



May 5, 2016

## TECHNICAL STAFF REPORT

*Planning Board Meeting of May 19, 2016*

**Case No./Petitioner: ZRA - 158 – Jon Weinstein**

**Request:** To amend Section 128.0.K of the Supplementary Zoning District Regulations of the Zoning Regulations to permit density from potential infill lots in the R-20, R-12, R-ED, and R-SC zoning districts to be sent to a receiving parcel in any planning district, under certain circumstances.

**Department of Planning and Zoning Recommendation:**

**APPROVAL WITH REVISIONS**

### I. DESCRIPTION OF PROPOSAL

The Petitioner proposes to amend Section 128.K of the Zoning Regulations, which governs the Neighborhood Preservation Density Exchange Option (NPDEO). The proposed amendment would permit density from qualifying infill lots in the R-20, R-12, R-ED, and R-SC zoning districts to be sent to a receiving parcel in any planning district, under certain circumstances.

- The Petitioner's complete proposed amendment text is attached to this Technical Staff Report as Exhibit A (Petitioner's Proposed Text).
- The Department of Planning and Zoning's recommended amendment text is attached to this Technical Staff Report as Exhibit B.

### II. EXISTING AND PROPOSED REGULATIONS

Section 128.0.K.1 of the Howard County Zoning Regulations provides a Neighborhood Preservation Density Exchange option for qualifying parcels in the R-ED, R-20, R-12, and R-SC Districts. Qualifying parcels are those that:

- Meet the definition of residential infill according to Section 16.108(B) of the Subdivision and Land Development Regulations – *“a residential development in the area planned for both water and sewer service that creates one or more units on a property that adjoins an existing residential unit”* or;
- Are principally used for a Community Swimming Pool and are eligible to be developed for additional residential lots.

According to the existing NPDEO, qualifying parcels are permitted to send density to a receiving parcel within the same planning district or within a two-mile radius regardless of the planning district. The proposed amendment would remove these geographic restrictions and allow density to be exchanged with a receiving parcel in **any** planning district.

### **III. BACKGROUND INFORMATION**

#### **A. Scope of Proposed Amendments**

The proposed amendment could apply to any potential infill lots in the R-20, R-12, R-ED, and R-SC zoning districts, or any parcel that is principally used for a Community Swimming Pool and is eligible to be developed for additional residential lots (see “Potential Sending Parcels” on attached map).

Additionally, the amendment applies to parcels in the R-ED, R-20, R-12, R-SA-8, R-A-15, R-APT, or CAC that can receive development rights transferred from a sending parcel.

#### **B. Agency Comments**

No comments from applicable agencies have been received.

### **IV. EVALUATIONS AND CONCLUSIONS**

The proposed amendment provides a density transfer option with greater flexibility through the ability to send density to any planning area. Since inception in 2008, ten Neighborhood Preservation Parcels have been created, constituting of 23.8 acres. Eight subdivisions received 24 development rights from these sending parcels.

The NPDEO has only been used eight times over the past seven years. These utilization rates appear relatively low, and partly could be attributed to geographic restrictions within the existing code. The existing code provisions which limit transfer of density to areas within the same planning area, or within two miles, limits the pool of potential sending parcels. The proposed text amendment removes these geographic constraints in an effort to facilitate utilization and expand preservation opportunities.

The current NPDEO contains limits on both the amount of density that can be sent and also the amount that can be received. These thresholds provide protection so that no one receiving site is overwhelmed with density. The applicable code sections are discussed below.

#### **Density Sending Rates**

Section 128.0.K.1.a. of the Howard County Zoning Code limits the rate at which density under the NPDEO can be exchanged.

- In the R-ED, R-SC, and R-20 zoning districts, density may be exchanged based on a rate of 2 development rights per acre, up to a maximum of 3 development rights.
- In the R-12 district, density may be exchanged based on a rate of 3 development rights per acre, up to a maximum of 3 development rights.

#### **Density Receiving Restrictions**

Most of the receiving zones, cap the rate at which density can be received to 10% of the allowable density for that district. This is the case for the R-ED, R-SA-8, R-A-15, and CAC.

R-12 (Section 109.0.G.2) allows for 10% additional density than would be achievable at a net density of 3 du/acre, however; 3.63 units per acre allowed by right. Similarly, R-SC (Section 110.0.F) allows for 10% additional density than would be achievable at a net density of 3 dwelling units per acre, however; 4 units

per acre allowable by right. Accordingly, the density caps placed on these two districts does not allow for more density than would be allowed by right and thus does not fulfill the intent of the NPDEO. DPZ recommends revisions to these sections to be consistent with the language used for the majority of zoning districts and to allow these zones to operate as intended.

R-APT (Section 112.1.F) allows for a bonus density of up to 35 units per acre (25 units per acre are allowed by right). This is the only district that allows for an increase of more than 10% of the density afforded by right.

Given the cap in the amount of development rights eligible for transfer and the cap on the amount of density that may be received, ZRA 158 would not affect the amount of density transferred, but rather would increase the pool of potential sending parcels to facilitate exchange opportunities.

### **Relation to Plan HOWARD 2030 and Subdivision Regulations**

Neighborhood preservation is a key policy objective throughout Plan HOWARD 2030 (General Plan). Specifically, the General Plan discusses “Protection Incentives,” which seek to target infill development away from environmental features toward more appropriate development sites. According to the General Plan (page 24), *“Much of the remaining undeveloped residential land in the East is located in small, infill sites that are surrounded by adjacent development. These sites are often undeveloped because they contain extensive environmentally sensitive features such as steep slopes, streams, wetlands, and forest. Use of the density exchange option for neighborhood preservation parcels could allow these types of parcels to be permanently protected while their allowable development potential is sent to a more appropriate development site.”* This section of the General plan supports the proposed amendment and specifically recognizes the use of the Neighborhood Preservation Density Option as a mechanism for resource protection.

Additionally, General Plan Policy 10.1, suggests that the County *“Protect and enhance established communities through compatible infill, sustainability improvements, and strategic public infrastructure investments.”* Further, Implementing Action d. of Policy 10.1 suggests that the County *“Consider zoning modifications that would provide more flexibility in order to allow limited, compatible infill that enhances an existing community.”*

While the proposed text amendment supports greater and more flexible infill opportunities, the Subdivision and Land Development Regulations for Residential Infill Development (Section 16.127), provide a regulatory framework to ensure that such infill is designed in a way that is compatible with existing neighborhoods. The residential infill regulations set forth specific criteria intended to improve the design of a residential infill project and its relationship to surrounding residential development. The objectives of the regulations are as follows:

- (1) Accommodate growth within the context of existing communities in areas that already have infrastructure and public facilities;
- (2) Ensure development occurs in a manner that protects the environment, achieves high quality design and strengthens existing communities; and
- (3) Encourage investment in older established communities.

These regulations were recently revised through Council Bill 15-2016, which passed on April 4, 2016 and will become effective June 14, 2016. The revised regulations incorporate infill criteria to address neighborhood compatibility issues associated with setbacks, landscaping, privacy, building orientation, stormwater management and drainage. Together, the NPDEO and the Subdivision and Land Development

Regulations for Residential Infill, achieve the goals of General Plan policy 10.1, as well as Implementing Action d.

### **Conclusion**

Overall the proposed ZRA amendment increases the availability of Neighborhood Preservation sending parcels, provides greater opportunity to transfer density, shields environmentally sensitive features from development, protects existing communities, and better fulfills the intent of the Neighborhood Preservation Density Exchange regulations.

### **V. PROPOSED REVISIONS**

The Department of Planning and Zoning recommends incorporating the following minor adjustments to Sections 103.0 and 128.0 of the Howard County Zoning Code. These adjustments help to clarify changes that occurred during Comprehensive Zoning in 2013.

- 1) The 2013 Comprehensive Zoning Plan included parcels located in the R-SC district as potential sending parcels. However, in Section 103.0, the definitions of *Neighborhood Preservation Density Exchange Option*, *Neighborhood Preservation Parcel*, *Neighborhood Preservation Receiving Parcel*, and *Neighborhood Preservation Sending Parcel* were never updated to reflect this change. Therefore, the Department of Planning and Zoning recommends that the R-SC district be added to those definitions as shown in Exhibit B.
- 2) Section 128.0.K.1.a was never updated to specify the rate at which density can be transferred from the R-SC district. The Department of Planning and Zoning recommends that the R-SC district be added to Section 128.0.K.1.a as shown in Exhibit B.
- 3) A minor grammatical correction is proposed in Section 128.0.K.1.a. that would remove the words “either” and “and,” and adding the word “or” as shown in Exhibit B to clarify interpretation.
- 4) Parcels in the R-SC district were not included in the list of parcels that may receive density in Section 128.0.K.3.a. The Department of Planning and Zoning recommends that the R-SC district be added to Section 128.0.K.3.a as shown in Exhibit B.
- 5) In Section 128.0.K.4.g.(2), an incorrect section number is referenced. The Department of Planning and Zoning recommends that the reference to Section 128.0.L.2. be replaced with a reference to Section 128.0.K.2.
- 6) In Section 109.0.G and Section 110.0.F, sending density bonuses are not calculated using the net density for the underlying zoning district. In all other sections where sending density bonuses are granted, the density for the underlying district is used to calculate the density bonus. The Department of Planning and Zoning is recommending that these two sections be amended to calculate sending density bonuses based on the density for the underlying zoning district.

**VI. RECOMMENDATION**

**APPROVAL WITH REVISIONS**

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-158 be **APPROVED WITH REVISIONS** as proposed in Section V above.

  
Valdis Lazdins, Director 5/4/16  
Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

**ZRA 151 – Exhibit A**

**Petitioner’s Proposed Text**

(CAPITALS indicate text to be added; [[brackets indicate text to be deleted]].)

**SECTION 128.0: - Supplementary Zoning District Regulations**

K. Neighborhood Preservation Density Exchange Option

1. In the R-ED, R-20, R-12 and R-SC Districts, a parcel that qualifies under the criteria for neighborhood infill development as defined in Section 16.108.(b) of the Subdivision and Land Development Regulations or a parcel principally used for a Swimming Pool, Community, as defined in the Zoning Regulations and is eligible to be developed for additional residential lots, may be a sending parcel for the Neighborhood Preservation Density Exchange Option AND [[within the same planning district or within a two-mile radius regardless of the planning district. However, sending parcels that contain a historic structure, as provided in Subsection 1.b below,]] may exchange density with an ELIGIBLE receiving parcel in any planning district.

**ZRA 151 – Exhibit B**

**Department of Planning and Zoning’s Proposed Text**

(**BOLD CAPITALS** indicate text to be added; [[brackets indicate text to be deleted]].)

Also,

**Section 103.0:-Definitions**

Neighborhood Preservation Density Exchange Option: An option for transferring density from a qualifying sending parcel in the R-ED, R-20, **R-SC**, or R-12 District to a qualifying receiving parcel in the R-ED, R-20, R-12, R-SA-8, R-A-15, R-APT or CAC District.

Neighborhood Preservation Parcel: A residential infill parcel in the R-20, R-12, **R-SC**, or R-ED Districts that existed on September 9, 2008 and is designated as a sending parcel on a Revision Plat or a Final Plat or easement. A Neighborhood Preservation Parcel shall be encumbered by a Neighborhood Preservation Parcel Easement, and is either improved with a Swimming Pool, Community as defined in Section 103.0 or an existing dwelling unit, or if unimproved, must be owned and maintained by a Homeowners Association or dedicated to the Howard County Department of Recreation and Parks as provided in Section 128.0.K. Any new structures placed on an improved site shall not be larger than 50 percent of the building footprint of the principal structure existing at the time the Neighborhood Preservation Easement is recorded, except as provided in Section 128.0.K.

Neighborhood Preservation Receiving Parcel: A parcel in the R-ED, R-20, R-12, **R-SC**, RSA-8, R-A-15, R-APT or CAC District which receives development rights from a sending parcel, in accordance with the requirements of the Neighborhood Preservation Density Exchange Option, and which, as a result, can be developed at a greater density than would otherwise be allowed in the underlying zoning district.

Neighborhood Preservation Sending Parcel: A parcel subject to a restrictive preservation parcel easement in the R-ED, R-20, **R-SC**, or R-12 District and from which development rights are removed and transferred to a receiving parcel in accordance with the requirements of the Neighborhood Preservation Density Exchange Option.

**Section 109.0: - R-12 (Residential: Single) District**

**G. Density Exchange for Neighborhood Preservation Parcels**

1. Sending parcel for Neighborhood Preservation:

A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development Regulations or parcels principally used for a Swimming Pool, Community, as defined in of the Zoning Regulations may be sending parcels for neighborhood preservation in accordance with the requirements of Section 128.0.K of the Zoning Regulations.

2. Receiving Parcel for Neighborhood Preservation:

A parcel may be developed as a receiving parcel in association with Neighborhood Preservation Parcel sending parcels at a bonus of up to 10% more dwelling units than would be achievable based on net density [[of 3 dwelling units per net acre]] **IN THE R-12 DISTRICT**, in accordance with Section 128.0.K requirements.

**Section 110.0: - R-SC (Residential: Single Cluster) District**

**F. Density Exchange for Neighborhood Preservation Parcels**

Sending parcel for Neighborhood Preservation:

A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development Regulations or parcels principally used for a Swimming Pool, Community, as defined in of the Zoning Regulations may be sending parcels for neighborhood preservation in accordance with the requirements of Section 128.0.K of the Zoning Regulations.

Receiving Parcel for Neighborhood Preservation:

A parcel may be developed as a receiving parcel in association with Neighborhood Preservation Parcel sending parcels at a bonus of up to 10% more dwelling units than would be achievable based on net density [[of 3 dwelling units per net acre]] **IN THE R-SC DISTRICT**, in accordance with Section 128.0.K requirements.

**Section 128.0:-Supplementary Zoning District Regulations**

**K. Neighborhood Preservation Density Exchange Option**

1. In the R-ED, R-20, R-12, and R-SC Districts, a parcel that qualifies under the criteria for neighborhood infill development as defined in Section 16.108.(b) of the Subdivision and Land Development Regulations or a parcel principally used for a Swimming Pool, Community, as defined in the Zoning Regulations and is eligible to be developed for additional residential lots, may be a sending parcel for the Neighborhood Preservation Density Exchange Option [[within the same planning district or within a two-mile radius regardless of the planning district.]] **AND MAY EXCHANGE DENSITY WITH A RECEIVING PARCEL IN ANY PLANNING DISTRICT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.** [[However, sending parcels that contain a historic structure, as provided in Subsection 1.b below, may exchange density with a receiving parcel in any planning district.]]

a. With this Neighborhood Preservation Density Exchange Option, in the R-ED, R-SC, and R-20 zoning districts density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 2 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in [[either]] the R-ED, R-20, [[and]] **OR** R-SC district. In the R-12 District density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 3 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in the R-12 District.



- b. A parcel that is either County-owned or encumbered with a Maryland Historic Trust Easement located in the R-ED, R-20, R-12, and R-SC District that qualifies as a Neighborhood Preservation sending parcel and that contains a historic structure which is open and accessible to the public may send density without limitation on the maximum number of development rights exchanged, provided that a single development right is retained in accordance with Subsection 4.a below.
2. Neighborhood Preservation Parcel Easement Requirements
  - a. The easement shall cover the entire sending parcel or lot that complies with the definition of a Neighborhood Preservation Parcel in the Zoning Regulations.
  - b. A Neighborhood Preservation Parcel Easement improved with an existing dwelling unit or a Swimming Pool, Community shall not have any new structures placed on the site that are larger than 50% of the building footprint of the structure existing at the time the neighborhood preservation easement is recorded. However, if the average footprint size of the nearest six dwellings is greater than the footprint of an existing building, the Director may approve a footprint that does not exceed this average.
  - c. The easement shall be approved by the Department of Planning and Zoning and shall be recorded at the time of recordation of the final plat for the Neighborhood Preservation Parcel.
  - d. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
    - (1) The location and size of all existing improvements on the parcel covered by the easement.
    - (2) A prohibition on future subdivision of the Neighborhood Preservation Parcel.
    - (3) A prohibition on future use or development of the parcel for uses incompatible with the Neighborhood Preservation Parcel Easement. Only principal or accessory residential uses or principal or accessory Swimming Pool, Community uses are permitted in accordance with the Zoning Regulations.
    - (4) The provisions for maintenance of the neighborhood preservation parcel.
    - (5) The responsibility for enforcement of the deed of Neighborhood Preservation Parcel Easement.
    - (6) The provisions for succession in the event that one of the parties to the deed of Neighborhood Preservation Parcel Easement ceases to exist.
  - e. One of the following entities shall be a party to the deed of Neighborhood Preservation Parcel Easement in addition to the property owner:
    - (1) Howard County Government; or
    - (2) Maryland Environmental Trust or Maryland Historical Trust; or
    - (3) A land conservation organization approved by the County Council.
3. Receiving Development Requirements
  - a. Residential development rights derived from Neighborhood Preservation sending parcels may be received as bonus density for developments on parcels in the **R-SC**, R-SA-8, R-A-15, R-APT and CAC Districts.

- b. Residential development rights derived from Neighborhood Preservation sending parcels may be received as bonus density on parcels in the R-ED, R-20 and R-12 Districts for which the total development project size is at least 5 acres.
- c. Development rights shall be received in accordance with the following ratios:

Type of Dwelling Unit to be Constructed	Number of Development Rights needed per Dwelling Unit
Single-Family Dwelling	1
Townhouse Dwelling	.5
Apartment	.33

- d. Any parcel with the main stem of the Patapsco River, the Patuxent River, the Little Patuxent River, the Middle Patuxent River, or the Deep Run running through the property shall be excluded for consideration as a receiving parcel for development of single-family attached or multi-family housing.

4. Additional Requirements

a. Sending Parcels

- (1) On improved residential parcels, one development right shall be retained on the sending parcel to allow for the continued existence of the existing dwelling unit. An unimproved Neighborhood Preservation Parcel must be owned and maintained by a homeowner's association or dedicated to Howard County.
- (2) On parcels improved with Swimming Pools, Community, one development right may be retained on the sending parcel to allow for a potential future dwelling unit.

b. Density Exchange

The exchange of density shall take place as a private exchange between property owners, subject to the approval of the sending and receiving parcels by the Department of Planning and Zoning in accordance with the procedures set forth below.

c. Approval of Sending Parcel

An application for approval of the sending parcel shall be made at any time before the initial plan for the receiving development is technically complete and tentative housing unit allocations have been granted by the Department of Planning and Zoning, and shall include the following:

- (1) A final plat of the sending parcel.
- (2) Documentation that the sending parcel complies with the criteria in Section 128.0.K.
- (3) A calculation of the maximum number of development rights which may be removed from the sending parcel.

- d. Application for Receiving Development  
An application for the use of the bonus density on a receiving parcel shall be made to the Department of Planning and Zoning and shall include a calculation of the proposed density and the number of development rights to be obtained from one or more sending parcels.
- e. Approval of Receiving Development  
The Department of Planning and Zoning shall tentatively approve the transfer of receiving bonus density to the receiving development when the initial plan submission for the development is technically complete and before tentative housing unit allocations are granted.
- f. Phasing of Receiving Developments  
Density for receiving developments may be recorded in sections. A Final Subdivision Plan or Site Development Plan shall not be approved for the receiving development until one or more sending parcels are approved which provide the necessary number of additional development rights for the lots shown on the Final Subdivision Plan, or the dwelling units indicated on the Site Development Plan.
- g. Recordation of Sending Parcels and Receiving Developments.  
Following the approval of the initial plan for the receiving development, the following documents shall be recorded together in the land records of Howard County.
  - (1) A revision plat or a final plat of easement for each sending parcel, designating the property as a Neighborhood Preservation sending parcel and indicating the number of development rights that have been removed from the parcel, the location of the receiving development, and that one development right has been retained for the existing or a potential future dwelling unit on the Neighborhood Preservation sending parcel.
  - (2) A deed of Neighborhood Preservation Parcel Easement for each Neighborhood Preservation sending parcel that complies with Section ~~[[128.0.L.2.]]~~ **128.0.K.2.**
  - (3) A final plat for the receiving development parcel which may be a final subdivision plat dividing the receiving development parcel into lots, or may be a density-receiving plat that records the number of development rights received from sending parcels but does not subdivide the receiving development parcel. Density recorded on the final plat for the receiving development parcel shall only be used on that receiving development parcel.