

A Zoning Rewrite Team Green Paper

Initial ideas for discussion and testing
to create a simpler ordinance based
on sustainability and quality of place.



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II. Land Use Districts: Consolidation and Focused Integration

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Introduction

Zoning Districts are regulated by Article 59-C of the Zoning Ordinance. There are 18 divisions of this article covering various residential, commercial, planned unit development, overlay, and other zones. Divisions 59-C-14 to 59-C-17 are reserved for who knows which other types of development can be imagined. Each of these divisions has its own land use table and set of development standards for each zone within the division. As mentioned in Green Paper I, the land use tables are not consistent or logical. Further, the development standards do not always follow the same order when in tabular form or when delineated in paragraphs. Thus, there is no consistent place to look for information in any given zone.

The diagnosis of the Zoning Ordinance, as summarized in the *Zoning Discovery*, has shown that both development standards and land uses are strikingly similar over many zones. There are also numerous redundancies and absurdities that should be eliminated and/or rationalized. A telling fact in the ordinance is that Article 59-C is titled “Zoning Districts” but each of the divisions refers to groups of zones. And each of these zones has its own permitted uses and development standards (and purposes, intents, and sometimes findings). An early task of the diagnosis was to create matrices of zones, uses, and standards to elucidate similarities and differences. Once the zones are compared side by side, patterns emerge that allow for a much more logical system of districting. If the uses are separated from the development standards, a large number of “zones” can be simplified as “land use districts” – as Article 59-C seems to imply they should. The

development standards, which will be discussed in a later paper, could then apply to zones based on intensity of use, i.e., they should correspond to density, not use. The districts would be mapped to provide appropriate space for required uses, the densities of development then determine the spatial standards.

This paper briefly outlines a potential restructuring of the existing zones into nine general land use districts. The guiding principle of further district consolidation analysis is the focused integration of uses in our nodes of mixed-use development and the protection of existing agricultural and residential neighborhood patterns.

Problem Statement

The Montgomery County Zoning Ordinance has over 100 zones in 12 districts. Most of these zones share uses within the district and, if not for the virtually infinite array of development standards for each zone, could easily be simplified as more comprehensive use districts. The zones have become so specific with regard to allowed uses and standards that planners continually add zones to tailor their master plans to the needs of a given locality. A restructuring of zones into more comprehensive use districts will ensure that the following objectives are met:

1. Master plans should rely on the ability to assign density to ensure proper development

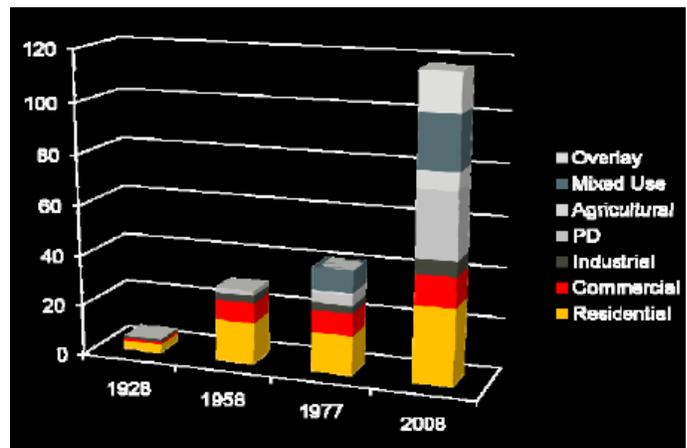
standards rather than the creation of new zones.

2. All commercial zones should be consolidated and no commercial district should prohibit residential uses – all commercial zones should permit, if not require, a mix of uses.
3. Agricultural and low- to medium-density residential neighborhoods should only allow uses that enhance and preserve their character.
4. Industrial zones should support new technologies and services in demand.

Background

In 1928, Montgomery County had five zones. As noted, it now has over 100. And each of these zones individually delineates the allowed uses and standards in tables and paragraphs spread throughout the ordinance.

This graph shows the growth in the number of zones in over the past eight decades:



Although, we have increased the number of zones at an exponential rate, many of these zones are applied to less than ten properties per zone and a miniscule percentage of land. For example, there is one C-5 zoned property, four Country Inn zoned properties,

and one PCC zoned property. In fact, there are almost forty zones that have contiguous areas mapped less than 10 times throughout the county. And some zones are not mapped at all: MRR, several of the PD zones, a couple RMX zones, LDRC, and a couple others.

Given the large number of existing zones, it has become difficult to quickly and easily find information about any given property. And a quick glance at the land use tables shows that many uses are shared across these zones. For example, there are six differences between the uses allowed in the RE-1 and R-200 zones (out of a possible 433 uses in the ordinance). Likewise, there are four differences between the uses allowed in the R-150, R-90, and R-60 zones (again, out of 433 possible uses listed in the ordinance).

Rewrite Team Solution

After diagnosis of the existing state of our land use tables, research into contemporary districting, and the efforts of several other jurisdictions, the zoning rewrite team has come to several conclusions:

1. Land use districts should be rationalized into overarching themes of land use.
2. Development standards should be divorced from land use to ease consolidation of districts and tie standards to density.
3. The use of a three-tier system of allowed use will facilitate

the consolidation of zones into districts to accommodate minute differences.

Each of these conclusions is discussed below.

Land Use Districts

It is proposed that 9 land use districts be created:

- Agricultural
- Residential Low Density
- Residential Medium Density
- Residential High Density
- Commercial/Residential
- Mixed Campus
- Industrial Service
- Industrial Light
- Industrial Heavy

Each of these districts would have a table enumerated in an identical manner of permitted, conditional, and special uses. In the case of the residential district and industrial districts, they would be combined in one table each. The commercial/residential and mixed campus districts will, given our research to date, probably allow identical uses, but they are separated as districts because they have such distinct characters and contexts.

The proposed consolidation, after the initial comparison of standards and uses:

will have a wide range of uses based on master plan recommendations. The development standards would work in a similar fashion, but be capped at the time of rezoning.

| <u>Current zones</u> | <u>Proposed use districts</u> | <u>Symbol</u> |
|--|---|---------------|
| RDT, Rural, RC, RS, RE-2, RE-2C, Country Inn, RNC, LDRC | Agricultural | A |
| RE-1, R-150, R-200, RMH200 | Residential Low Density | RLD |
| R-90, RMH, R-60, R-40, RT-6, RT-8, R-4plex | Residential Medium Density | RMD |
| RT-10, RT-12.5, RT-15, R30, R20 | Residential High Density | RHD |
| R10, RH, RMX-1/2/2C/3/3C, MXTC, CBD-R1, TOMX, CBD-R2, TMX, TSR | Commercial/Residential (typically higher residential density than commercial) | RC |
| C5, C6, CT, C1, C2, C3, C4, CBD-0.5/1/2/3, HM, CO, TSM | Commercial/Residential (typically higher commercial density than residential) | CR |
| CP, I3, R&D, LSC, OM | Mixed Campus | MC |
| I1, I4 | Industrial, Light | IL |
| I2, MRR | Industrial, Heavy | IH |
| New Zone? | Industrial, Service | IS |

Last, overlay zones may fit into a fewer number of overlay districts that focus on particular issues such as:

- Environmentally Sensitive Areas
- Small-Business Protection
- Employment
- Design & Character

These last two proposals for consolidation, viz. the PD and overlay districts will only be able to be streamlined if three things occur in concert:

- general guidance for the district is given in the ordinance,
- a more specific vision is provided by the master plan, and
- a site plan with a finding for master plan conformance is required of all applications.

Use versus Development Standards

When properties are assigned to a use district they will also be assigned a density. To ensure compatibility with context and the creation of a more uniform aesthetic for an area, the development standards for any use will be tied to the density. And this can occur in one of two ways. A simple table for each density in a district can list setbacks, heights, etc. Or, in specific areas of concern – such as village centers or CBDs, the standards can be directly mapped.

Thus, all uses would be regulated the same in the RMD district, but the designation of density would determine the standards in the table or as mapped. In this case, a simple

Discussion of moving the RS zone to the Light Industrial district is ongoing.

The TDR zones would be grouped according to their primary zone, e.g. R-90TDR would move to the RMD district. The zones would not be necessary, because receiving sites can be mapped separately – regardless of district or density designations. (This will be discussed in a later paper.)

The current PUD zones are being further analyzed for consolidation into a single PD floating zone that

one-to-one map amendment would assign density as follows:

| Zone | Assigned FAR |
|------|--------------|
| R-90 | 0.80 |
| R-60 | 0.90 |
| R-40 | 1.00 |
| RT-6 | 0.90 |
| RT-8 | 1.00 |

This will be discussed in detail in the Residential FAR and Development Standards white papers.

Tiered-Use Impacts and District Consolidation

Most of this is possible only when implementing the permitted, conditional, and special use method outlined in paper I. In some cases, consolidation would mean the once prohibited uses would be allowed in a new district. In these cases, a choice must be made to simply permit the use (it may never have been considered for a certain zone or it may be innocuous), to allow the use under conditions (for example a minimum lot size, setback, or screening requirement), or it may be allowed only by special permit to ensure a Board of Appeals ruling on compatibility. This flexibility allows consolidation of zones into larger districts while maintaining context-specific sensitivity.

Summary & Example

These methods work together to form a simple and rational approach to zone districting. Applicants, regulatory bodies, and citizens will

have a clearer understanding of what is allowed where and under what circumstances.

The consolidation of, for example the I-1 and I-4 zones are strikingly similar. First, the names, “I-1 – light industrial” and “I-4 – low-intensity light industrial” is a clue. Second, there are about a dozen differences in the land use table out of about 160 total uses. And these are for uses such as stockyards (how many are there in Montgomery County?) and a few are simply grandfathered uses. A rate of 92% similarity lends itself easily to general grandfathering provisions and to establishing permitted, conditional, and special use permits to ensure the outlying 5 or 6% of differences to be sensitively and responsibly regulated. Last, the standard method development standards are virtually identical (I-4 requires more green space) and the “special regulations” of the I-1 zone and optional method of development in I-4 allow for a great amount of flexibility when reviewed by site plan. The consolidation of these zones into a light industrial district will contribute to easier development of necessary activities that have scarce available land in the county while maintaining protections for residential neighborhoods.

Simplifying and rationalizing land use districts, detaching standards from use districts, and using a tiered regulatory review, will allow for better comprehension, forecasting and master planning, and flexibility of implementation without the need for a new zone or text amendment for every new planning idea. One final caveat: this proposal allows for a base of allowed land uses; optional method development that may allow more flexibility in exchange for

certain public benefits will be researched and discussed later.

Selected Resources for Green Papers I & II

Texts:

Anderson, Robert, *Anderson's American Law of Zoning*, 4th ed, New York, Clark Boardman, Callaghan, 1996.

“The Conditional Use Permit”, Governor’s Office of Planning and Research, The Planner’s Training Series, Sacramento, CA, August, 2007.

Easley, Gail, “Conditional Uses: Using Discretion, Hoping for Certainty”, *Zoning Practice*, May 2006.

Elliott, Donald, *A Better Way to Zone*, Washington DC, Island Press, 2008.

Freilich, Robert, et.al, *21st Century Land Development Code*, Chicago, APA, 2008.

Kushner, James, *Comparative Urban Planning Law*, Carolina Academic Press, 2003.

Markham, Lynn, “Conditional Uses: Part 1”, *The Land Use Tracker*, 2:4, Spring 2004.

Rohan, Patrick, *Zoning and Land Use Controls*, Matthew Bender/Lexis Nexis, 2001.

Jurisdictions Researched:

Stafford County, VA

City of Port Orange, FL

Ocean City, MD

Northbrook, IL

Hanover, PA

County of Chesterfield, VA

Town of Carrboro, NC