to make the code more user-friendly? What do you think of the use of graphic illustrations to help define the form allowed in a particular zone? [Continued]

- Consideration should be given to the challenge of avoiding binding from illustrations. Form is geometry. Architectural detail is the specific design of a building.
- In the optional method for mixed use zones, why do we have a table? We could probably have a more simplified system if we limited the number of ways in which we define and finely define. It's unclear if this is valuable in the long run.
- We have a lot of things that require a special exception currently but with the new system we could avoid a lot of the special exceptions through the use of optional method.
- More design review panels who review projects when they initially arrive and work with an architect to look at potential improvements for a project. Not to limit creativity, but to have early good input. We get a lot of crap that meets the zoning requirements, but doesn't meet the quality that we should be getting.

5. Would you prefer a larger number of zones with a few allowed uses or a significantly reduced number of zones with a more flexible range of uses?

- We have a variety of zones – prefer reduced number of zones with more flexible uses.
- We've tried more zones, so fewer zones with more flexibility
- With form-based, you can add commercial zones
- Originally thought of zones as silos whereas DC is more mixed use
 - 90% residential and 10% commercial is better than 100% either way
- Current doc is cumbersome
- Make use of floating zones with particular purpose and design
- Reduced number of zones with flexibility
- Don't understand why we have "optional" design standards-should be required
- Think in terms of bonuses and penalties to encourage developers to comply with standards
- Reduce zones, use master plans to help form new zones
- Master plans can inform zoning
- Collapse number of zones with more flexible uses
- If you limit number of zones, it would deal more with the form and minimize focus on uses and performance and intent
- Performance should be regulated
- Main purpose in larger number zones is to simplify language
- Focus more on commercial/industrial zones. Collapsing might be possible.
- New master plan updates always creates more zones. Would like to minimize mixed zones.
- Fewer zones with broader range would help with master planning effect. Differentiate levels of intensity instead.
- More important issue is deciding which zones to eliminate, keep, modify – housecleaning of old zones
- There will likely be a different reflecting location.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

5. Would you prefer a larger number of zones with a few allowed uses or a significantly reduced number of zones with a more flexible range of uses?

- We should have fewer, more flexible zones. We have way too many. You don't need these zones with small variations. All you need is a couple of commercial, industrial and residential zones.
- The overlays are one of the most difficult things. I'm in charge of people who are doing reviews as well as complaints. The investigators often miss the overlays when they are in the field. In the long run make them zones.
- The whole issue of master plans and sector plans treated as regulatory plans, I think that gets confusing.
- Having the multitude of zones is confusing. More broadly, people would agree that segregation of uses goes in the face of smart growth. Having a much smaller number of zones with broader uses makes sense.
- Fewer zones with flexible uses. Only concern is legal limitations of zoning. Zoning authority is granted by state. State imposes uniformity requirement. So you need to regulate the zones. Makes it more difficult if you have small number of zones.
- Driven by how you set up your general land use scheme. Can only derive answer after other discussions.
- Fewer zones would illuminate problems with uses that are hard to characterize.
- Already have a scheme with overlapping uses; fewer zones would add to that.
- The latter. The profusion of different zoning categories and sub-categories we have now is utterly ridiculous. It may or may not be worth considering a form-based code for more densely developed parts of the County. Relying only on use categorizations to drive development is sometimes counterproductive to creating varied, distinctive places.
- More flexible uses so you can find what you are looking for.
- Process is how you get there – process already in place.
- Form-based system is needed for flexible uses.
- People do not care about uses as much as building appearance.
- With more flexibility you will not need as many ZTAs in the future.
- Encourage redevelopment.
 - Currently, there is a major penalty for it.
 - Policies and “development parfait” create disincentives.
 - This is critical for future. In past redevelopment was not as important, but now we are running out of unused land.
 - Code still encourages greenfield development
- Residential uses not allowed in commercial zone and that is inhibiting progress (affordable housing).
- Environmental standards are green-field based and have multiple layers.
- Have separate redevelopment policy.
- Concern over mixed uses – makes residential properties lose value.
- Mixed uses make previously existing businesses leave area.
- Mixed uses work in Georgetown, but can destroy vision community embraced 30 years ago because of developer tendency to seek greater densities.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

5. Would you prefer a larger number of zones with a few allowed uses or a significantly reduced number of zones with a more flexible range of uses?

- Want to see flexible uses because would reduce ZTAs. Suburbs are gone so we need to change code to be consistent.
- Flexible uses are good but not density. Density effects existing community greatly. Just limit density.
- Smart growth means different things to different people. What we have now is smart growth. To manipulate what we have with flexibility is improper. Must be put in master plan first with community participation. Flexibility is already built into code.
- If R60/R90 zones are more flexible, his property value goes up, but ability to sell decreases. Senior citizens can't afford to stay in their homes.
- We will need more dense development for climate change interests.
- MOG makes promises for infrastructure, but often does not fund it.
- Safeguards – community participation and permanent position for “people’s advocate”.
- Fewer zones
- Reduce number of uses
- Flexibility of interpretation for application of uses
- Look at the challenges of “similar to” definition process when identifying acceptable uses. It is hard to predict the outcome and can be too inflexible.
- The “similar to” process [for identifying acceptable uses] is helpful! But the DPS decisions on what uses are permitted using the “similar to” method don't have weight when the cases come before the Planning Board and the Board of Appeals. How they rule can be hard to predict.
- Lower number of zones can be useful way to control development standards and can communicate what can be done/developed.
- For uses, just use “retail” instead of “carpet store”, “variety store”, etc.
- Prefer more zones with specificity
- For rigor and predictability.
- Greater flexibility = more advantage to those with dollar land use lawyers
- Ambiguity=more litigation=more deference to individual preference – no certainty of outcome.
- Some loopholes are done not through ZTAs, but through DPS with no oversight.
- Form follows function. Be specific about goals. Write only the language needed to do that.
- Flexibility gives too much discretion to planners, whereas I would rather rely on objective code. No consistency vs. predictability.
- Fewer zones with flexibility, without need to go for special exception. Special exceptions extend the process.
- Long process for quality of life needs (need for flexibility)
- Fewer zones with flexibility
- As an economist, I see difficulties to re-occupy a space that was zoned narrowly. Hard to replace tenants with narrow use definitions. Or, converting old offices to living spaces – ways to keep economy liquid.

**Montgomery County Zoning Code Rewrite
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5. Would you prefer a larger number of zones with a few allowed uses or a significantly reduced number of zones with a more flexible range of uses?

- With so many telecommuters, these uses are technically illegal. Look at impact vs. type of business. There is a difference between levels of visitors generated. Allow for residential use with flexibility. No industrial or mixed uses in residential areas.
- In favor of fewer zones. Not so much about flexibility. The folks in Colesville want to preserve residential areas. They don't want day care centers, multi-family housing, accessory apartments, etc in a residential area. Just single family homes.
- I agree with more categories of uses, but reducing number of zones with flexibility, there needs to be a way to fit these zones to certain places. Custom fit them through master plans.
- Fewer and more flexible
- Master plan and zoning ordinance should have more flexibility. Density code zone lack of flexibility produces poor results
- Where is the certainty in flexible regulation?
- Flexibility with base definitions
- What if the "new thing" (like mixed use) does not work? The zoning code is often the platform we rely on. We need the baseline anchor.
- In low density residential neighborhoods, we can't suddenly collapse items together. The protections in residential neighborhoods have been important to residents, so we couldn't change them radically. But we should collapse things in commercial zones.
- Number of zones is irrelevant, but simplification is needed. The thickness of the document may matter more than the zones.
- Would prefer few zones rather than more. Allow flexibility in complex areas of the county.
- There are multiple types of mixed use zones, and it could be simplified into one broad category of 'mixed zone'
- Need to start with less, because over time more will be added.
- I lean towards a fewer number and more flexible range. However, community reaction might fear that means you can do anything. You have to be very clear within the flexibility. You would control development standards and provide predictability on a project by project basis. Master plans should illustrate that we're all tracking to the same vision.
- Variations within the zones should have ranges within the zone. You should have a few simplified levels of development within a zone.
- More flexible uses and more flexible way of designing the scale of uses. The TMX zone is a good example.
- Fewer zones with more flexibility, YES.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation?

- Public participation is limited because of a need for expertise in zoning. Education would be needed.
- Past 1.5 years, we are given more attention to involving public, but often the public gets involved too late to influence decisions.
- Public participation impedes timely process.
- Sometimes spend 4 hours with citizen, but deadlines do not get extended. Not much time to dedicate to public outreach /education.
- Other jurisdictions require public education/involvement, but not as much here.
- Hearing schedule is set by outside court, which will not change/get postponed due to public involvement.
- Required public participation might be useful.
- Often have to seek input from private and public entities – they are often not on our schedule so that delays us.
- Current code is not inclusive of public
- Visibility and accessibility are major hurdles
- If information were available, we'd have fewer interruptions in timeline
- Currently slow because of lack of input
- Developers submit revisions at the end of process
 - Hard to get information out to residents in time for them to show up to hearing
- Must have people to get information up online
- Design electronic system where auto updates get emailed to interested parties
- Environmental “Hansen” built-in review process
- Not zoning’s job to address public participation
- From a ZTA standpoint public participation is inadequate
- Citizens typically don’t know what to expect in the ZTA process-time frame
- There needs to be initial step of introducing a text amendment. Planning department at county level would do this. Now we go to Planning Board after the Council. Could give briefing to board pre-council meeting.
- Too time consuming. Having multiple agencies impacts the pace. Public input can slow down the process.
- There is no responsibility on the part of the public to participate in the whole process, (naysayers).
- Review process for plans going through the approval process is unclear, slow (not clear about the exact root of the problem).
- There are numerous “hoops” to go through before the public process even happens and can impact the openness to the public part of the process.
- The burden on the citizen to influence the project is great. There could be a more targeted public participation of the process.
- The process can also be more important than the outcome. Public can not approve, participate, etc. and still not be addressed.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation? [Continued]

- I think there are too many steps. Project plan, site plan, etc. It takes way too long and doesn't necessarily make a better project.
- We get mandatory referrals because the normal process takes so long. The mandatory referral is ironic because we exempt ourselves from the process that we require on everyone else.
- A shortened process would benefit folks who want to build. The community side has grown to like the longer process – they can adjust and come back. Shortening it up may be seen as closing a door to the community. The most constructive would be an early-on participatory roundtable approach, something where the community has a hands on participation role. The traditional approach is flawed.
- Community process needs to be more at the beginning. As an economic development tool, we have developers who flee because they can't do things by right. They could do it by right in the District. NPR is an example of this.
- I live off of 108 in Olney. There was a development and we saw a sign. The only way we got down to fight it was through word of mouth. We didn't know the process as a community. It is very confusing. You don't know where to go. Information doesn't get out there. You had to go down to Park and Planning in Silver Spring, but they close by 5. It's not user friendly.
- The issue you are raising, Park and Planning is trying to address through its web site.
- I do think that in the master planning process there are places to comment. It is in the master planning process where the vision is shaped. But it is so early, that people miss it. People give input when the process is nearly ending. It is human nature.
- As far as length of time for review, it was addressed by the County Council, in the early 90s, but we've slipped to where developers don't come to Montgomery County because of the length of time it now takes.
- Some time it takes so long, you get new people commenting who don't know about the project and say "what are you doing?"
- Can we put something in the code that allows a limited number of projects that meet a certain threshold to be named a strategic economic development project with a special public involvement activity up front? Something that keeps the system working.
- I found the process to be very confusing because of the number of applications, plus special exceptions and the number of plans. The whole process needs to be better clarified.
- There are so many different bodies involved.
- The process is going to have to take into consideration renovation and expansion of existing buildings.
- Confusion in public as to their participation in steps of process. Say they are unaware that what they say in front of planning board is not automatically testimony. Need to reduce number of layers, but make sure public knows where it's important to step and voice their opinion.
- Work session schedules are posted, but doubt average person knows how to access them.
- Such a complicated land use system. Must have certain familiarity to effectively communicate/participate. That's why we have people's counsel.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation? [Continued]

- Currently don't impose time limits on presentations so a lot of irrelevant material gets presented.
- What stretches the process out isn't the public but the multiple layers of approval.
- This is an operational problem, not a code problem. The notice and participation requirements are generally well-suited to allow public input.
- Not code's problem, but planning board's staffing problem.
- Gap between Rockville/Silver Spring.
- No incentive for leadership.
- Public participation is the new reality.
- One neighbor can change process dramatically.
 - Should be some limitation so one person cannot disrupt entire process.
 - Should be clean leadership on when a project can move on.
- No one on staff wants to step up and give approval over that one neighbor. You cannot please everyone.
- Many people objected to Strathmore, but what would county be like today without it?
- Need to have ability to define areas where we will not accept deterioration.
- Zoning not welcoming infill currently.
- Should be guidelines as to when developers can move forward in the face of opposition (at their own risk).
- Value of predictability in code. Developers need predictability.
- Would help if it were clear what communities would look like so public would understand.
- I believe it does.
- Used to be community could testify to board and board would consider for x time and then decide. Now they rule the same day of public testimony which suggests public voice does not matter.
- Public does not get much time to develop full response – only days and civic associations only meet one time per month.
- Only way to participate in ZTA is to sit in on hearing and it's not efficient for public's time.
- Public does not have necessary information to participate fully in process.
- No enforcement of required public meetings – need legislative effort.
- Developer is not transparent at public meetings, but they still get credit for having meetings.
- Often appropriate stakeholders are not notified of relevant information and meeting time.
- More planning board staff resources are needed so they will not rely on developer.
- Guidelines have become mandates, which are not codified
- Lack of responsiveness (on part of staff)
- The issue could be addressed by saying that if approval doesn't occur in "x" days, then approval automatically happens
- Guidelines have weighted down process. Start time for projects is arbitrary and one-sided. Timeline can be limited in value
- Process slowness frustrates the public when nothing happens at predictable rate
- Most of the questions in this are not code related problems but process issues

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation? [Continued]

- Public participation process can be out of line with the degree of change
- One size fits all approach means that small D's require big process: application, community engagement, etc.
- Public participation component can set an expectation for exact output that may be unrealistic plan
- Ordinance should address relative flexibility from "visioning" of the plan. Materials and style all change over time.
- Process should be content-based – not schedule based, but performance based. Based on goals at each step.
- Have a maximum amount of time to review.
- Gives you predictability (good for public participation).
- Very little emphasis on public input.
- We are not brought in in a timely manner. Instead, developers come in and the deal gets made before the public gets to make input. The public should be notified when the developers first state their intentions.
- Current process requires county meetings, but it is up to developers what level of detail they propose.
- Since Clarksburg, they do have to notify, and an effective community will get involved with the planner.
- Community involvement is uneven. Some community associations have no guidance or resources. People's Counsel has not played the ombudsman role.
- Sometimes it provides too much public participation.
- Example: redeveloped YMCA. Owner was supposed to notify every civic association in Montgomery County. This is not common sense (part of Development Review Manual).
- We are talking about 59D – do not limit us to 3 minutes of testimony.
- Park and Planning process has improved. Staff packets now available in advance. We are blessed with our process compared to other jurisdictions.
- Major problem is that we do not set a reasonable time limit in which to complete the project. There should be different time limits for different types of buildings. But no permits as long as 20 years.
- Too much public participation
- Required to have public meeting before filing plan is burdensome. You should be able to file a plan before having to meet. The requirements create delays. It is not a productive step because the client won't pay for changes before the plan has gone to the government anyways.
- Number of persons/organizations to notify is excessive ex: HOAs, community associations, etc...before filing is lengthening the process with no valuable outcome.
- Timing of public participation requirements impacts outcomes. Ex: notification issues/no confirmation and receipt of notification is practical in many situations
- Any one person in the public can stop a project, but there is no one person that can approve a project

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

6. Does the code strike a good balance between the need to process applications in a timely fashion and the need to allow for public participation? [Continued]

- Lack of confidence in current zoning code means that the amount of onus on the builder to get approval for the project is great. Anyone can object/out spoken groups can have undue influence, zoning code should represent baseline.
- Not against public participation but the complexity of projects, process, etc. confuses the issue, too political-Clarksburg
- Lack of awareness in current system that there are other external deadlines
- So many variables: time; staff turnover (the length of time threatens the success because of the influence of public comment); 2 year process
- Public participation contributes to staff indecision.
- Agreements are made but change over time can impact the success of the process.
- Lack of critical process by staff=poor outcomes
- Public participation would not slow things down if the process were more clear. In complex dense places, you need to involve the public sooner and early on in the process.
- Too many steps, not enough certainty on any side of the equation.
- The county reviews take longer than the public participation.
- The need to process applications in a timely fashion isn't related to public comment. The difficulties of coordination between outside agencies and sometimes the developer are inadequate. There is plenty of good process, but the coordination between and among agencies is the bigger issue.
- No. Rezoning takes a year, for example. The real problem isn't public participation, but bureaucratic failure. The developer review should be shorter, for example. The zoning hearing process is good in principle, but needs to be retooled and made more efficient.

7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards?

- Very political environment – any given time can have forces from council or planning group.
- Every 20 years timeline might help serve as rational baseline structure for conversation between the two.
- Will do master plans more regularly.
- Conflicts are usually about density and height.
- Master plans are outdated 20+ years old; zoning should not be used as negotiation tool during master plan revision processes.
- Flexibility should be incorporated into zoning/master plan.
- Height conflict – some specify number of feet, some specify floors/stories (p.6).
- “Neighborhood – serving retail” – is that fast food?
- Conflicts between master plan and zoning are different to converge, but can be done.
- Regulators have to understand master plan people.
- Master plan people need to understand regulator's needs.
- Cross-training needed for County staff.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards? [Continued]

- They do work
- TMX guidelines are in conflict with intent and purpose
- Examples of both exist: Silver Spring and Shady Grove
- If we don't have to craft zones spontaneously, we can design a zone that works long-term
- There used to be different departments in charge of different zoning parts
- Zones on the fly came from developers who want their projects pushed through
- Two schools of thought: Don't worry about zoning until later or pay attention to them all the time
 - Explain zoning on the fly
- Zoning code should be open (living document) for change via master plans
- Confusion over who was lead packager
 - Power struggle between remote divisions
- Most master plans are getting better, but some are still outdated
- After reorganization into teams, how does that affect how projects and the rewrite are done?
- There was a clear gap between those who design the plan and those who review them. Team structure may be helping with that.
- Some master plans have conflicts-height/density, sometimes not
- Zoning can work in opposition to master plan. Zoning should be tuned to what resources are on the ground
- Master plans are out of date and create problems for modern situations. Fewer/more flexible zones would help this
- A text document could explain the relationship between master plans and zoning
- If zoning were more flexible, master plans could be written easier to follow
- Need section explaining purposes for master plans / zoning. Make it more clear.
- ZTA's are tailor-made to developers allow them to get around master plans.
- Relationship has been strengthened by RNC zone. It's more flexible. This refers to the master plans as well.
- Use interpretation
- Something may not be prohibited, but goes against the purpose.
- Should there be more guidance in the code? There should be more certainty in the code
- Number 7 misunderstands how the county operates.
- X-purpose reflects that the code has been written improperly.
- Focus in the master plan as a "driver".
- If there is a master plan process that takes places outside the regular process, such as historic preservation, I'm thinking of the Falkland Apartments, when it goes onto historic preservation, it can derail the whole process. I don't think it is fair to the developer. It is ad hoc.
- When you go through just focusing on historic preservation, you don't look at other areas.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards? [Continued]

- From a transportation perspective, Park and Planning has said master plans are guidelines. It allows the planning board to overlook the master plan. That is frustrating for us, because if they ignore that road, they should have do to an transportation analysis
- By law master plan is a guideline.
- The code trumps the master plan.
- The planning board doesn't always look at it. For example: height issues on workforce housing. The zoning text amendment said you could increase the height. The Planning Board said that you had to conform to the master plan.
- There are other disconnects, e.g. the Fenton Village overlay. It is designed to be pedestrian friendly retail, but the zoning doesn't require retail on the first floor.
- There are disconnects with MPDUs and high rise buildings. It is costly to provide MPDUs in high rise buildings. There is a provision in the code for an alternative review committee.
- Work in concert. But master plans are only recommendations unless zoning ordinance specifies they must be followed. Make it more available electronically so it's easier to find the things we want in there.
- Work well together. There are places where PD zone has limitations based on master plan. Sometimes good ideas cannot pass because of the master plan/sector plan legal code. Master plans are too outdated.
- Maybe a perception that master plan process is opportunity where you get all citizen groups in and talk and decide on the plan. Then years later, a property owner wants to do something on their property that isn't consistent with plan, but council approves action. That's a matter of council-self-discipline.
- Substantial compliance is what we look for, but not complete compliance.
- Let our master plans drive our zoning ordinance, but update master plan every 5 years. Even if it's just a partial update. Now it's every 15+ years.
- We need to establish a consistent approach between master plan and zoning ordinance.
- One person's rigidity is another person's consistency.
- Generally, there is an overemphasis on Master Plans and Sector Plans in that these documents treat zoning as endlessly fungible. First, we need to establish a clearly articulated approach to land use, transportation, education and public services planning. Then, that all needs to be reflected on a map. Next, the zoning ordinance should provide the framework, principles and regulations that apply throughout the County. Finally, the Master Plans and Sector Plans flesh out specific development goals for individual areas. As it stands, there is not enough coordination between area Master Plans - we need to return to a County-wide strategy, especially as transportation planning becomes increasingly important.
- In the special exception context, the Master Plan/zoning ordinance intersection works well. Master Plans are less relevant to variances than are the general requirements for the zone in which the subject proposal is located.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards? [Continued]

- In the development plan arena, Master Plan and Sector Plan recommendations often simply disregard height limitations and other volume-based requirements. This is a sign that the current comprehensive system is not working.
- Zoning code should be used to enforce Master Plan. Currently, zoning has to apply in other places and thereby does not serve its purpose with Master Plan uniformity a problem.
- Master Plan suggests zoning categories, but those categories do not allow for Master Plan vision (Germantown).
- Supposed to be in concert. Manipulated by ZTA. For example - Bethesda. Manipulation by developer and board is often the case. Another example. There is a property near Leisure World. It was recommended to be 140 affordable senior housing units. 20 years later turned into 66 elite senior housing units.
- Do not work in concert currently officials even say this is about zoning not master plan.
- Need to revise master plan/zoning together.
- Zoning amendments often go against intentions of master plan.
- It is the conflicts and trying to bend the rules that take up the most time. Good process is needed.
- Like to see county obey its own rules
- Example – not releasing documents to public, ex: Clarksburg.
- Need to incorporate master plan vision with zoning code. Cannot do it separately.
- They work at cross purposes regarding density, height, use, etc.
- Community-based planning has been a stepchild.
- The master plan in White Oak is so unspecific. It just reconfirmed old zoning, all fluff. It is 10 years old and should have a long life, but does not say anything. A large Federal redevelopment was happening, but the master plan did not address it for fear of politics. What to do with old master plans that are low-quality?
- There should be a major community role in the Master Plan process. Community should have the authority to open up the process.
- There are a lot of people who would like to open up the Master Plan process, but lack funds.
- There is too much reliance on charrettes. Use other tools.
- Master Plans, if followed, are pretty good. ZTAs change the Master Plan and code and it should not be allowed.
- Master Plan process is where the community gets involved. Problem is when development does not want to do what the Master Plan provides. Then you get into an argument about whether and how the Master Plan is advisory. The real issue is that they are out of sync.
- I like how TMX refers specifically to Master Plans. It gives Master Plans some legal standing and more responsibility to the Master Plan.
- Looking at plans around the Metro stops, make them more flexible to meet market demands, but only in designated urban centers.
- Like form-based – good for some areas.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards? [Continued]

- RNC/AG Zone example of cross purpose failure of Master Plan and Zoning Code (zoning density w/ height requirement not comparable). Particularly with density, bulk, and forced conservation zones. The Master Plan undercuts the intent.
- Height requirement in plan undercuts density
- Should be more upfront when zones are going to be undercut
- Zoning code has appeal process, but the master plan locks in development and there is no method to change the master plan.
- Master plan should be a broader vision statement, not locked-in.
- Too rigid and inflexible
- Should be more effective hierarchy of authority that better reflects the actual time line of process
- The younger the master plans are, the better they work in concert. The older the master plans are, the more they become out of sync.
- We haven't thought through the broader philosophical issue of how we want them to relate to each other. Should height be in master plan, zoning, or both?
- Currently master plans are advisory and zoning code is law. So therefore you have to decide about height by keeping this in mind.
- As master plans develop and age, it becomes more of a problem. We need to review them more often. It would reduce ZTAs. Maybe do smaller areas quicker.
- Within Park and Planning, development review has no connection with community-based planning. Who writes the master plans? There is no coordination.
- There shouldn't be conflicts, but master plans are notional and the code has loopholes, so it is conflictual.
- Sometimes yes sometimes no. It depends on what attorney, parcel, etc. There is no consistent interpretation between master plans and zoning codes. We're starting to get subversion of master plans and codes. The zone should complement the master plan easily. The master plan should be the plan and not a guide. The expectation should be there. This should transmit transparency in the project. If the zoning code is successfully done then the master plan should have more weight. It should just work that way. You shouldn't have to put in the code "see master plan." It should happen by an output of a good process. As the county and needs change the plan should evolve. The zoning should be the objectives that gets the master plan (vision) seeks to accomplish. Truer form of democracy. Doing so would diminish the community's sense that there are deals happening between developers and the government that aren't transparent and good for the community. This would be better for developers and government.
- The fact that the zoning code is over-particularized from zone to zone makes it harder to implement the decisions of the master plan. Decisions are being made at the strategic level that don't interact well with the code.

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7. In your experience does the Zoning Code work in concert with the land use and design recommendations in the Master and Sector Plans or do you think that the Zoning Code and Master Plans are at cross purposes? If so, do possible conflicts relate to density, height or other standards? [Continued]

- We always design new zones for new master plans. We don't always draft the master plan regulations particularly well. The zones say 200 feet, but to make outside interests happy we make allowances for 600 feet that aren't binding and that could change. So the master plan contains limits aren't necessarily useful.
- It depends. Sometimes the relationship is very effective. Sometimes they are at cross purposes. Where they run in to conflict is largely about height and sometimes density. With workforce housing and affordable housing, bonus densities are problematic when calculating height in conjunction with the master plan.

8. Do you find footnotes to be helpful or confusing? Do you have any alternative suggestions?

- Plain language rewrite of zone could be considered.
- They do have a purpose.
- They represent individual development that exists.
- Should be handled as variances.
- There are far too many footnotes. A lot of the footnotes are meant to fine tune provisions. Stop trying to micromanage and fine tune. Have general provisions that are generally applicable.
- Even if you can't make it more general, at least keep the description in the text.
- Footnotes are fine if they clarify, but the problem in our ordinance is they add substance.
- And the substance footnote isn't written in a clear manner. Creates problem when you have look at 16 different places for an answer and their footnotes.
- I have no problem with footnotes because I don't know of a better way to clarify what is permitted by right.
- It's a question of scale. If ordinance was simpler, we would not need footnotes. However our ordinance is large and actually needs footnotes.
- These are SOME issues that will not necessarily be reflected in the zoning code itself, but which the code must nevertheless take into account:
 - Religious uses - the current code gives religious institutions a virtual pass on compliance.
 - Ag Reserve - the plethora of Ag programs themselves could use a lot of pruning. At last count there were about 20.
 - Planning coordination with MCPS
 - MPDUs and other forms of affordable housing - militates for creation of a cottage zone?
 - Transportation planning
- Footnotes are fine if they are needed for clarification.
- Depends on footnote – some are helpful and some are confusing.
- Need to be written more clearly.

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8. Do you find footnotes to be helpful or confusing? Do you have any alternative suggestions? [Continued]

- Not really confusing, but I believe the organization of the chart(s) may be the issue. In some cases, the chart(s) may be trying to do too much and then there are other instances where one is looking for information, but it is tucked in a long list of footnotes.
- Illuminate footnotes where possible.
- Footnotes different for public. Use plain language guidelines.
- Footnote is to explain – but inside they are not helpful and create confusion.
- Layers of footnotes create confusion. The first and second footnotes are ok. It's later footnotes that become problematic.
- There is a lack of legislative discipline w/ rules and interpretations
- If someone has a good idea that is not allowed, you should either enforce the law or revise the law. Don't do a ZTA. A law that is revised every week is not a good law.
- The "micro" nature of legislative footnotes is a negative thing.
- The conflicting interests of stakeholders can lead to interpretation of code outside the code
- More flexibility in code to ease need for footnote
- Idea of a "living document"
- Footnotes are helpful in that they sometimes provide the answers and context. They capture nuances and clarify the code.
- A lot of the footnotes were to facilitate a specific developer project. They change the nature of the planner's intent.
- You have to keep them in an appendix for references – codifying them – but not as a live part of the record.
- Do footnotes judiciously: public purpose instead of a particular developer's need.
- Remove clutter
- Have them clarify
- They conserve a community purpose, even when oriented to a specific project.
- Overall, make all information computer – searchable.
- Number of footnotes good
- Allows for flexibility
- They provide reminders of the legislative history and the full intent of exceptions
- Master plan is a guide, not law, so some footnotes are needed, but far fewer
- Footnotes have become as enforceable as zone and up complexity
- Many footnotes are "sleeper" legislation, not trivial and can cause confusion concerning legal zones
- Footnotes began in 1958 and have continued since.
- If you don't have a footnote how do you clarify?
- Footnotes are overused.
- Would be interested in other jurisdictions and how they use footnotes.
- If we have footnotes, establish an electronic link to them.
- Challenge in doing conditional uses in different zones.
- When rewriting code, we need to evaluate the footnotes and see if they are still valid and useful. If not get rid of them.

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- For some footnotes no one knows why they are there and what purpose they serve.
- Footnotes are useful. However, sometimes they don't retain the original intent of the code and become more than an exception to a general rule.
- Because the code is over-particularized it leaves you to utilize the footnotes to redescribe the actual application of the code.
- They aren't a lot of help. They can be confusing. They are often inconsistent with the text. I am a believer in a code that has a sparse use of footnotes. Clarity to avoid footnotes.

9. Records indicate that accessory apartments are the most frequent type of special exception brought before the County, and that they are almost always approved. What do you think about allowing accessory apartments as a permitted use with standards?

- We have tried, but county tends to rise up and say no. In this process now, we made them better. Maybe two other questions:
 - Is there a place where accessory apartments are allowed by right?
 - Are zones working how we need them to work? – affordable housing.
- Maybe have more 2-family houses? Some exist.
- Attempted to be relaxed about accessory (p. 9) apartments, but it was not well received. It might be worth a try again if it is a county-wide responsibility.
- Affordable Housing
 - Are the zones working for AF?
 - Standard procedures do not usually allow for AF.
 - With more flexible and floating zones it would accommodate more.
- Accessory apartment cases are detailed and take up time
- This should be done on the master plan level, block-by-block
 - Don't do it as a special exception
 - Maybe permitted use
- Makes more sense as a permitted use like in DC
 - It's a commercial activity so regulate it as such
- Must provide adequate public facilities for each case
- No additional burden
- Should be standard for no paving, for design as well as environmental standards. Might need deeper review from community. Depends on zone or community. Could explain exceptions to the standard.
- Could illuminate access apartments if you define standards.
- Makes sense to streamline the process (i.e. affordable housing).
- Opens development to public conflicts over irrelevant issues.
- Excellent way to increase housing stock.
- Could enhance ability for increase enforcement of Access Apartments, if there was increased availability.
- If they are regulated. Otherwise, they have to be licensed. But why not?
- The general public would not agree.
- The fear is that if you don't require special exceptions, there would be a flood of accessory apartments. The public would be uncomfortable with that.

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9. Records indicate that accessory apartments are the most frequent type of special exception brought before the County, and that they are almost always approved. What do you think about allowing accessory apartments as a permitted use with standards?

[Continued]

- I just received a comment that people fear that removing special exceptions would change their neighborhood character.
- There are a number of policy items – has the council provided a policy direction on housing, smart growth, etc? There should be a check-in early with the Council to see if this is ok. Will the Council be ok?
- I think we should make more of an effort to look at the zoning of municipalities, so that the borders are in concert, and there aren't in any issues.
- Great idea.
- Good provided we clarify issue of public right of way.
- Doesn't take up hearing time, but they are half our caseload. Typically take 30-45 minutes, plus half a day to do report. Second most often: special exceptions. Mostly beauty salons. Private schools. There's a big variety. Gas stations. Difficult to pick out second most popular.
- Accessory apartments are definitely 50% of workload. Have recommended denial twice in 7 years.
- When used judiciously, footnotes can be helpful. Generally, they should not even be necessary. In the current zoning ordinance, footnotes have the effect of eviscerating the provisions they seek to clarify and have generally burdened the code with confusing and contradictory requirements - but this is a symptom of the larger difficulties and is not caused by the existence of the footnotes themselves.
- Good idea – provides sensible housing.
- Easiest way to streamline it.
- Should be part of Master Plan.
- 'Might change character of neighborhood' is an exaggeration.
- Parking is number 1 problem with accessory (p.10) apartments.
- Better approach is to streamline process but keep community involved.
- Permitted use with standards.
- Housing code enforcement is needed.
 - Would be problematic regarding parking.
 - Needs refinement, but not "as of right"
- Streamlining of process was already done.
 - BOA to Hearing Examiner was supposed to do that.
 - More would create overcrowding.
- Should be special exception with lots of opportunity for input.
- Setting precedents make it difficult to not enforce across board.
- There is a disconnect between time involved and outcome. It may not be a situation that should have a special exception.
- Get away from special exceptions and move to permitted uses with standards
- Difficult to set equitable standards across all neighborhoods.

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- Accessory apartments for some single family homes are very problematic. I would not apply the rules evenly in my association because of the diversity of housing stock.
- County has lost control over apartments. Right now there are two programs. There are accessory apartments by special exception. There are also registered living units. Those are not being managed by DHCA. They put tremendous stress on mixed income areas. We are also a free-reduced meals area. It affects poverty levels. I suggest some from staff read case #S2728. It brings out key issues. Keep accessory apartments as a special exception.
- It depends on standards and enforcement.
- Permitted uses will encourage a proliferation of rental units in areas that already have a disproportionate amount of rentals and high school transiency rates.
- County should promote the existing legal system.
- I think transiency is economic-driven. Not housing driven.
- As a realtor, accessory apartments are a critical part of the housing stock, particularly as people age in place (with conditions).
- From inclusion standpoint, they allow for affordability, particularly for people who are disabled or on fixed-incomes.
- People in Colesville prefer that they are kept as special exceptions – it keeps public input.
- Special exceptions keep a record. You need this for enforcement, inspection and public input.
- Accessory apartments with standards is useful and adapts the housing stock to demographics of today. Important source of affordable housing.
- Do not put too onerous burdens of parking – go to performance standards like Arlington.
- It is an extreme rewrite to allow for extra care, you are effectively rezoning to multifamily in buildings that are not multifamily.
- Accessory apartments can help homeowners with mortgages as well with tenants.
- Federation has strong support for special exceptions. This allows for citizen board input. If it is decided within an agency, you lose this input.
- The Colesville community opposes the proposal to make accessory apartments permitted use rather than special exception. In principal the community is ok with accessory apartments, however because it changes the nature of a neighborhood from single family dwellings to multi-family dwellings they prefer to retain the right/opportunity to comment on any application submitted for an accessory apartment. The special exception also provides a means to identify the number of apartments in a given neighborhood as well as monitor them for compliance with zoning and housing standards.
- Can be effective
- Citizens will be very interested in this topic.
- It's being done illegally in lots of places.
- This is a policy decision not a rezoning decision.
- Accessory apartments are good way to handle affordable housing issues.
- A great way to allow people to buy their own homes. They buy doubles and rent one out.
- If we do accessory apartments, you would want some sort of code addressing kitchens, etc.
- Standards should address compatibility issues (with attention paid to attached/unattached structures)
- Difficult to set equitable standards across all neighborhoods. Ex: for square footage, for legal issues to inspect and enforce, it would be non-enforceable.

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9. Records indicate that accessory apartments are the most frequent type of special exception brought before the County, and that they are almost always approved. What do you think about allowing accessory apartments as a permitted use with standards?

[Continued]

- If you had standards and reliable enforcement mechanism, a lot of the concerns of accessory apartments would go away.
- Accessory apartments are best way to go not only for youth, but also for senior citizens.
- Lots of people from the community have been calling and not wanting accessory apartments in the single-family communities.
- Strongly agree. Accessory apartments should be a permitted use with standards. They provide an untapped source and type of affordable unit.
- Yes. If we had clearer standards for building then the need for these is great.
- Good idea. Why not?!

10. It has been suggested that it would be beneficial if zoning text amendments could be considered as a group. In that manner, all impacts could be assessed during the review process in order to address the possibilities of inconsistencies and unintended consequences. What are your thoughts on limiting the submission of zoning text amendments to twice a year?

- Go for it, good idea, but politics will not allow us to do it.
- We would need our own lobbyists to get it done.
- Miami Dade, FL, zoning code rewrite done by sections, but they have support of the 15 commissioners.
- Lobbyists were helpful in getting that accomplished.
- All agreed it is a good ‘blue sky’ idea.
- If other jurisdictions around us did it, that would help convince council to go this route.
- Could be part of recommendation for rewrite
- Planning Board Staff would create backups for themselves and it would decrease quality of review.
- Probably a good way to streamline process
- Similar to map amendment process and water and sewer quarterly review
- Better to keep them at set times to address a general issue and not personal or political process
- Public would have more clarity with set times
- Could work if you have adequate time
- 15 at one time-it might not provide much benefit
- Time limits would encourage developers to focus more on what they are proposing
- Would improve content as much as process
- This might delay developments and incur carrying costs for developers
- If we had broader zones, ZTA quantity issues would not be a problem
- Other jurisdictions schedule zoning map change applications-not ZTAs
- Would simplify the process for education

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

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- Would make the system more transparent if there was increase predictability for review.
- Need and exception for urgent/unexpected text amendments.
- It will never work – politically, it will never fly. More ZTAs in a short time will make it harder to look at unintended consequences. Better to look at piecemeal. I think the screening committee does a good job.
- If the code is written properly, might the number of ZTAs plummet?
- Depending on how you write it, it is possible. I'm skeptical. You need lots of tweaks to accomplish what people want.
- I agree that a rewrite will address a lot of ZTAs, but there will always be issues that don't get addressed.
- Baltimore County does free zoning.
- Lack of coordination of zoning activity. ZTA seem to be recommended without rhyme or reason. Logic is lacking. Would suggest bundling them somehow.
- Help people to keep apprised of changes and help council stay self-disciplined.
- Accessory apartments should definitely be changed to be a permitted use subject to clear legislative criteria and stringent registration requirements. A more streamlined, less costly (in time and \$\$\$) process would greatly enhance County housing policy. The key here is to craft clear requirements - the current ZO special exception provisions are not a bad start. Fortunately, DHCA does an effective job administering the existing accessory apartments.
- Do not see a benefit.
- Doing it on calendar basis will not help.
- Every 6 months is faster than it is now.
- Grouping will not help with inconsistencies.
- More important things to focus on besides timing of ZTAs.
- Fairfax County has system where everything is lumped together – not efficient or effective.
- I believe that would work well.
- In theory, it would be better. Problem is planning board will have hearing 3-4 days apart from council making it difficult for public to provide full feedback to both.
- Be sensitive to public's needs for timely responses
- Grouping would not allow for emerging ZTAs
- Problem is transparency.
- No time limit. There would be no beneficial impact. ZTAs submitted in the same time period do not necessarily represent related issues
- If zoning code is amended it should be at predictable times of the year for better staff focus.
- "Good staff work" can be a better approach
- Similar amendments should be heard together/grouping
- In the past, filing months were not effective (Council got rid of filing months)
- Having fewer review periods wouldn't reduce unintended consequences

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

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- I am for it. One of the problems is that citizens have to testify and research all year round.
- There are too many. We should not rely on ZTAs for too much.
- If you rewrite the code, you hopefully reduce the number ZTAs
- It would be interesting to have access to the ZTA screening committee inputs.
- It could be overwhelming if dozens of ZTAs land at once.
- There should be more clear standards for ZTAs
- ZTAs could be a method for changing the master plan
- Seasons would make ZTAs more self-limiting and increase transparency.
- Creates a huge expense for those who are developing properties.
- Not practical
- We would like to see far fewer
- In Wheaton, they have limited plan amendments. This keeps the zone intact.
- ZTAs less necessary if there is flexibility in the code and if the staff is competent.
- Can be financially disastrous for project timeline
- 70's system of 2 filing periods created a lot of rezoning challenges
- Fails to allow for adjustments to new zones, ex: new uses like video stores
- Could impact the rights of the public with regards to ownership
- The screening committee should address inconsistencies more effectively and unintended consequences
- 2 times a year filing wouldn't positively affect the issue of unintended consequences
- Maybe there shouldn't be text amendments. Sometimes the text amendments reflect a lack of understanding of code/or poor interpretation and not problem with the code itself.
- Zoning text amendments have become a political issue
- A re-write goal should be to minimize the number of text amendments, or else the re-write will lead to a whole new series of ZTAs
- Bad idea because there are legitimate businesses might go out of business waiting for the window to reopen. Wouldn't address time sensitive issues.
- Difficult to have external time schedule for the process because of so many drafts, edits, etc. of ZTA writing process.
- Much better fix would be to eliminate need for ZTAs.
- Time schedule would be phony because we need to not have so many ZTAs. Additionally, chairman will decide pace of ZTAs and how fast they go.
- Strongly agree. They should be grouped and limited to no more than twice a year.
- Wholeheartedly support packaging of text amendments. This would alleviate the high-level of confusion.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

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- Need to set up a procedure for deadline of submissions that would describe how the text amendments would be submitted to the screening committee. It could allow for increased filtering and should be maintained. It is essential that it is a review on technical and policy levels before the final review.
- Yes. You would have the opportunity to see if this is an important change. Is it urgent and needs to be done now, or is it anecdotal? For the economy of staff time it means that you can review these with more time and do the level of analysis that would allow for better prediction of unintended consequences. We could combine similar ZTAs to have fewer text amendments.
- The current screening committee has to review each ZTA individually. It could be more effective if there were more committees to increase the level of collaboration.
- The Council makes the constituents happy in zoning by fixing problems. The distaste for limited periods for submitting ZTAs reflects their goals to make their constituents happy.
- There would have to be a focus on ZTAs during the window and while that would reduce the available manpower during that time it would provide predictability for the community. Currently, important ZTAs pull human resources at unpredictable times and can threaten other successes.

11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite?

- Affordable housing
- Landscaping – landscape manual
- Parking
- Transit-oriented development
- Energy efficiency
 - Green area ratio (Seattle and Berlin examples)
 - Storm water management via green design.
- Energy issues
- Hospitals/change from special exceptions
- Bike racks
- Update zoning-open it and see what shakes out
- Form-based codes
- MPDU success?
- Separate zone for trailer parks
- Open space (reserved zone)
 - So it won't be seen as developable
- Auto Review of zones
- Eco-Zoning

**Montgomery County Zoning Code Rewrite
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11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite? [Continued]

- Urban industrial area (get case fixed, etc)
- Sustainability
- Environmental guidelines (stream protection). If language says “you must adhere...,” it works as law. This could be included by reference
- Examine density implications on environment
- Walkability
- System where uses have their own section. It would be a reference for zones.
- Uses as comprehensive but flexible in the sense that they can be changed in the future, ex: smart code
- Local food production, ex: markets
- Electronic forms with links and illustrations
- No specific zones for hospitals, etc.
- Use vs. ownership distinctions S/B addressed – i.e. private vs. public school.
- Religious institutions do not have to comply with zoning without “special exceptions”.
- Discriminating in favor of religious institutions (ex: mega-churches), that are not subjective to regulations of “like” sized institutions.
- In-fill development
- “Fast-food” defined to be addressed by zoning.
- Impacts of “big-box stores”. Gaithersburg example for size zoning.
- Impervious surfaces
 - Greater focus on issues (i.e. storm water) lot coverage, parking standards, grading, green roofs, grayfield redevelopment.
 - Could be strengthened by allowing the agency to sign-off on “storm water”, but many have instituted overlap.
 - Definition problem of “lot coverage”.
- It’s going to be impossible to foresee everything that comes.
- Amenity definition broadened to include housing and other kinds of uses, not just open space.
- Public safety – you read about citizens, especially immigrants, moving in and getting picked off. Look at lighting, user safety, sidewalks.
- All of the things that arise from the environmental issues that the whole country is looking at – solar panels, windmills, there are a whole range of things they will try to do that are not allowed – either by height, or space availability. I don’t know how you do that, because you don’t know everything that will come. How do you incorporate accessory structures?
- The 2007 Maryland stormwater act will require counties to require environmentally sensitive development. The state is proposing to have their regulations in effect by the end of this year. Also, the county has just received the MS 4 permit which will allow the county to update their ordinances. This fits right in with a look to make sure that the zoning ordinance adopts as much as possible environmentally sensitive development.

**Montgomery County Zoning Code Rewrite
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11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite? [Continued]

- I think the current zoning structure is geared to auto-centered development. Look broadly at how to make it pedestrian oriented. Jerry Weast proposed enlarging the area where kids have to walk – it is a safety issue. We’ve developed in a way that mitigates how we want to work as community. I’m not saying do away cars – have sidewalks.
- If you go to the schools in Potomac, you have kids getting dropped off one at a time. It’s our mode of thinking. It’s in all the schools. We are trying to promote carpooling and safety.
- It’s not just the zoning ordinance – it’s the 15-20 year-old master plans. You have a developer creating a retail center with no housing. In other places you have these urban communities that think they are still suburban – with no alternative.
- My biggest issue is fitting limits for imperviousness.
- It’s difficult to legislate behavior – but a more pedestrian-friendly environment.
- Bike-friendly.
- Allow greater densities around Metro stops. This is the professed policy but sometimes density is limited in Metro areas when they could be greater.
- Some time this is addressed in master plans. There are parts that don’t want sidewalks. You see a zoning / master plan conflict.
- We’ve gotten away from central city-type organization. We are almost reverting back to a cottage industry type society. But we still centralize government operations. Maybe these things need to be decentralized (size of schools, government centers). We need to see as a county what is happening in industry.
- What about the overall process – reduce inconsistencies, readable, policy? What should the process goal be? Policy changes are much harder to affect.
- Plain language, reducing inconsistencies and highlighting duplication would be very helpful.
- There has been a major effort to update the county road code. New standards have been published.
- Look at best practices. I remember reading the Clarion report. We shouldn’t be starting from scratch. We should look at other jurisdictions.
- Anything done in the zoning code will impact other parts of the code. Keep that in mind.
- Religious uses. Montgomery County has the most lenient zoning rules in the metro area.
- People are afraid of lawsuits, but lots of places all over country have successfully regulated religious uses. They tend to come here as opposed to other counties because it’s easier. These churches aren’t small, they’re megachurches.
- Public schools fall under master plan.
- Cottage zone in Portland/Seattle. Tiny lot zones that allow small homes to be built on small lots for an affordable housing strategy. Designed to promote alternatives for affordable housing.
- Hospital special exception where you have to have approval from planning board that no longer exists. Will email specific code/info.
- This is an excellent idea, but doesn't get to the root of why we have so many ZTAs underfoot to begin with. A sufficiently flexible zoning code should take into account a wide range of circumstances.
- Hesitant to add more regulation – perhaps just “emphasis”.

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11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite? [Continued]

- Sustainability
- Emphasis is on existing issues is emerging not new issues.
- Housing market
- Productivity housing would be helpful in this side of housing market.
- Density more expensive to build upward pressure on cost to build and downward pressure on buying cost stop disincentives.
- New focus on affordable housing panic in commercial and industrial zones.
- Do not create policy disincentive.
- Maybe a separate redevelopment standard.
- Overload market – only way to get affordable housing.
- Maybe policy “if application not processed in X-time, it is deemed approved”.
- Defined time periods built into code to get predictability.
 - Goes back to staffing availability.
- I can see this working if the number of cases in the past has been at such a capacity that twice a year would not create a major overload.
- Nexus between zoning and infrastructure growth policy.
- Form-based codes with architectural standards.
- Allow for effective ZTAs regarding historic preservation.
- Public participation is key.
- Greater focus on urban concepts. Not just suburban like before.
- Smart growth
- Reuse/redevelop standards are more important than new development (Practical application of standards in the code penalizes redevelopment. Should be leveled out or accommodated)
- Environment regulations, their place in the code should be reviewed
- Economic benefits of a project should be considered. There should be standards that give consideration to economic development
- “Limited master plan process” that could be initiated by applicant
- More requirements for time frames on more processes
- Expiration time frames are sometimes too short/arbitrary on plans and lead to poor outputs
- Step 1 time limit doesn’t reflect the actual process. Timelines should be more reflective of actual total process
- Water quality and conservation. Maryland will get drier.
- Transit is not addressed properly. Zones and codes set higher standards. For community development, i.e., Metro zones, not just density, but do not allow 80-90% market rate. Mix the income levels – better and higher standards to truly promote the policy goals.
- Address climate change and global warming – green design car dependency.
- Parking standards for urban areas.
- Honesty in zone ordinance. The new TMX zone can apply in places with no transit. This is because of a definition in the code. This is dishonest.
- Object to use of zoning to further green objectives. If my parking is curtailed, I will go to another county or drive further.

**Montgomery County Zoning Code Rewrite
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11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite? [Continued]

- I am retired and I do not need the frustration they want to impose.
- We have to plan for plug-in cars (Example: Outlets in driveways, windmills, parking spots).
- We will change from internal combustion to electric vehicles.
- Greater consciousness on demographic change. A 1/3 of the population has a disability. Look at requirements for no-step access homes. Likewise, look at modifying regulations to allow for live-in caregivers, particularly for affordable housing.
- With regards to cars, we still need to move away from the auto-dependant environment.
- The more you develop walk ability, the more convenient you make mass transit.
- Address drastic compromise of the viability of the housing reserve. Once fuel costs go up, we will not have farms at all.
- We need to tie zones and transit together. Go back to recommendations of Transit Policy Report.
- Current code does not provide much use for infill. Compatibility standard is subjective and not useful.
- Neighborhood conservation districts are a way to define standards. I would like a way to build NCD's into the zoning code.
- Mansionization; it reflects that the single-family resident zones are out of date.
- If you want to build smaller homes, you should allow for simplified subdivision of lots (with certain consent of local neighbors, perhaps with compensation).
- Helps avoid McMansionization.
- One of the stakeholder groups that needs to be heard in this process is the realtor group.
- Subdivision of lots is a good way to increase desirable and affordable housing stock.
- Lower the cost of doing a Zoning Application.
- Avoid need for professional planners, draftsmen and lawyer.
- Simplify when possible to make the zoning process less costly by avoiding professional help.
- Provide for expedited process when possible.
- Look at this question of process efficiency
- Zones to address water quality, runoff.
- Coordinate with transportation regarding sidewalks and storm water management (particularly with infill).
- Consider reducing of unrelated inhabits in a singe-family home.
- Another group to hear from is the affordable housing organizations
- Municipal planning boards that Park and Planning interacts with
- Address development of publicly owned lands
- County/municipality coordination
- DPS issues should be addressed
- Form and design-Form should have greater emphasis
- Design guidelines for context sensitive design
- What are the overwhelming policy goals?
- Address the impact of State Authority; i.e.: smart growth-statewide development policies

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11. What new or emerging issues are not addressed (or not adequately addressed) in the code that should be included in the Rewrite? [Continued]

- Recognizing distinction between agricultural, suburban, and urban. Should be reflected in environmental guidelines (for example).
- Disconnect between state priority development funding areas and County, etc.
- Environmental and climate change.
- State-enabling law. Look at state enabling law and then proceed with rewrite from there.
- Environmental might should be put elsewhere in law besides zoning.
- Uniformity should be reexamined and eliminated. Spot zoning issues.
- Health concern. High density that is not walkable is not healthy. People should be encouraged to park their cars and not use them. An upcoming issue will be health for seniors.
- Form-based code. Would like a discussion about how it might/might not work.
- Conflict of interest if people can't afford urban housing but we don't want them going out to agricultural areas. Also applicable regarding institutional uses.
- Design standards; compatibility of infill to existing neighborhoods; modification of mind-set from suburban zoning standards to urbanized zoning standards. Separation of uses should be the exception rather than the norm; set-backs and other urban standards.
- A major emerging issue is urbanization. The Kensington mayor suggested that he would like one zone for urban Kensington with a strong master plan. Mayor of Kensington is looking for simplicity to address the development issues, but the current system of I3 , I4 and C3 is inflexible.
- We have to get away from predicting the economic future of every square of land and look at "how is urbanization new"? Currently it's only addressed in CBD zones. New code should reflect the way we view planning. Is it to plan for the future market? Or, is the process to determine an overall vision with a fairly high-level of flexibility. Zoning should accomplish those goals. There is a legitimate fear by the public of giving over power of this sort.
- Most commercial is C3 and has limited density and parking and not height.
- Clean up CBD zones then clean up TSR, C3, CO, I4, then clean up commercial and finally residential zones. Clean up relatively low density residential zones and areas where we want apartments/ mixed use zones. Limited attention should be paid to rural zones because it's not likely to be useful.
- Quality of design and development that we achieve in terms of its form could be addressed by some measure of form based approach. I'm leery of inclusion in master plan and zoning code, so that's a problem
- The interest in mixed use (streetscape and public zone) isn't currently well addressed.
- The optional method design review should separate the site plan from the project plan. The site plan becomes more of a ministerial plan. Whether it is by zoning or newly developed practice problem, the ordinance should be clear about the distinction between the project and site plans.
- Keep the project plan because you need early stage review in the process.

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12. Do you have any other suggestions or concerns that have not been mentioned?

- Smaller zoning codes for specific areas.
- Would get same number of ZTAs in year, but possibly easier to sort/organize.
 - Assign certain times of year.
 - Public might not go for it if it complicates the process.
- Signage issue – look into design of signs.
- Special exceptions require find of need. Need has never been really defined. It's impossible to evaluate and it doesn't serve purpose it was intended. Need requirement should be illuminated or defined better. Cell phone towers, for example.
- Market will determine the need; shouldn't need a "need" requirement.
- Electronic signs-zoning says they can't change more than once per day. Maybe an emergency provision in case of amber alert or hurricane warning.
- Some sign provisions are bizarre. They are outdated. For example, you can have a temporary sign for a year. No signs in shape of people (perhaps this is intended to regulate advertising by adult businesses).
- What is a story? It's an issue. Maybe should be height.
- See preliminary comments above. It's great that we're taking a hard look at the zoning ordinance, but it's the bigger picture that is more in need of fixing.
- Parking ordinance is difficult to get through.
- Small uses for special exceptions.
- Height of houses, definition of cellar and basement.
- What does 36 ft. mean? (Re: mansionization debate).
- Schools need places to go. Affordability is an obstacle for new institutional uses.
- Zoning ordinance/MPDU, consistency.
- Lots of comments learn toward form-based code. Why not good for Montgomery County? It is new, but possibly a good idea.
- Form-based may open up areas to newer populations – could be prevailed as negative.
- If we do not encourage redevelopment here, we will lose – they will go somewhere else.
- Some have said they do not want to do business here again.
- Maybe look at other jurisdictions around county for examples.
- As a great deal of the discussion today related to form based codes as a means for dramatically improving what we have today, I think there are two examples that you might want to look at, if you have not already.
- Azusa, CA has created a tremendous new formed base code for the City. Ventura, CA has also created a wonderful code that should be used as a precedent throughout the country. In both cases the codes were spearheaded by Rick Cole who was the City Manager at both cities when they were created. I might suggest that whoever is working on this effort, contact him to pick his brain and get feedback on how he did it and what process did he follow to get these implemented. Rick is currently the City Manager at Ventura and can be contacted at (805) 654-7740 and citymanager@ci.ventura.ca.us
- How do we get the Department of Transportation on board with the goals of this effort which I believe is to continue to strive for smart growth? Right now, they are not helping.

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12. Do you have any other suggestions or concerns that have not been mentioned?

[Continued]

- Zoning supposed to be comprehensive document to protect public. Has become document to protect certain few. Health, safety, and welfare should be main concern.
- Quality of life – people should be able to get to or from places they need or want to go.
- Transit, air quality.
- Quality of life of individual or group. Automobile or public transit.
- Established building set back should be eliminated. The mathematical application of the standard produces outcomes that aren't appropriate to the context or that don't reflect the intent of the standard.
- Eliminate story requirements and replace with height.
- Keep design out of the code
- Keep out other code that isn't relevant (ex: life/safety)
- Consider reducing number of unrelated inhabitants occupying a single family dwelling – need to distinguish between a large or extended family (personal use) and many unrelated tenants (rental/commercial use). Similar to accessory apartments, this changes the nature of a neighborhood.
- Develop guidelines for residential off-street parking – need to minimize paving of front yards or parking on grass.
- Develop architectural guidelines for residential and commercial buildings – incompatible additions to existing structures or incompatible new structures to neighbors/neighborhood create visual blight.
- Develop landscaping guidelines for residential buildings – need to minimize clear cutting by requiring replacement of trees
- Make lawn maintenance service a special exception rather than a permitted use. Some services are creating an impact on the neighborhood; the community should have the right/opportunity to comment on this use.
- Better enforcement of existing regulations.
- Coordinate requirements of all regulating agencies including but limited to transportation and storm water management.
- Applicability density/growth of narrow range ought to be set in broader context
- Old Euclidean zones stop development
- More focus on transportation corridors and wedges of land to be redeveloped
- More emphasis on hierarchy of transit options outside Metro
- Address the failures of personal interpretation of zoning-better leadership needed
- Other jurisdictions have more unified vision of leadership than at Park and Planning
- Establish clearer Park and Planning vision
- Environmental division at Park and Planning too radical an influence
- Staff is good but the level of detail of the process for zoning is too cumbersome
- Code should allow for consideration of market forces with regard to use
- Needs to be a way to override the master plan if zoning is impacted
- Imprecision of zoning code: Substantially conform, not inconsistent with, conform to, master plan issues.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

12. Do you have any other suggestions or concerns that have not been mentioned?

[Continued]

- Preserve trees or go after mass transit.
- Bonus provisions have been treated differently in different zones. There needs to be consistency between programs.
- Needs to be consistency between zones—need structure as to why they exist. Pick a form and stick with it.
- Legal issues are imbedded in all of these laws—adult bookstores, sign laws. Need a legal review in this before you get too far in the rewrite.
- There should be a way for Board of Appeals/DPS/others to give advisory recommendations.

13. Is it clear what different government entity roles are in the zoning and development process?

- Montgomery County is not all under one boss – zoning actors are not clean.
- Hard to get outsiders/agencies.
- Reasons they do it differently – because their system is different.
- Some systems like M-NCPPC, are easier to understand.
 - State regulation may have been different.
 - Maybe staff was different
- M-NCPPC authorities all have different goals/different constituencies.
 - Not an executive branch.
 - No one authority, but it is spread across multiple people.
- Maybe there was a more clear chain of command or even more time allotted for review.
 - Also higher level of responsiveness.
- Change to this system must come from top-down.
- Public education would not need to be done in the code.
- Need to understand more the relay/process for requests.
- Excellent structure civic associations we could give regular talks to organizations- “How to get your plan through”. Example- DC Advisory Neighborhood Commissions (ANCs).
- Give civic association more weight like ANCs, encourage use of their organizations.
- Confusing for staff and public
- Improved but not always clear. What division is taking lead? Is there an exception?
- Not clear on government structure nor the request/approval process
- Roles are not clear
- DPS and zoning department-who makes decisions on the document? Citizens call us for information, but for formal decision they must go to DPS. Public tends to go zoning department, developers tend to go directly to DPS. Would be helpful if zoning department knew what developers were doing beforehand.
- Reword this question to say just zoning, not “development process”-too broad

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14. What are your thoughts on the current zoning districts? Are there zones that are outdated and no longer used? Are there opportunities to consolidate or eliminate?

- I think the low density residential zones and agricultural zones are working fairly well and require the least change (but definitely some improvements). Moreover I don't think we can have major changes in standards for built-out residential areas (but definitely need to consider some improvements targeted at redevelopment).
- I think the commercial and industrial zones are probably seriously out of date and may not be achieving our objectives.
- We have too many mixed-use zones and I am not sure why we can't decrease the number significantly (e.g., why have both transit station and CBD zones if the zones look so similar?).
- For non-residential uses (and possibly residential as well), the number of potential uses should be decreased significantly.
- Will have to give this more thought, but the question can only be fully answered once we get through knowing what the real purpose of the zoning code is (see discussion at question 3).
- Get rid of CO, OM, TSM, TSR, and maybe one of the generic industrial zones. They are difficult to interpret. We might want to modify one of the floating zones to clarify purpose.

15. Additional Comments Submitted in Writing

Submission A

Preliminary comments: An overhaul of the Montgomery County Zoning Ordinance is a necessary task, but only one in what should be a comprehensive examination of land use policies and procedures in the County. In the absence of a high-level view of what else we need to improve in the existing framework, working on the zoning ordinance in isolation will address only some of the issues currently bedeviling the County.

The current framework places an overemphasis on planning above execution and implementation. Certainly, the latter stages are worthless without good planning. However, we have the opposite problem - no effective follow-through. This is the root of problems like the Clarksburg debacle, which was not an isolated incident - just the most visible.

Special exceptions are a good example of this disconnect. Special exceptions are where the rubber hits the road for any given Master Plan. They are really part of Master Plan implementation. Although a few large sites are targeted for specific complex projects subject to site plan review, most development occurs by right or through the special exception process and doesn't require rezoning or detailed review by the Planning Board. However, there has long been a cultural focus at the Planning Board that puts Community Based Planning at the apex of any conceptual approach and tries to fit all zoning activities into it. Doesn't work. Special exceptions are not mini-site plans and their success hinges on whether the applicant has complied with the zoning ordinance requirements, not how much the applicant can massage its proposal to be palatable to technical staff or neighbors.

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Furthermore, there is a serious disconnect between planning and enforcement. There are not enough zoning inspectors at DPS to provide meaningful enforcement. If Montgomery County were appropriately staffed, there would be some 36 zoning inspectors in place. We have seven. Zoning enforcement is largely complaint-driven, which might have worked 30 years ago but is glaringly inadequate to maintain the quality of life that County residents now expect.

So, as we examine what to fix in the zoning ordinance, it's essential to keep in mind that there is a larger context that is in even greater need of adjustment. Unless we take a comprehensive approach to all phases of the land use process, we won't have achieved much. The beginnings of a framework already exist - it just needs to be developed with this zoning ordinance effort as a component.

Submission B

- 1) We recently tried to make acc. apts. a permitted use, and at the public hearing, all the neighborhoods came out and testified against – so this seems politically infeasible.
- 2) We do not have enough affordable housing here, which is why we need acc. apartments. So, why not:
 - a. Encourage the building of two-family dwellings (“a dwelling containing not more than 2 dwelling units arranged one above the other or side by side”), which is a permitted use in the R-40 zone, and also create and permit and encourage three-family dwellings that can be above or side-by-side. The key is not to require each unit to have a separate direct entrance to the outside and not to require that each unit have its own outdoor space. Units like these provide affordable housing all over the country. They are called double and triple deckers in New England and “mother-daughter” houses in New York. Maybe DC has its own version. With such buildings, often one family buys the building, lives in one unit, and rents out the other unit or units, thus being able to afford the mortgage. These buildings allow parents and adult children to live together, in different units, where neither unit is necessarily subordinate in size to the other. This allows for parents to age in place and have their children nearby. Sometimes parents and adult children or various family members buy the building together, making it more affordable.

Yes, we may not get the open space we want, but we have to start thinking more urban. And maybe there is some way to address this open space issue for these units. For example, maybe we could change the PUD zones so that they allow this type of two-family and three-family dwelling. Right now, although 59-C-7.131 says that all types of residential uses are permitted in PUDS, the attached density table excludes two-family homes, and only references one-family and multi-family (neither of which is a two or three family double decker per definitions in our zoning ordinance).

Two and three family dwellings as described here successfully house all types of households all over the country – renters, people who do not want yards, students, retirees, people who can come to amicable ways to share the yard.

In New England, the ownership structure of these dwellings often is converted so that there are separate owners for each unit, with provision for common maintenance of the building and common use of the outdoor space. My friend is raising her family in just such a unit right now,

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and could never have afforded a single-family house, especially one that happened to be close to a subway and bus lines. I lived as a renter in two different two-family homes in New England, and they were just fine and in fact quite pleasant.

b. Encourage developers somehow to build family-sized apartments (i.e. 3 bedrooms, plus), with ancillary rec. facilities in the building and on the grounds that make it less necessary to have your own personal lawn. I lived and worked in Hong Kong, and these buildings worked just fine – some of the apartments were small, some were huge. (I was a housing planner in HK for the Hong Kong Housing Department). I lived in NY in just such an apartment.

3) Create different standards for accessory apartments by zone, and keep them as special exceptions. Why in the world should we have the same standards for an R-60 zone as for an RE-2 zone? The larger zones have larger lots that often can easily accommodate larger apartments and more cars, with no obvious detriment to the neighborhood. Why mandate the same acc. apt. size limit on the apartments in all zones? We easily could deal with the typical adverse impacts of acc. apts. by having different standards in different zones, with diff max. cars/unit restrictions and perhaps diff unit size restrictions.

4) Perhaps we could even allow some very specific types of locales to have acc. apts. by right, with requirements/restrictions – e.g. on arterials in single-family homes, with no car ownership allowed (or a max. number of cars that can be owned/leased at any one time by both the units, to minimize car parking associated with the building...), and on a bus line or near a metro, or something like this. This might help the owners of homes on arterials that have been widened over the years and whose properties are now less than desirable, while reducing the attractiveness of the home to an entirely non-residential special exception use.

Submission C

I. Significant Flaws and Policy Issues

Start from Scratch; Restrict Zoning Text Amendments. In my view, the major flaws in our Zoning Ordinance are unnecessary complexity, inconsistencies and excessive detail. I would be delighted to see us put the current code aside and start from scratch with something simpler. Our Zoning Ordinance has become unwieldy over the years, at least in part due to the practice of continuously adopting piecemeal amendments to achieve narrow goals, with insufficient regard for the overall impact on our zoning scheme. Regardless of whether we revise what we have or start over, I would strongly recommend that we eliminate the practice of continuous, piecemeal amendments. We would be better served by permitting zoning text amendments to be introduced only at certain times, perhaps twice a year, so they can be considered as a group and their combined impact can be assessed. This would not eliminate piecemeal amendments, but would improve our ability as a County to implement them with fewer inconsistencies and unintended consequences. The applicable provisions could be crafted to allow zoning text amendments at other times on an emergency basis, with either a unanimous vote of the Council or at least a supermajority.

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Simplify Use Charts. One important means of simplifying our Zoning Ordinance, if we do not start over with something new, is to consolidate and simplify the uses in the use charts for the various zones. A few months ago, Judy Daniel prepared a good example of how to accomplish this in connection with amendments to the TOMX Zones. If her draft is still available it would be an excellent starting point, but it would have to be coordinated with all of the use tables throughout the code, and with special exceptions. In the process, it would also be worthwhile to explore consolidating some of the special exceptions.

Two things to bear in mind in connection with these consolidations are the impacts on existing uses that will become nonconforming, and avoiding generalizations so broad as to permit potentially harmful or incompatible uses. We need to tread carefully on the line between too much complexity, which we have now, and too little, which could have its own set of unintended consequences.

Clarify Nonconforming Use/Structure Provisions. I recommend clarifying the treatment of nonconforming uses and nonconforming buildings, which are currently addressed in 59-B-5.3, 59-B-6.2 and Division 59-G-4 (plus undoubtedly other locations I am not aware of). The current provisions are rife with ambiguity, and have caused significant problems in special exception cases in recent years. The Department of Permitting Services and the County Attorney's Office have issued several interpretations, but clearer language would make things easier. For example, it should be clarified that special exceptions that are approved and implemented and later become nonconforming uses due to changes in the zoning ordinance are only permitted to continue at the level of operation that was approved by the Board of Appeals before the change in the zoning ordinance that made them nonconforming. Moreover, it should be clarified in 59-B-5.3 that "altered" and "renovated" apply only to external changes, not internal, because zoning addresses only external features – internal features are building code issues. Also, the distinction between nonconforming *uses* and nonconforming *buildings* should be clarified, and appropriate restrictions should be developed for each category. Right now they are fairly muddled.

Make Country Inns a Special Exception Instead of a Single-Use Zoning Category. The Country Inn Zone has the distinction of being a single-use zone, providing no flexibility for property owners and a cumbersome means of developing a country inn. Moreover, a country inn can have significant impacts on a neighborhood, given that they often host large events such as weddings. These impacts would be better controlled by requiring a special exception, which can impose detailed operating conditions such as limiting the hours of operation or restricting the number of people on site at one time.

Re-Write or Eliminate PD Zone. The purpose clause of the PD Zone is unworkable in its repetitiveness, multiple calls for subjective determinations, and sheer complexity.¹ The purpose clause should be entirely re-written. The zone should not continue to be used for in-fill development unless the purpose clause is re-written in a way that makes it work for urban, single-building sites. We need an urban, mixed-use, in-fill zone that will give property owners a better option.

¹ It is especially repetitive when viewed in connection with the findings the Council must make under 59-D-1.61 to approve a PD Zone reclassification.

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If we retain the PD Zone, the purpose clause should not suggest that commercial uses are required, while the “Uses Permitted” section suggest that commercial uses are not permitted in a development under a certain size. In addition, section 59-C-7.133 should be revised to clarify which uses require a special exception when added to a development plan after Council approval, and which are considered “nonresidential, noncommercial” uses. The question recently arose in a PD zoning case as to whether a private school is a permitted use under 59-C-7.133(b) as a “nonresidential, noncommercial” use, or one that requires a special exception under 59-C-7.133(d) because a private school requires a special exception in the R-90 Zone.

Eliminate or Revise the Role of Development Plans in Response to Planning Board Concerns. In two recent cases involving required development plans (G-861 and G-864), the Planning Board recommended approval, but the recommendation letter expressed reservations about the development plan, and the Chair recommended that the District Council consider the development plan illustrative, to allow the Planning Board the freedom to work out compatibility and other issues during site plan review. I find these recommendations problematic, in light of the division of responsibilities that the Zoning Ordinance currently establishes between the District Council and the Planning Board with regard to rezonings. I have no opinion as to whether the current division of responsibilities is good or bad as a policy matter. My concerns are practical and legal. When the Planning Board makes a recommendation that does not truly represent a recommendation on the development plan that has been presented, but instead suggests that the Council should rely on the Planning Board to make it work at site plan, the District Council cannot place the same weight on that recommendation that it normally accords to Planning Board recommendations. This leaves the Council with less of the substantial, probative evidence that it needs to support a decision, and deprives the Council of the Board’s considered opinion on the plan before it. In hopes of resolving this problem, I thought it might be useful to describe how the Zoning Ordinance currently addresses rezoning cases, and to suggest some possible changes that might make the Planning Board more comfortable providing more definitive recommendations.

Currently, the Zoning Ordinance has two types of floating zones: those that require a development plan approved by the District Council at the time of zoning, under Section 59-D-1.1, and those that do not require a development plan, but provide the option, under Section 59-H-2.5, to submit a schematic development plan. These two types of zones create three types of rezoning decisions for the District Council: those that have no development plan at all, those that elect to submit a schematic development plan, and those that are required to submit a development plan. I have described below the findings the Council must make in each type of case, and the evidence necessary to support those findings.

(a) No Development Plan Required or Submitted. In floating zones that are not listed in 59-D-1.1 among those requiring a development plan, the applicant has the option to submit a schematic development plan that places limits on the use of the site, but is not required to do so. In most cases where a schematic development plan is an option, the applicant chooses to submit a schematic development plan. If the applicant chooses not to submit a schematic development plan, the District Council must decide the case based on the most intense use permitted in the zone, assuming building construction to the limits of the applicable development

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standards. To grant the rezoning, the Council must find that the application of the zone at the requested location, and the development permitted under that zoning, would be compatible with existing and planned development in the surrounding area (which includes visual impacts, nature and intensity of use, and traffic impacts), would be consistent with the purposes and standards of the zone, and would be in the public interest. The visual element of the compatibility finding will be based on the development standards for the zone, which specify elements such as minimum building setbacks, maximum building height and maximum building coverage/minimum green area. The public interest element includes assessing whether the development would be in harmony with the master plan, whether it would be adequately served by or have adverse effects on public facilities such as roads and schools, and whether it would support public interest goals such as protecting the environment and creating affordable housing.

(b) Schematic Development Plan Submitted. In most cases that do not require a development plan under 59-D-1.1, the applicant chooses to submit a schematic development plan under 59-H-2.5. This allows the applicant to limit the uses that will be permitted on the site and, if desired, to impose restrictions on building construction that are stricter than the development standards for the zone. These limitations simplify the evidence that needs to be submitted to support the application. For example, if an applicant seeking a commercial zone submits a schematic development plan that limits the use of the site to offices, or that specifically excludes high-intensity uses like drive-through restaurants, the evidence presented at the hearing can be limited accordingly. These restrictions also can serve to allay community concerns about what kind of use or construction is planned for a site. The restrictions that an applicant places on a schematic development plan are stated in the form of “binding elements,” which are specifically delineated as such in a table or list on the face of the plan. On a schematic development plan, only the items specifically set forth as “binding elements” are binding. The rest of the plan is considered illustrative. The plan may specify minimum building setbacks and maximum building height and coverage as binding elements, but exact building locations will be established at site plan. The binding elements on a schematic development plan have a perpetual life, because they must be listed in a covenant that is executed by the applicant and filed in the county land records, putting any future landowner on notice of the restrictions. This construct was created to avoid the constraints of Maryland case law, which prohibits conditional zoning (granting a requested rezoning only if the applicant agrees to certain conditions on the use of the land). The provisions of 59-H-2.5 allow an applicant to offer limitations that the County could not impose.

To grant the rezoning, the Council must find that the zone, the proposed use and the proposed construction would be compatible with existing and planned development in the surrounding area (again including visual impacts, nature and intensity of use, and traffic impacts), would be consistent with the purposes and standards of the zone, and would be in the public interest. The Council’s compatibility determination and its assessment of master plan conformity are aided in these cases by the information provided in the binding elements of the schematic development plan.

(c) Development Plan Required under 59-D-1.1. The zones that require a development plan offer developers a higher degree of flexibility than the Euclidean zones and the other floating zones. They do not impose fixed development standards such as minimum

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setbacks and maximum building heights, but rather encourage developers to be creative. In return for this flexibility, applicants are required to submit a development plan that will show the District Council what is being proposed and provide a basis for its compatibility determination. To ensure that the County gets the type of development that the District Council anticipated when it granted the rezoning, the site plan is required to conform to the non-illustrative elements of the development plan. To provide a certain amount of flexibility during site plan review, my practice is to advise applicants to state on a development plan that the building locations and footprints are approximate, and that minor changes may be made at site plan. I also recommend phrasing textual binding elements shown on development plans in terms of a maximum or minimum rather than an absolute number, again to promote flexibility at site plan.

To grant the rezoning, the District Council must make five specific findings that are set out in 59-D-1.61, as well as a finding that the rezoning and development would be in the public interest. The five required findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. To make these findings, the District Council requires enough detailed information that is binding in nature (and therefore able to be relied upon) to assess compatibility; to find that the project would be in substantial compliance with the use and density recommended in the master plan; to find that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient; and to find that the project would satisfy applicable forest conservation and water protection regulations. Thus, an overview of the various types of rezonings shows that for the zones that require a development plan, the Zoning Ordinance front-loads some of the planning that might otherwise take place at site plan. It requires submission of a fairly detailed development plan, requires that the site plan conform to the development plan except where particular elements are described as illustrative, and requires the District Council to make findings that can only be made with a fairly detailed level of reliable, binding information.

I have identified three alternatives to change the role of development plans, assuming the County Council agrees to revise the current allocation of responsibilities.

- Remove the requirement for a development plan from the zones that currently require them, eliminating the need for the findings currently required under 59-D-1.61(a). Without those findings before it, the District Council would not need the same level of detail about a proposed project. This approach would require adding some development standards and use limitations to these zones, to give the Council enough information about a proposed project to make a compatibility determination.
- Continue to require a development plan in certain zones, but amend the Zoning Ordinance to make development plans under 59-D-1.3 more closely resemble schematic development plans under 59-H-2.5, with binding elements permitted only for certain aspects of the proposal, such as development standards and the type of use. This would clarify and limit which elements can be made binding. Depending on how the requirements are written, this could provide substantially more flexibility at site plan while still giving the District Council a basis for its rezoning decision.

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- Eliminate the two types of zones and three types of zoning decisions by making the schematic development plan approach available in all floating zones. This would give applicants the option to submit no plan at all, in appropriate cases. For those who submit a plan, this approach would limit the elements that can be made binding, providing more flexibility at site plan. This approach would have the added benefit of simplifying the process.
- Either of the latter two alternatives could be done in conjunction with a new provision stating that if a site plan application is not submitted within a specified number of years after rezoning, the zoning of the land will revert to the former classification or be rezoned by the District Council to the former classification.² This would have the benefit of not locking in binding elements indefinitely. It would, however, require careful record-keeping at Park & Planning to ensure that each rezoning is tracked, and in cases where a site plan is not submitted in time, the proper action steps are taken to place the property in the former zoning classification.

Consider Potential Improvements to LATR and PAMR. Although the detailed requirements of LATR and PAMR are established in Planning Board documents, they are referenced in the zoning ordinance and are key to the outcome of many zoning and special exception cases. LATR is based on critical lane volume (“CLV”) analysis, which calculates CLV based on conflicting vehicle movements at an intersection, such as left turns by cars headed south v. through movements by cars headed north. The Growth Policy establishes CLV standards for each policy area in the county. An intersection is considered to operate reasonably as long as the CLV does not exceed the threshold for the relevant policy area. If a proposed project is anticipated to push the CLV at a studied intersection above the CLV standard for the policy area, the applicant will be required to make roadway improvements to mitigate its impact on the intersection by bringing the CLV to a level below the applicable standard. In some situations, instead of or in addition to roadway improvements, an applicant can mitigate its impact by making non-roadway transportation improvements, such as building a sidewalk or a bus shelter. The LATR Guidelines offer trip credits for such improvements, which allow an applicant to reduce the number of trips anticipated from a project. Reducing the number of trips added to an intersection of course reduces the impact on CLV.

Evidence in many cases has suggested that CLV analysis does not always measure traffic conditions accurately, particularly at intersections that are already seriously congested. CLC analysis measures only on thing: how many vehicles can get through an intersection during the weekday morning and evening peak hours. It does not measure how long it takes to get through an intersection (delay) or how far back cars stack up waiting to get through (queuing). Several traffic experts, including those working for developers, have testified that if an intersection is heavily congested, the congestion can depress the number of vehicles getting through the intersection during the peak hour to a level that results in a CLV below the applicable policy area standard. This does not mean that the intersection is operating at an acceptable level in terms of

² Legal research would be necessary to determine whether this can be set up as an automatic reversion, or whether Council action would be required.

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delay or queuing. The intersection passes the LATR test simply because existing congestion limits the number of vehicles that can make it through the intersection during the peak hour.

Evidence in several cases has suggested that there are alternatives to CLV analysis, such as delay analysis, queuing analysis (which is, in fact, noted as a possibility in the LATR Guidelines, but has rarely been used) or computer simulations, which might provide a more accurate analysis of an intersection and of the potential impact of proposed development. Given the central role that traffic impacts play in the County's planning and zoning activities, in my view it would be worthwhile to evaluate alternatives that might be more accurate than CLV analysis.

Decision-maker in Special Exceptions. Currently, the hearing examiners hold hearings in all special exception cases, but the Board of Appeals makes the final decision in all but a handful of special exception categories. This results in a hearing, followed by 30 days for the hearing examiner to write a report, then a ten-day period for interested parties to request oral argument before the Board of Appeals, then a Board decision after a vote at its next public work session, then a period of time before the Board of Appeals issues a written decision (the statutory period is 30 days). The suggestion has been made that the time between application and final decision could be shortened by giving the hearing examiners the authority to decide all special exception cases, with a right of appeal to the Board of Appeals. This would shorten the decision-making process, and would have the additional advantage of avoiding the common misunderstanding that because the "Board of Appeals" is making the decision, a special exception hearing is an "appeal" of something that has already been granted, rather than an initial application for a new use. This change would be unlikely to result in a significant change in decision-making, given that the Board of Appeals almost always adopts the Hearing Examiner's recommendation. It would, however, decrease the citizen-board role in special exceptions, which could be viewed as a negative.

Parking Requirements. Evidence in many of my cases suggests that the parking requirements in Article 59-E require too little parking for multi-family and townhouse developments in typical suburban locations, and too much in location near Metro stations. These requirements should be comprehensively examined and re-written in a way that recognizes varying needs in varying types of neighborhoods.

Accessory Apartments. Due to the high number of applications, accessory apartments take up a disproportionate amount of hearing time and other county resources. They are almost always granted – I am aware of only one denial in the several dozen cases that my office has processed in the last seven years. The biggest potential reason for denial is if a neighborhood already has too many accessory apartments. The relevant provisions, however (59-G-1.21(a)(4) and (7)), contain no standards to assess how many is too many, so they are very difficult to apply. I recommend that accessory apartments be treated as a permitted use, regulated by the Department of Housing and Community Affairs, with a right of appeal to the Board of Appeals. Failing this, accessory apartments should be decided by the hearing examiner (per 59-G-1.12), to shorten the amount of time before applicants get a decision and to avoid taking up more county resources than the issues warrant. Either way, the specific standards should be revised (1) to provide a proliferation standard, e.g. a radius around an application site within which there can

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be no more than X percent of homes with an accessory apartment; and (2) to replace the language in 59-G-2.00(a)(5), which states that an accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, with language that will serve the same goals without the risk of violating Montgomery County's anti-discrimination provisions. These provisions prohibit discrimination in housing based on, among other things, marital status.

Call Special Exceptions "Conditional Uses." Many members of the community think that a "special exception" is a variance, because that's what the name sounds like. Our special exceptions are, in fact, conditional uses, and should be called that to avoid confusion.

Call Hearing Examiners "Administrative Law Judges." The title "hearing examiner" is meaningless to most people, and does not convey to members of the public the function of the position, a quasi-judicial role commonly known in other jurisdictions as "administrative law judge." We serve as judges in administrative cases, and our title would be more understandable and less archaic if changed to Administrative Law Judge.

Listing of Zoning Text Amendment Dates. Currently, each section is followed by a legislative history that lists amending ordinances. It would be helpful for each ordinance listing to include the date that the ordinance was adopted, so the reader can tell when the section has been amended.

II. Detailed Recommendations for Particular Provisions

59-H-2.33. The provisions for a filing fee refund if a local map amendment application is withdrawn currently allow the Hearing Examiner to refund the full amount of a fee, if the fee was \$25,000 or less. They require District Council approval for a refund if the fee was greater than \$25,000, but then they limit the refund to 75% of the fee. This inconsistency should be resolved, for example by allowing the District Council to refund the full amount of any fee, or by limiting the Hearing Examiner to refunding up to 75%. I would recommend allowing both the Hearing Examiner and the Council to refund up to 90% of a fee, recognizing that some work has gone into any application, even if it is withdrawn before a hearing is conducted.

59-H-5.12. The hearing examiners should be given the authority to extend the report deadline in any zoning case once, for 30 days, without asking for approval from the District Council. This would allow the hearing examiners to better manage their work loads without undue delay, and without taking up time on the District Council's agenda for requests that are routinely granted.

59-D-1.7(d) (2). In cases where a hearing examiner conducts a hearing on a development plan amendment, this section prohibits the hearing examiner from holding the record open after the end of the public hearing, and requires that a report be submitted within 30 days. This section should be revised to eliminate the restriction on holding the record open, which serves no discernible purpose. The only effect I have observed from this section is to require the hearing examiner to schedule an additional hearing date just to receive into the record revisions to a development plan that became necessary based on testimony and discussions at the first hearing date. Development plan amendments that proceed to a hearing before a hearing examiner should be treated like local map amendments, where the record can be held open as needed, and the

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hearing examiner has 45 days to submit a report. Like local map amendments, the hearing examiner should be given the authority to extend the report deadline once, by 30 days, without asking for approval from the District Council.

59-D-1.61(a). This provision was amended a few years ago to add a requirement for review of a rezoning application by the Alternative Review Committee (“ARC”) in any case where an applicant seeks to exceed the height or density recommended by the applicable master plan in order to accommodate moderately priced dwelling units (MPDUs) on site. The ARC Committee is charged with deciding whether a proposed project would be financially feasible, with MPDUs on site, without the full height or density requested. The committee has been criticized by many parties on grounds that some of its members have inherent conflicts of interest, its meetings are not open to the public, and the standards for determining whether something is “financially feasible” are not clear. When these criticisms are raised in zoning cases, they result in delays and complication. In my view, whatever benefit the ARC provisions confer is not worth the trouble it causes, and they should be eliminated. Legislation is currently pending before the Council to accomplish this.

59-D-1.61(e). This provision requires a finding that any documents an applicant submits “showing the ownership and method of perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and efficient.” The provision creates an ambiguity, because it does not directly require any such documents to be submitted, but it suggests that the Council should inquire about this issue. It also places the Council in the position of evaluating legal documents such as homeowners’ covenants for adequacy and efficiency. This provision should be eliminated, given that such detailed representations may be better handled during site plan review, or at least revised to resolve the ambiguity. This could be done by requiring the submission of such documents, but this would present difficulties for many applicants who have not determined, at this early stage in a development, what the ownership arrangement will be. The ambiguity could also be resolved by stating that an applicant must make a written representation that common and quasi-public areas will be maintained in perpetuity.

Section 59-E-2.83. The screening and setback requirements for parking areas in residential zones should not apply to uses of moderate intensity, such as accessory apartments and smaller home occupations, where no new construction is planned. Many homes with such special exceptions have three or more parking spaces (such as two spaces in a garage and two in a driveway), which is enough to qualify as an “off-street parking facility” under 59-E-2.83. It does not make sense to require such homes to install six-foot-high screening along their driveways, which typically is incompatible with the surrounding residential neighborhood. A waiver provisions should be added to this section to allow reduction or elimination of the screening requirement to enhance compatibility with the neighborhood.

Section 59-A-2.1. The definition of automobile parking facility cross references 59-E-2.92, which no longer exists. The correct reference is 59-E-2.83.

59-G-2.06. The requirement in (b)(5) that all driveways must be perpendicular to the curb or street line should be revised to permit a waiver by the Board of Appeals when a non-

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perpendicular driveway would result in a safer condition, or would improve compatibility with surrounding properties without sacrificing safety.

59-G-2.13.1. The specific standards for a child day care facility permit the Hearing Examiner to approve a facility “for a maximum of 30 children,” and authorize the Board of Appeals to approve a facility “for 31 or more children.” Both of these provisions should be clarified to refer to either a numerical enrollment limit or a number of children permitted on site at one time. This distinction affects the number of trips to and from the site, so it would be very useful to clarify whether applicants are expected to limit the enrollment to a stated figure, or may simply commit to a maximum number of children on site at one time. As a policy matter, I favor limiting enrollment, which provides better information about how much drop-off and pick-up activity the day care center will generate.

59-G-2.29. The parking provisions for home occupations should be made more flexible, to allow parking in a front yard when that is the best design solution for the site and the neighborhood.

59-G-2.32. The specific conditions that must be satisfied for a veterinary hospital are unnecessarily detailed and lengthy, and should be revised in favor of more simplicity. In particular, the noise provisions are somewhat contradictory, and have been described by noise experts as extremely onerous. Section 59-G-2.32(b)(6) specifies noise limits, expressed in dBa, at the nearest receiving property line. These are straightforward and, based on testimony in past cases, reasonable limitations. This section also provides, however, that “the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBa at any time.” This provision has been described as difficult to apply because it is complicated to assess “characteristic ambient sound levels.” It has also been described as onerous, because a noise increase of 3 dBa is the smallest change in noise level that can be detected by the human ear.

An additional noise restriction is imposed by 59-G-2.32(b)(3), which states that for buildings in which animals will be present, “maximum expected interior sound levels must be reduced to 40 dBa (A-weighted decibels) outside, measured at ten feet from the structure.” This provision has been described by experts as difficult to apply, because it is challenging to take outdoor noise measurements while isolating the noise coming from inside the structure from ambient noise. In addition, this provision seems unnecessary, given that the hospital must already comply with noise restrictions at the property line. The chief concern in granting a special exception is limiting its impact on neighboring properties to acceptable levels. This, in my view, is accomplished by the property-line dBa limits, without the need for a complicated, additional layer of noise restriction ten feet from the structure.

59-G-2.58. The specific standards for a telecommunications facility are designed to regulate cell phone transmission structures on free-standing monopoles and on rooftops. They do not address other cell phone technologies that do not need such tall structures, and can be mounted on utility poles or street signs. My understanding from past cases is that the cellular carriers are reluctant to use these alternative technologies because of their cost. Given the proliferation of cell phone towers in the County in recent years and the inherent visual impacts of

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these tall structures, I believe it would be worthwhile to research alternative cell phone transmission technologies and consider requiring all new telecommunications facilities to use such technologies, except where there are insurmountable technical impediments. Legal research would, of course, be necessary to ensure that any changes in our regulations do not run afoul of federal law. As a preliminary matter, however, it seems unlikely to me that requiring the use of technologies that are less visually obtrusive would violate federal law.

The references in 59-G-2.58(a)(1)(d) and 2(d) to a “less visually obtrusive location” should be clarified to explain what “less” refers to – less visually obtrusive than what? Specifically, these sections should be revised to clarify whether the Board of Appeals is authorized to permit a reduced setback on a site where there is no location that would satisfy both the property line setback (one foot per foot of height) and the residential dwelling setback (300 feet from any off-site dwelling). The question to answer is whether a waiver is available only if the site could satisfy both setbacks, but a different location on the site would be less visually obtrusive, or whether it is also available on a site that cannot satisfy both setback requirements.

59-E-3.7. The parking requirements for an automobile filling station are outdated. They require two parking spaces for each car wash bay or service area, but today, car washes are almost always automatic, and what they need is stacking space for cars to line up, not parking spaces.

A parking requirement should be developed for landscape contractors, who need parking spaces for their trucks and other work vehicles as well as their employees.

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Online Survey Summary as of 9/29/08

[Responses reflect 70 submissions, with either complete or partial responses]

1. What is the single greatest concern you have with the Zoning Code?

25 Too complex

- 6 Too many zones
- 9 Difficult to find what I'm looking for
- 8 Information on a topic is scattered throughout the code
- 19 Other

Other

- There was something wrong with the survey output so we did not get any clarifications on these others.

2. In your opinion, what are other major flaws or weaknesses of the Zoning Code?

- 18 Outdated
- 29 Zoning districts are complicated and/or overlap
- 24 Too many footnotes
- 32 Processes are complex
- 30 Needs better organization
- 17 Other

Other

- Too many exceptions to basic concepts
- Generally cumbersome. Sooo many zones, processes, etc. that can be inconsistent if not downright conflicting and are difficult to reconcile.
- the ZO has become too rigid trying to address detailed master and sector plan disallowing good design to rule over standards written out of context. Zones for every master plan is not necessary
- Requirements for developers inadequate
- Too difficult to determine applicable development standards on older lots.
- It does not provide realistic, flexible development standards for implementing infill development/redevelopment.
- Allowing equestrian facilities to be called agricultural rather than recreational uses in the RDT zone is wrong. Some zones do not have enough land associated with them to be viable.
- favors real estate developers, not public int
- Must limit ZTAs or at least limit the time periods or seasons when they can be enacted.
- allows tear downs and huge McMansions to be build on our street - Kirkwood Drive. Allows too many industrial storage facilities to be built on River Road.
- it's disorganized and inefficient de to too many amendments
- Too many codes. Not everything needs regulation.
- Needs an overall vision, rather than exception upon loophole upon special status...
- Too many exceptions are given to favor developers which infringe on zones that are rural.

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- YOU NEED COMPREHENSIVE ZONING MAPS ONLINE. THE WAY IT IS SET UP NOW IS INANE. YOU NEED TO CONSULT A ZONING ATTORNEY TO FIND OUT WHAT APPLIES TO YOUR PARCEL/LOT.
- Residents need one-stop shopping. Online information should be categorized and linked to details by neighborhood and subject matter.
- Doesn't accommodate "green" options, such as easy conversion of McMansions into multiple family dwellings.
- Does the code address the issue of "remodels" of pre-1958 houses? We are not sure if the code prevents mansion building on small lots where small structures existed.

3. What are the most successful aspects of the code?

- 3 Well structured
- 15 Contains historical information
- 20 Land use tables are easy to understand**
- 14 Other*(Responses in Appendix)

Other

- Provides some standards, information public can understand at a high level
- Worked OK in "1960"
- Results are apparently successful. We have a wonderful County.
- the parts I wrote! The structure and organization of the ZO is not the problem - the zones themselves is the issue
- None.
- There are no good aspects - it is too complex and allows too much subjective application
- None
- allows tear downs and huge McMansions to be built on our street - Kirkwood Drive. Allows too many industrial storage facilities to be built on River Road.
- None
- contains some useful zones
- the idea is central: to control and manage growth
- Free online download of the ordinance. And that's the only single successful aspect I see in the entire ordinance and I use it daily.
- Able to deal with many different situations with some degree of certainty

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4. How do you prefer to get information about the Zoning Code?

- 7 In person
- 0 By phone
- 42 Online**
- 10 By letter/email
- 4 From Department of Permitting Services

5. Would you use online mapping (GIS) to find information about a property?

- 66 Yes**
- 1 No

6. Does the code make it clear which decision-making body is required to make each type of decision involving development or zoning?

- 16 Yes
- 44 No**

No

- Example: The location of parking in an SPA (DPS and MNCPPC), on a historic site (HPC), in an overlay zone with impervious area limitations (DPS and/or MNCPPC?) subject to Site Plan (MNCPPC), etc. etc
- not really; it could better address the "players" and respective roles in the process, also addressing lead agency issues (which is a big problem)
- Jurisdiction of DPS and MNCPPC is still not clear.
- Review by committee and multiple comments to be resolved prolongs the process too much
- extremely complex. Difficult to tell decision making body.
- responsibilities are so divided that there is little accountability.
- The average person can not understand the decision making process between the Planning Board and the District Council.
- there are too many bodies involved in special exceptions
- overlapping jurisdiction. Not necessarily a bad thing, but definitely not clear to the ...consumer.
- I own a building in a historic district, and permitting was a nightmare because agencies did not understand the zoning as well as I did. The code favors large businesses. with bribe money to change it
- Decisions through site plan review and other approval processes require you to endure a byzantine, bureaucratic, and outdated gauntlet. Planning staff should have no decision-making authority.
- In our neighborhood, different boards make different/conflicting decisions for renovations vs. new construction. These should be in synch with each other.
- no as to many of the small decisions that need the "lead agency" designation.
- Flow charts would be helpful, whether in print or on line.

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7. What issues or uses do you feel the code could more adequately address?

25	Sustainability
18	Renewable Energy
13	Small Business Incentives
16	Parking Standards
19	Landscaping
28	Design and Architectural Guidelines
23	Other

Other

- Optional vs. standard methods
- my list would be different
- Only if the issue is addressed by incentives, not mandates. It's already over-regulated.
- the regulatory framework should allow for design excellence to emerge through a thoughtful dev review process rather than strangle creativity, flexibility and sustainability
- Public use space design
- walkable communities/amenities to encourage walking/bicycling
- House size to lot size, # cars per lot, % non-permeable surface, # people per house, % tree canopy, requirement to keep/maintain trees, max # of pets, work vehicles - what are County priorities, enforce
- Better mixed uses zones are required.
- Conservation design for agricultural zones
- Need fewer zones, more generalized list of uses. Too many "special" situations, i.e.: overlay zones, special exception parking, etc.
- Economic growth, job creation, affordable housing, revenue creation for the County
- development standards by zones and other subcategories
- Definitions of what constitutes public open space and amenities in the optional development method.
- Easy zones that specify maxim FAR and Maximum Height measured from a highpoint or low point in the street in front of the property.
- allows tear downs and huge McMansions to be build on our street - Kirkwood Drive. Allows too many industrial storage facilities to be built on River Road.
- Greater consideration to impervious surfaces & storm water run off.
- I believe that codes should address safety, not esthetic issues, and code requirements are already too costly, too bureaucratic, too complex and too burdensome
- arts and entertainment
- Practicality - don't spend time worrying about renewable energy as a zoning issue when it's likely only be a fad. Will it actually need to be a key part of zoning decisions in 10 years? I doubt it.
- Some areas appear plan-less. They are ugly, not geared to walking or to the community, and have no sense of place or context.
- Zoning must clearly reinforce and support ag reserve, add buffer zones to zoned agriculture, and address smart growth policies to discourage developers running rampant with loopholes.

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- None, the code should be streamlined. Not expanded.
- Should NOT address design/arch guidelines -- too subjective. Design is the owner's purview.
- I am tired of all the vinyl and poor quality building materials.
- Little regard for the non-central areas of the County

8. In some cases, the zoning code is more permissive (e.g. building heights) than the county's master plans. Do you think this:

15 Permits Greater Flexibility
48 **Creates Confusion**

9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

- Simplicity and clarity. Master Plan should override zoning code. The existing code should be enforced without exceptions. Pay and go should not be part of the zoning code
- The Code has to be rewritten in its entirety to reflect current and future County status and vision and to reflect newer zoning tools and theories. Also, DO NOT use this survey to support any conclusions. It is too simple and has internal bias.
- Do not try to rewrite the code with inhouse staff. It was tried in the 1990's and failed. Staff has too much work as it is and is too close to it. Need a fresh look.
- I do not envy the task ahead. It will be a Herculean task to alter the many very entrenched mindsets. It will be a painful transition but we appreciate your efforts.
- simplifying the ordinance and eliminating conflicts between planning and regulatory documents and "guidelines" is needed. Predictability has to be at the forefront of the ordinance (results and process), which can occur by creating zoning tools that allow creative private and public sector minds, though a transparent and flexible review process, to arrive upon development entitlements that are result oriented, clear as to exactions and other "give-backs", responsive to market, and flexible based upon basic parameters guiding where growth is appropriate and establishing the important goals and objectives being sought through the regulations. Trying to shape development through detailed, rigid regulatory ordinances discourages good and creative design. The relationship between master plans and zoning needs to be made clear with consistency being the key (especially as to the basic parameters of density, height and other generic zoning standards). Flexibility will minimize footnotes!
- Requirements for development (particularly by-right) should be more in line with best practices of other leading jurisdictions. Developers should be required to put more resources/thought into the design of buildings and property to create walkable places. Where are the TDM strategies? bike racks, shared parking, internal sidewalk networks? Reduce parking minimums --parking maximums should be set. Look to Arlington VA, Charlotte NC.

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9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

[Continued]

- People need to understand the zoning and related rules before they purchase a property so as not to have false plans for future use of said property. With so many zones this is a daunting, nearly impossible task.

Also, people need to know whom to contact if they have questions. They may wonder, "is it Rockville (County Gvt), Park & Planning, DPS, Maryland DEP, Mont. County Dept of Environment, Animal Control, Humane Society, Police? There are so many places to turn that people don't know exactly which one to call for help.

- Will the County put monitoring staff and enforcement teeth into enforcement of environmental laws that go along with zoning? It seems when people are caught, they get a small fine. A cynical view may be that individuals or groups with deep pockets may consider a fine a simple cost of doing business. The current fines are not enough of a deterrent, and monitoring of construction projects may not be comprehensive enough to catch all offenders.
- 1. The system of grandfathering prior era development standards should be scrapped entirely for older lots and replaced with a "quasi-variance" process to allow exceptions to current development standards only in limited circumstances, under circumstances where infill compatibility is addressed in the exception standard. Houses that replace tear-downs should get no break from current law at all; houses that renovate more than 1/2 the existing floor area (counted like FAR) or add to the existing floor area by 50%, should get no break from current law as to the enlarged area. The entire system should be administrable without having to research or apply standards from long ago replaced development standards.
2. The Code must contain language that allows for common-sense to be exercised by staff. Staff must have the ability to disapprove obvious attempts to evade existing constraints where today technical form is allowed to triumph over substance. Many examples of this can be cited.
- I believe the time for preserving agricultural land through restrictions on sewerage disposal is rapidly coming to an end. Serious thought must be given to some conservation design spelled out in the zoning code to preserve a viable agricultural land base in the county.
- We've got to get away from the "a new zone for every master plan revision" mentality.
- Zones should stay away from design and architectural guidelines and stick with guidance on land uses.
- If the rewrite of the ZO will increase the ZO reliance on master plan recommendations, then a process should be developed to ensure a property owner's opportunity to file for a master plan amendment with the assurance of being heard. If the rewrite will increase use of site plan review with "compatibility" the primary factor, then a definition with parameters regarding compatibility should be developed.
- This is a great idea and I applaud the effort of reaching out to the community. A rewrite is long overdue.
- More flexibility is needed. In general, the County's zoning and land-use regulations are far too restrictive and fixated on one-size-fits-all approaches that clearly don't work in the real world. Some discretion and creativity is needed to meet the needs of the vibrant, dynamic, private sector economy free we now have (if we hope to keep our tax base, that is).

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9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

[Continued]

- As General Counsel of the M-NCPPC, I drafted many amendments to the zoning ordinance. I would be happy to explain their meaning and intent to you.
- Over the years, the ordinance has been amended many times by simply adding new zones, many of which are inconsistent, in whole or in part with prior zones. This is a major problem.
- Many other more minor issues. Thanks for asking.
- the code should provide predictability across the board. where alternatives or flexibility are desired, parameters or ranges of flexibility should be listed with conditions that apply in each case. The structure should be more logical and flow in some continuous deliberate order
- I hope the discussion of revisions includes consideration of form based zoning, as well as what constitutes the "state of the art" zoning codes in other leading jurisdictions.
- The County Council's practice of amending the code via ZTAs is inefficient, makes the code difficult to understand, and opens the door to undue influence by real estate developers who seek special concessions for their individual projects. The code is written for -- and often by -- real estate developers, rather than for the public interest. Its interpretation, e.g. by DPS, is not transparent, resulting in practices that negate the purpose/intent of the code. Dr. Hanson's policy of trying to shorten the sector plan process looks suspiciously like an effort to short-circuit the County's Master Plans, to facilitate project-by-project favors for real estate developers. The MNCPPC really needs to keep the developers at arms' length to counter the wide-spread perception (starting with the Clarksburg scandal) that County planners are controlled by the real estate industry, and are working against the public interest.
- The Zoning Code should be a standard to which developers must adhere. However, all too often the Zoning Code is changed to meet the desires of individual developers who do not wish to construct projects in accordance with the Code. Look at the number of modifications to the Code over the years to see the way this has evolved. I hope that this rewrite process is not an attempt to further lessen the functions of the Code.
- A zoning code should be clear for any layperson to read.
- The zoning code need to address the tear downs and huge McMansions built on our street - Kirkwood Drive, and, too many industrial storage facilities built on River Road.
- Properties should have more flexibility for uses if the owner/applicant can satisfy the neighbors and the planners that the use is compatible and/or consistent with other uses in the neighborhood, even if other uses have been grandfathered, because all current uses contribute to the character of a neighborhood. Also, I am not sure if this is done as of this time, but a clear interpretation of what a neighborhood is should be included in the zoning code.
- All planning and zoning information should be available online as well as land records.

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9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

[Continued]

- Permitting and compliance costs are excessive (unnecessarilly so) and inconsistent with affordable housing goals espoused by most elected officials. Codes need to be ones that are applied to the County as they are applied to commercial development. Should the County require commercial development be "green", but not impose the same requirement on its structures? Should the county impose a fallen tree removal on private property owners but neglect fallen trees on dead trees on its property? The County radon hazard standard is much lower than needed to protect the public and expensive to comply with. Code standards have been developed to insulate legislators from criticism, and are unneeded or excessive. Also housing codes should not be used to enforce esthetics. If people want to live in a planned community or a condo, they have that opportunity, but don't use codes to enforce property management approval committees on residents who would rather not have them.
- Ensure a proper mix of stores...that includes some big-box retailers in selected areas. Don't be so anti-big box as to force Target and Wegmans out of town thru archaic and overly restrictive zoning. If they want to spend their money to be here, zoning and/or political restrictions shouldn't forbid it.
- USE your zoning and planning powers adequately. There were many arguments that the ICC would encourage sprawl. Sprawl won't take place if zoning laws don't allow it. But, don't NOT build new roads because some uninformed individuals use the "fear" of new sprawl along a long-overdue new road as a hollow argument against it. We also need to continue the ICC around into VA to hook up with VA Rt 28 near Dulles.
- Generally, this is an attractive county. But you have a long way to go to fully encourage new businesses (of all kinds, small and large) to want to relocate here. The planning process is extremely cumbersome, restrictive and, in many cases, too expensive.
- All regs should be sortable by zone so one could generate a report specific to their particular situation - say R-60. If notes must still apply then they too would be consolidated and presented as an R-60 set of notes. I don't want to wonder whether my interpretation is correct...I want to see the regulation specific to the zone.
- Think long-term! Pavement is forever, and ugly construction/pavement may remain ugly forever, or certainly for a very long time. Don't inflict it upon us. With a little creativity or thought, something appealing can be made...
- Demand green space, even if it's just a bit.
- Demand smart-growth, energy-star, LEED, etc. standards. No exceptions.
- Build for the demise of the ICE (internal combustion engine); think it through and build for the future.

**Montgomery County Zoning Code Rewrite
Small Group Discussion and Online Survey Report**

9. Do you have any other suggestions or concerns, relating to the Zoning Code Rewrite?

[Continued]

- We have a chance to safeguard our county for a sustainable future through zoning codes. Codes in the ag reserve should not be diluted, but reinforced and expanded. New development codes must reward and allow density and re-development of older outdated commercial tracts, one good example is along Rockville Pike. Sprawl and large parking lots already in place could be rezoned for sustainable redevelopment, even to the point of increasing green space. New developments must be held to a better stewardship than the past "plow, pave and build" mentality. Developers can no longer rule the county, and be granted exception after exception to bypass zoning codes. Taxing with development district taxes is one contributing factor to sprawl, and it should not be allowed, so people will buy in to the smart growth developments.
- It would be really nice if the Zoning Code were a web site such that "linkages" could be made between key words, the zoning text, and maps, for example. This would also point out any inconsistencies in the code.
- There has GOT to be some way to make it all more comprehensible and relevant to the way we need to build today, that is, build for long-term sustainability when our primary challenge is reducing greenhouse gas emissions and still living well. In an effort to making our zoning relevant, we keep adding more zones, but now the number of zones has gotten surreal. I do not think form-based codes are the answer, however.
- Process itself must be streamlined so applicants can have transparency in process and know where they are in process (upon whose desk the application is and when it will be moved on) and not get tied up for years.
- Zoning and zoning in Master Plans should be identical. Too many zones, now I hear there will be TMX and TOMX, etc, etc.
- Don't do it as a wholesale, comprehensive effort. Fix only the limited areas that need fixing and leave the rest. Generally works satisfactorily. For any amendment, grandfather as conforming anything that exists and conforms to requirements when it was built.
- The Zoning Ordinance is a patchwork of old and new rules. It is one of the most complex, overly complicated zoning ordinances that I have worked with. To even the most sophisticated planners, lawyers & architects it is a morass of processes and procedures. A complete overhaul is long overdue. The ordinance must be completely rewritten to focus on 21st century planning practice.
- A piecemeal approach of looking at one section at a time will not work. It has not worked in the past where previous efforts failed miserably. A fresh approach looking at best practices around the country is needed. The Clarion study of 2002 was a good diagnosis for the commercial and industrial zones. A similar effort to examine other ordinance models is warranted. The effort should be to streamline, simplify and focus on the real issues important to people like clear guidelines and standards, less plan review and more certainty of processes and procedures.
- Good luck!

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[Continued]

- Restrict businesses that are intrusive on the character and quiet of a residential neighborhood. Some bring in traffic but are, at least, quiet (Vet clinics/ Drs. offices) but others are more intrusive. E.g. there is a home-owner who has a car/motorcycle repair business on our street corner. Others have construction businesses which overflow into the home/garage with noisy operations at all hours. There should be some modification over the types of businesses allowed in purely residential areas.
- Wind Mills and solar power restrictions need to be lifted.
- Public notification of re-zoning is "hit or miss". County notification procedures are not followed (i.e. - those affected by a zoning change are not notified, as County code indicates they should be. If a resident does not see a posted sign for a proposed change, they are out of luck.
- Getting information is difficult. A citizen should not have to take annual leave from their jobs, and travel long distances to see zoning documents. Why cannot these documents be available at regional county offices or at libraries where those affected can see them?
- Reaching the appropriate County official is difficult. While we all have too much work and too little time, when you finally reach the correct County official, you get their voicemail, and your messages are not returned (even after waiting a week for a message to be returned).