



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

MCPB
Item 13
05/15/08

DATE: May 6, 2006
TO: Montgomery County Planning Board
VIA: Glenn Kreger, Acting Chief, Community-Based Planning *gk*
 Rose Krasnow, Chief, Development Review *RK*
 Ralph Wilson, Zoning Supervisor *RW*
FROM: Judy Daniel, Community-Based Planning *JD*
 Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance language based on recommendations from the Draft Twinbrook Sector Plan. Specifically, to establish the Transit Oriented Mixed-Use 1.0 and Transit Oriented Mixed-Use 1.0/TDR Zones and to amend the land uses, development standards, and approval procedures for development in the Transit Oriented Mixed-Use 2.0 and the Transit Oriented Mixed-Use 2.0/ TDR Zones.

TEXT AMENDMENT: 08-05
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: District Council at the request of the Planning Board
INTRODUCED DATE: April 8, 2008
PLANNING BOARD REVIEW: May 15, 2008
PUBLIC HEARING: May 20, 2008, 7:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications to:

- expand the existing grandfathering provisions in the TOMX zones to allow an approved phased site plan to continue development under the previous zone if at least 60 percent of the total approved density is constructed before adoption of the Sectional Map Amendment rezoning the property to the TOMX zone.
- change the Standard Method density in the proposed new TOMX-1 zone from 0.5 FAR to 0.3 FAR, consistent with the Standard Method density in the TOMX-1/TDR. The change ensures that the Standard Method density in the new TOMX-1 zone is less than the Standard Method density of the TOMX-2 zone.

BACKGROUND OF THE TEXT AMENDMENT

The Twinbrook Plan recommendations reflect a long standing desire of the Planning Board and the County Council to augment the TDR program by establishing a means to allow the non-residential use of TDRs, as well as the established requirement to create TDR receiving capacity in Master and Sector Plans. In Twinbrook, both goals were reached. The Twinbrook Plan establishes:

- TDR receiving capacity in a new TOMX-1/TDR Zone and the existing TOMX-2/TDR Zone
- A mechanism for the non-residential use of TDR through establishing a value for a TDR in square feet instead of dwelling units
- A TDR bonus density potential in increments of floor area ratio rather than dwelling units per acre

The expansion of the potential for use of TDRs furthers the goals of the Twinbrook Plan to create a more urban and mixed-use place. These recommendations lay important foundations for the TDR program as the program must move into the urban realm of development that is the future of any significant added development potential in the County. The ability to create receiving capacity for non-residential uses is particularly important as we move further into the use of mixed-use zoning in urbanizing areas.

The specific TDR mechanisms proposed in the Twinbrook Plan and the TOMX Zone include:

- *Establishing a base density in the Standard Method*
- *Allowing a modest increase in residential density through the use of TDRs in the Standard Method*
- *Establishing a base density in the Optional Method allowed without the use of TDRs*
- *Allowing increased density through the use of TDRs up to the maximum density allowed in the Zone*
- *Establishing that the Master or Sector Plan may undercut the maximum density allowed and set the type of use (residential vs. commercial) allowed with TDR use*

In February, 2008, the County's Zoning Text Amendment Advisors reviewed the text amendment and recommended certain technical changes. These include:

1. Limiting changes to the table of uses, as they believe the simplification of the table of uses, which they support in concept, should be undertaken holistically through the Zoning Ordinance rewrite project. Accordingly, the staff revised the ZTA to reflect the same listing of uses (with highlighted minor modifications) as currently used. We will undertake the streamlining of the use tables – throughout the code - within the context of the comprehensive Zoning Ordinance rewrite project.

2. Revise the footnote to Section 59-C-13.234 in the TOMX Development Standards, to use the term “recommended” rather than “established” or “authorized”, reflecting actual legal authority.
3. Eliminating the provision for “stories” in the height section (59-C-13.235) in the Development Standards, using height in feet only.
4. A revision to the footnotes regarding the Shady Grove Master Plan to reflect the potential for a more general applicability of those standards in the future where only residential use of TDRs is desired.

These technical changes were included in the introduced version of the text amendment.

ANALYSIS

The Twinbrook Plan recommends the creation of the TOMX-1 Zone and TOMX-1/TDR Zone, as discussed during the deliberations on the Shady Grove Master Plan. Modifications to the TOMX-2 and TOMX-2/TDR Zones are also proposed that broaden their application for urban areas. A third, higher density TOMX Zone is anticipated for the White Flint Sector Plan and will be proposed at that time.

Other modifications to the TOMX/TDR zones incorporate the use of non-residential TDR receiving capacity. Also the calculation of TDRs for dwelling units in Metro Station Policy Areas is removed.

Below is a description of the text amendments. It should be noted that the same land uses are allowed in all the TOMX and TOMX/TDR zones, reflecting that it is the form standards and intensity that separate the different TOMX Zones, not the land uses.

I. TOMX ZONE AMENDMENTS

Development Standards – Standards for the new TOMX-1 generally mirror the existing standards for the TOMX-2 Zone other than density, and include (*ZTA Line 101*):

- **Net lot area** – TOMX 1 is the same as the existing TOMX-2
- **Building coverage** - TOMX 1 is the same as the existing TOMX-2
- **Public use space** - TOMX 1 is the same as the existing TOMX-2
- **Setbacks** - TOMX 1 is the same as the existing TOMX-2
- **Density of development**
 - As introduced, Standard Method TOMX 1 is the same as the existing TOMX-2 (*Staff is recommending that the TOMX 1 be reduced to 0.3 FAR, establishing less density than the TOMX 2 FAR of 0.5*)
 - Optional Method TOMX 1 is 1 FAR, compared to 2 FAR for TOMX-2 (*also establishes ability of the Master Plan to limit density below the maximum*)

- **Building height** (*Standard Method- height not defined in the Optional Method*)
 - Standard Method TOMX 1 is 28 feet
 - Standard Method TOMX 2 is 35 feet

All special standards and guidelines for Standard and Optional Method of Development for the TOMX Zones are unchanged, applicable for the TOMX-1 or TOMX-2 Zones.

Development Requirements - Site Plan and Project Plan requirements are added for the TOMX-1 Zone and the TOMX-1/TDR Zone. (*Line 238*)

II. TOMX/TDR ZONES AMENDMENTS

Development Standards - Standards are proposed for the TOMX-1/TDR Zone and some of the standards for the TOMX-2/TDR Zone are modified. (*ZTA Lines 142-143*)

- **Land Uses** – The land uses categories for the TOMX-1/TDR Zone are the same as set for the TOMX-2/TDR Zone.
- **Standard Method of Development**
Maximum density without TDR use is set at very low thresholds:
 - TOMX 1/TDR .3 FAR (*new zone*)
 - TOMX 2/TDR .5 FAR (*existing zone standard*)

Maximum density with TDR use is set at

- TOMX 1/TDR .36 FAR (*new zone*)
- TOMX 2/TDR .6 FAR (*new standard for existing zone*)

The 20 percent limit on increased residential density and dwelling units per acre through TDR use that were established for the Shady Grove Master Plan are deleted from the table, but retained in a footnote as applicable for Shady Grove.

- **Optional Method of Development**
 - Maximum density allowed without use of TDRs is somewhat higher than under the Standard Method. A provision is added clarifying that a lower level may be set in the master or sector plan, but not lower than the level established for the Standard Method.

| | |
|------------|--|
| TOMX 1/TDR | .5 FAR (<i>new zone</i>) |
| TOMX 2/TDR | 1.5 FAR (<i>change from current zone standard</i>) |

For the TOMX 2/TDR, the applicable master or sector plan may set a higher maximum density without the use of TDRs. This language reflects the higher 1.6 FAR density established for Shady Grove.

- o Maximum density of development with use of TDRs reflects that a lower maximum may be established in the master or sector plan.

| | |
|------------|---|
| TOMX-1/TDR | 1 FAR (<i>new zone</i>) |
| TOMX-2/TDR | 2 FAR (<i>existing zone standard</i>) |

The dwelling unit per acre limitations, and the 20 percent limit on increased density and dwelling units per acre through TDR use that were established for the Shady Grove Master Plan are deleted from the table, but retained in a footnote as applicable for Shady Grove.

Special Regulations / Applicability

A calculation of TDRs allowing residential or commercial use is included. (*ZTA Line 158-161*)

Where the master or sector plan recommends calculating TDRs based on square footage, one TDR will be required for 1,800 square feet of residential space, or 1,500 square feet of non-residential space. If the master plan only recommends residential use of TDRs, one TDR will be required for each dwelling unit, regardless of square footage.

Development Requirements - Site Plan and Project Plan requirements are added for the TOMX-1 Zone and the TOMX-1/TDR Zone. (*Line 238*)

III. GRANDFATHERING PROVISIONS

The existing conforming use provisions for the TOMX zones permit buildings existing before the applicable SMA adoption date to be continued, structurally altered, repaired, renovated or enlarged up to 10 percent or 7,500 square feet, whichever is less.

An additional conformance provision has been proposed since the introduction of the text amendment pertaining to approved site plans existing before the applicable SMA adoption date. The intent is to allow phased site plan approvals that are at least 60 percent complete to remain valid. Staff recommends that this concept be included in the text amendment. The existing conformance language and the proposed amendment are provided below:

59-C-13.239. Existing buildings and uses.

Any lawful structure, building or established use that existed before the applicable Sectional Map Amendment adoption date, is a conforming structure or use and may be continued, structurally altered, repaired, renovated or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 7,500

square feet, whichever is less, or construction of a new building must comply with the standards of the TOMX zones.

59-C-13.*. Approved Site Plans**

Any remaining development under a phased Site Plan approved under the zone that existed for the site immediately before the applicable Sectional Map Amendment adoption date, remains valid if at least 60 percent of the total approved density has been constructed. All remaining approved development, including any amendment approved by the Planning Board, may be completed under the approved Site Plan. After construction of all phases of the approve Site Plan, buildings will be subject to 59-C-13.239.

IV. ADDITIONAL QUESTIONS FROM COUNTY COUNCIL

The County Council staff forwarded the following questions related to ZTA 08-05 (TOMX Zones) on behalf of Chairman Knapp which require some Planning Board consideration prior to the PHED Committee worksession on the text amendment. Staff responses follow the questions:

1. Would the approach used in ZTA 08-05 be appropriate for other transit station areas? If not, what changes are necessary?

It has always been the staff intent to use the TOMX Zones in other transit station areas. The approach proposed in ZTA 08-05 is far more flexible for use in other areas than the existing language that was crafted just for the Shady Grove Master Plan. As discussed elsewhere, additional modifications may be proposed to address the "BLT" issue before adoption of the Twinbrook Plan and zones.

2. As proposed, would the Planning Board exempt the floor area increases that result from the purchase of TDRs from the optional method requirement for additional amenities for additional density?

That concept was not contemplated, but since the public amenities and facilities requirement is generally negotiated during the approval process, the Planning Board could take the TDR purchase into account when reviewing a proposal.

3. Why should not all density above standard method densities be allowed by the purchase of TDRs instead of the optional method process?

The staff believes that requiring all density above standard method through TDR purchase would not be fiscally realistic given all the other added costs in the optional method. The concept being explored in the context of the "BLT" TDRs would require

a portion of optional method density to use TDRs (standard or "BLT"). If the zone requirements go beyond what is fiscally realistic for the development community, the master plan density goals are likely to be undermined. This is particularly important at transit station locations where the creation of balanced live/work/shop neighborhoods is an important policy goal.

4. If TDRs could be purchased to reduce the amount of public use space required in an optional method project, how much of a reduction in space should 1 TDR buy?

On this policy question, the staff recommends that public use space should generally not be reduced in optional method projects, particularly since the Council has just recently adopted provisions allowing the off-site location of public use space. Creating adequate and attractive open space elements is a vital part of creating the great spaces that make urban neighborhoods livable and attractive.

If the Council should wish to pursue this provision, the provisions for reducing public use space for added MPDUs could be considered. The reduction should be less than allowed for the added MPDUs, as that program provides an important resource need in our transit areas. But the staff recommends that this concept not be pursued.

5. How many additional TDRs would be required to achieve the sector plan recommended maximum density in Shady Grove if ZTA 08-05 is adopted as proposed?

Approximately, 195 TDRs are anticipated within Metro West, Metro South, Metro North-CSP, WMATA North and Jeremiah Park neighborhoods of the Sector Plan. This number is based on three (3) multi-family units for one (1) TDR, which is allowed in the Zoning Ordinance, and not on a square foot basis. A range of approximately 241-289 TDRs is possible, if the new proposal is used.

TDRs within the Shady Grove are based on a minimum of 70% residential development and could increase with additional residential development. Therefore, the number of TDRs could also increase.

The Plan recommends that residential FAR and dwelling units, within the TOMX-2/TDR zone, can increase by 20% for TDRs. The amount of non-residential within Sector Plan is limited to 30% maximum and was not calculated for commercial TDRs. Properties closest to the Shady Grove Metro and publicly owned properties were zoned TOMX-2/TDR.

6. What impacts would the TOMX zone have in Shady Grove if TDRs were required to be purchased on the same square footage basis recommended for Twinbrook?

The Shady Grove Plan established dwelling units per acre and residential FAR as the measures where TDRs would be purchased for only residential development. It also allowed 20% increase in residential FAR and dwelling units for TDRs. Converting dwelling units to square feet and removing the 20% increase may contribute to the increase of TDRs used.

7. Why not calculate all residential TDRs on the basis of square footage instead of units? Should small units be exempt in order to support affordable housing?

A. Calculating all residential TDRs on the basis of square feet would be problematic if extended to all residential receiving sites, and would require changes to multiple master plans. If the change were limited to multi-family TDRs, the changes would be limited but would still required modifications to the Bethesda CBD Sector Plan, the Clarksburg Master Plan, the Germantown Master Plan, and the Shady Grove Master Plan.

B. The staff does not recommend exemption for small multi-family units, as the greater housing need in multi-family development is larger spaces (2-3 bedrooms) for housing families.

8. What is the rationale for allowing more standard method density for TOMX-1 than for standard method density in TOMX-1/TDR?

The staff acknowledges a mistake in the standard method density for the TOMX-1. It should be at the .3 FAR, as in the TOMX-1/TDR. This is to establish a lower standard method density than is allowed in the TOMX-2 and TOMX-2/TDR.

9. What would the impact be of allowing TDRs to increase standard method density by 100 percent without going through the optional method process?

The staff recommends against this option, which would allow substantially more density without the added public use space, and public amenities and facilities requirements required under the optional method. A 100% density increase is a very generous bonus which could result in more TDR use, but might also result in a less attractive and livable urban neighborhood.

V. BLT TDRs

A specific calculation/recommendation for the use of "BLT" or "building lot termination" TDRs was not included in the zone or the Sector Plan due to the time constraints on completion of the Plan. But this task is proceeding on a separate track. As discussed in the context of the Germantown Master Plan last week, the staff is currently working on ways to provide receiving capacity and incentives for these TDRs, looking at the TDR program holistically. It is possible that this work could result in a final proposal for addressing the "BLT" TDRs that could be adopted with the Twinbrook Sector Plan. The staff will return with further recommendations on this subject in the near future.

RECOMMENDATION

The staff recommends that ZTA No. 08-05, to address Twinbrook Sector Plan recommendations, be approved with the recommended modifications. The recommended modifications to the TOMX zones are important steps that will allow this zone to be broadly used in transit oriented areas. The changes expand the potential for use in urbanizing Metro Station areas such as White Flint and the transit stations along the Corridor Cities Transitway, while protecting the carefully crafted intent for Shady Grove.

The modifications allow a wide range of flexibility in uses, and provide important incentives that support the TDR program as it expands and evolves. The modifications give substantial authority to the Master or Sector Plan to limit the full potential, and establish expectations of housing or commercial use, to reflect specific situations in a community.

Attachments

1. Zoning Text Amendment No. 08-05 (as modified by staff)

ATTACHMENT 1

Zoning Text Amendment No: 08-05
Concerning: Transit-Oriented Mixed-Use Zones
Draft No. & Date: 3 –
Introduced: 4/8/08
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Transit Oriented Mixed-Use 1.0 and Transit Oriented Mixed-Use 1.0/Transferable Development Rights Zones;
- establish the allowable land uses, development standards, and approval procedures for development in the Transit Oriented Mixed-Use 1.0 and Transit Oriented Mixed-Use 1.0/Transferable Development Right Zones, and
- amend the land uses, development standards, and approval procedures for development in the Transit Oriented Mixed-Use 2.0 and the Transit Oriented Mixed-Use 2.0/Transferable Development Rights Zones.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

| | |
|-------------------|---|
| DIVISION 59-C-13 | “TRANSIT ORIENTED, MIXED-USE ZONES (TOMX) |
| Section 59-C-13.1 | “Zones established” |
| Section 59-C-13.2 | “Provisions of the Transit Oriented, Mixed-Use Zones” |
| DIVISION 59-D-2 | “PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES, AND RMX ZONES. |
| Section 59-D-2.0 | “Zones enumerated” |

*EXPLANATION: Boldface indicates a heading or a defined term.
Underlining indicates text that is added to existing laws
by the original text amendment.
[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.
Double underlining indicates text that is added to the text
amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.
* * * indicates existing law unaffected by the text
amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 59-C-13 is amended as follows:**

2
3 **DIVISION 59-C-13 TRANSIT ORIENTED, MIXED-USE ZONE[S] (TOMX)**
4

5 **Sec. 59-C-13.1. Zones established.**

6
7 **59-C-13.11 Zones permitted.**
8

9 These zones are permitted in transit station development areas as defined in Section 59-A-2.1.

10
11 TOMX-1.0

12 TOMX-1.0/TDR

13 TOMX-2.0

14 TOMX-2.0/TDR
15

16 **Sec. 59-C-13.2. Provisions of the Transit Oriented, Mixed-Use Zones.**
17

18 **59-C-13.21. Description, purpose, intent and general requirements**
19

20 **59-C-13.211. Description.**
21

22 Each Transit Oriented Mixed-Use Zone is intended to be shown on a master or sector
23 plan. The TOMX Zones are a continuum of Euclidean zones with a range of increasing
24 densities permitted. The zones provide incentives to redevelop transit areas into distinct
25 and compact mixed-use centers for housing, retail, service, and employment
26 opportunities and include public use space and appropriate public facilities and amenities.
27

28 The TOMX-1.0 Zone is intended for moderate density development in Transit Station
29 Development Areas, as defined in Section 59-A-2.1.
30

31 The TOMX-2.0 Zone is intended for medium density development [adjacent to transit
32 station development areas] in Transit Station Development Areas, as defined in Section
33 59-A-2.1.
34
35

36 **59-C-13.212. Intent.**

37
38 The intent of the TOMX Zones is to provide mixed-use, transit, and pedestrian oriented centers
39 that include housing, commercial, biotechnology, and research and development uses. These
40 zones are intended to foster development by permitting an increase in density and height [when
41 such an] if the increase [conforms to] is consistent with a master plan or sector plan
42 [recommendations] recommendation. Land [shall be classified] is eligible for classification in
43 any transit oriented, mixed-use zone only if it is recommended for the zone in an approved and
44 adopted master plan or sector plan. The TOMX zones are intended to accomplish the following:

- 45 (a) To create mixed-use transit oriented development with an interconnected street system
46 defined by buildings, open spaces, public facilities and amenities that are arranged to
47 create a setting for community life.
- 48 (b) To provide incentives and flexible development standards for mixed-use, transit and
49 pedestrian oriented development that create a compatible network of interconnecting
50 streets, open squares, plazas, defined streetscapes, and civic and community oriented uses
51 as recommended in applicable master and sector plans.
- 52 (c) To encourage land assembly in a compact and efficient form that achieves a compatible
53 mix of uses [in accordance with] recommended by the approved and adopted master plan
54 and sector plan.
- 55 (d) To provide housing, including affordable housing, near transit station development areas.
- 56 (e) To encourage Leadership in Energy and Environmental Design (LEED) standards for
57 sustainable and efficient design.
- 58 (f) To improve access within the mixed-use transit station development areas as well as from
59 the surrounding communities.

60 **59-C-13.213. Reserved.**

61
62 **59-C-13.214. Location.**

63 Land classified in [the] a TOMX [2.0] Zone must be located in [transit station development areas]
64 a Transit Station Development Area as defined in Section 59-A-2.1.

65
66 **59-C-13.215. Methods of development and approval procedures.** Two methods of
67 development are available [in this zoning category].
68

- 69 (a) **Standard Method of Development:** The standard method requires compliance with a
 70 specific set of development standards and permits a range of uses and a density
 71 compatible with these standards. If residential uses are included in a development,
 72 moderately priced dwelling units must be provided [in accordance with] under Chapter
 73 25A. The maximum dwelling unit density or residential FAR may be increased in
 74 proportion to any MPDU density bonus provided on-site. Site plans must be approved in
 75 accordance with section 59-D-3.
- 76 (b) **Optional Method of Development:** The Optional Method of Development promotes
 77 additional densities, and supports innovative design and building technologies to create a
 78 pedestrian-oriented and mixed-use development pattern. Approval of the Optional
 79 Method of Development is dependent on providing required public amenities and
 80 facilities. The public facilities and amenities are intended to support the additional
 81 densities permitted under the Optional Method of Development. The procedure for the
 82 approval of the Optional Method of Development is [set forth] established in Section 59-
 83 D-2. Site plans must be approved [in accordance with] under Section 59-D-3. If
 84 residential uses are included in a development, Moderately Priced Dwelling Units must
 85 be provided [as required by] under Chapter 25A and workforce housing units must be
 86 provided [as required by] under Section 59-A-6.18 and Chapter 25B. The maximum
 87 dwelling unit density or residential FAR may be increased in proportion to any MPDU
 88 density bonus provided on-site.

89
 90 **59-C-13.22. Land uses.**

91
 92 No use is allowed except as indicated in the following table:

93 * * *

| | TOMX 1.0 and 2.0 | |
|--|-------------------------|-----------------|
| (a) Residential: | Standard | Optional |
| Dwellings. | P | P |
| Group home, small. | P | P |
| Group home, large. | P | P |
| Hotel or motel. | P | P |
| Housing and related facilities for senior adults or persons with disabilities. | P | P |
| Life care facility. | P | P |
| Personal living quarters. | P | P |

| | Standard | Optional |
|--|----------|----------|
| (b) Transportation, communication and utilities: | | |
| <u>Parking garages, automobile.</u> | | <u>P</u> |
| Public utility buildings, structures, and underground facilities. | P | P |
| Radio and television broadcasting studio. | P | P |
| Rooftop mounted antennas and related unmanned equipment building, equipment cabinet or equipment room. | P | P |
| Taxicab stand, not including storage while not in use. | P | P |
| (c) Commercial [office and retail]: | | |
| Antique shops, handicrafts or art sales and supplies. | P | P |
| <u>Automobile sales, retail showroom.</u> | <u>P</u> | <u>P</u> |
| Book store. | P | P |
| <u>Convenience food and beverage store, without fuel sales.</u> | <u>P</u> | <u>P</u> |
| [Eating and drinking establishment, excluding drive-in. | P | P] |
| <u>Department stores.</u> | | <u>P</u> |
| Drug store. | P | P |
| <u>Eating and drinking establishment, excluding drive-in.</u> | <u>P</u> | <u>P</u> |
| Florist shop. | P | P |
| [Food and beverage store. | P | P] |
| Furniture store, carpet, or related furnishing sales or service. | P | P |
| Gift shop. | P | P |
| Grocery store. | P | P |
| Hardware store. | P | P |
| Office supply store. | P | P |
| Office, general. | P | P |
| Office, professional including banks and financial institutions (excluding check cashing stores). | P | P |
| Offices for companies principally engaged in health services, research and development. | P | P |
| Newsstand. | P | P |
| Photographic and art supply store. | P | P |
| Pet sales and supply store. | P | P |
| Specialty shop. | P | P |
| (d) Services: | | |
| Adult foster care homes. | P | P |
| Ambulance or rescue squad, public supported. | P | P |
| Animal boarding place. | SE | SE |
| Art, music and photographic studios. | P | P |
| Automobile filling station. | SE | SE |
| Automobile rental services, excluding automobile storage and supplies. | P | P |
| Barber and beauty shop. | P | P |
| Charitable and philanthropic institutions. | P | P |
| Clinic. | P | P |
| Child daycare facility | | |
| - Family day care. | P | P |
| - Group day care. | P | P |
| - Child day care center. | P | P |

| | Standard | Optional |
|---|----------|----------------|
| Daycare facility for not more than 4 senior adults and persons with disabilities. | P | P |
| Domiciliary care for no more than 16 senior adults. | P | P |
| Dry cleaning and laundry pick-up station. | P | P |
| Duplicating services. | P | P |
| Educational, private institution. | P | P |
| Home occupation, no impact. | P | P |
| Home occupation, registered. | P | P |
| Home occupation, major. | SE | SE |
| Hospice care facility. | P | P |
| Hospitals, veterinary. | SE | SE |
| International public organization. | P | P |
| Place of religious worship. | P | P |
| Publicly owned or publicly operated uses. | P | P |
| Self storage. | | P ¹ |
| Shoe repair shop. | | P |
| Tailoring or dressmaking shop. | P | P |
| Universities and colleges teaching and research facilities. | P | P |
| (e) Research and Development and Biotechnology | P | P |
| Laboratories. | P | P |
| Advanced Technology and Biotechnology. | P | P |
| Manufacturing, compounding, processing or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and products resulting from biotechnical and biogenetic research and development. | P | P |
| Manufacturing and assembly of medical, scientific or technical instruments, devices and equipment. | P | P |
| Research, development, and related activities. | P | P |
| (f) Cultural, entertainment and recreational: | | |
| Auditoriums or convention halls. | P | P |
| Billiard parlor. | P | P |
| Bowling alley. | P | P |
| Health clubs and gyms. | P | P |
| Libraries and museums. | P | P |
| Park and playgrounds. | P | P |
| Private clubs and service organizations. | SE | P |
| Recreational or entertainment establishments, commercial. | P | P |
| <u>Theater, legitimate.</u> | <u>P</u> | <u>P</u> |
| Theater, indoor. | P | P |

94 1 Only if recommended in the applicable master plan or sector plan and limited to a
 95 maximum FAR of .75.

96
 97 **59-C-13.23. Development standards.**
 98 The development standards applicable to the Standard Method and Optional Method of Development are
 99 [set forth] established in this section. In addition to the requirements specified in this table, all Optional

100 Method of Development projects must be consistent with the guidelines established in the applicable
 101 master plan or sector plan.
 102

| | TOMX-1.0 | | TOMX- 2.0 | |
|---|-------------------|-----------------|------------------|-----------------|
| | Standard | Optional | Standard | Optional |
| 59-C-13.231. The minimum net lot area required for any development (in square feet): Provided, however, that a smaller lot may be approved [for the TOMX zones] where such lot is designated for [one of these zones] a <u>TOMX zone</u> on an approved and adopted master plan or sector plan, <u>where</u> the lot is located adjacent to or confronting another lot either classified in or under application for either zone, and the combined lots are subject to a single project plan subject to approved or approved by the Planning Board. The required minimum area does not prohibit a lot of less than 18,000 square feet for purposes of subdivision or record plat approval. | | <u>18,000</u> | - | 18,000 |
| 59-C-13.232. Maximum Building Coverage (percent of net lot area): | <u>75</u> | | 75 | |
| 59-C-13.233. Minimum Public Use Space (percent of net lot area): | <u>10</u> | <u>20</u> | 10 ¹ | 20 ² |
| 59-C-13.234. Maximum Density of Development³ (floor area ratio): | <u>[[0.5]]0.3</u> | <u>1.0*</u> | [FAR] 0.5 | [FAR] 2.0* |
| 59-C-13.235. Maximum Building Heights (in feet): | <u>28</u> | | 50 [feet] | |
| - If adjoining or directly across the street from land recommended for or developed in a residential zone with a maximum of 15 dwelling units per acre or less (in feet) | <u>28</u> | | 35 [feet] | |
| 59-C-13.236. Minimum Setbacks (in feet): | | | | |
| - From an adjacent TOMX Zone ⁴ | <u>15</u> | | 15 [feet] | |
| - From an adjacent commercial or industrial zone | <u>20</u> | | 20 [feet] | |
| - From an adjacent single family residential zone | <u>25</u> | | 25 [feet] | |
| - From a public right-of-way | <u>10</u> | | 10 [feet] | |

103 * * *

104 * Unless a lower standard is recommended in the applicable master or sector plan.

105

106 **59-C-13.237. Special standards and guidelines for Standard Method and Optional**
 107 **Method of Development projects.**

108 * * *

109

- 110 (c) Site Plan Streetscape Guidelines:
- 111 - Provide street lighting designed to avoid an adverse impact on surrounding uses,
 - 112 while also providing a sufficient level of illumination for access and security.
 - 113 - Provide a canopy of closely spaced street trees along each street.
 - 114 - Provide street furniture such as benches, trash receptacles and planters.
 - 115 - Enhance crosswalk areas with accessible curb ramps unless prohibited by
 - 116 the Department of [Public Works and] Transportation.

117

118 **59-C-13.2371. Off-street parking.** Required off-street parking must be provided [pursuant to]

119 under Article 59-E and off-street parking spaces for mixed-use projects must be provided

120 [pursuant to] under [Sec.] Section 59-E-3.1.

121 * * *

122 **59-C-13.239. Existing buildings and uses.**

123 Any lawful structure, building or established use that existed before the applicable Sectional Map

124 Amendment adoption date, is a conforming structure or use and may be continued, structurally

125 altered, repaired, renovated or enlarged up to 10 percent of the gross building floor area or 7,500

126 square feet, whichever is less. However, any enlargement of the building that is more than 10

127 percent of the gross floor area or 7,500 square feet, whichever is less, or construction of a new

128 building must comply with the standards of the TOMX zones.

129

130 **59-C-13.***. Approved Site Plans**

131 Any remaining development under a phased Site Plan approved under the zone that existed for

132 the site immediately before the applicable Sectional Map Amendment adoption date, remains

133 valid if at least 60 percent of the total approved density has been constructed. All remaining

134 approved development, including any amendment approved by the Planning Board, may be

135 completed under the approved Site Plan. After construction of all phases of the approve Site

136 Plan, buildings will be subject to 59-C-13.239.

137

138 **59-C-13.24 Transferable development rights zones.**

139 **59-C-13.241. Method of development.** The following [2] methods of development are possible

140 in any TOMX/TDR zone:

- 141 (a) **Standard method of development.** Development under the standard method for any
- 142 TOMX/TDR zone must comply with the requirements and procedures for development
- 143 and density limitations contained in the corresponding TOMX zone, except that greater

144 residential densities may be permitted [pursuant to] under Section 59-C-13.242.
 145 Development must also conform to the special regulations for developments in a TOMX
 146 zone using transferable development rights [contained] in Section 59-C-13.243.
 147 (b) **Optional method of development.** Development under the optional method for any
 148 TOMX/TDR zone must comply with the requirements and procedures for development
 149 and density limitations contained in the corresponding TOMX zone and must conform to
 150 any [the] numeric limits set in the applicable master or sector plan concerning floor area
 151 ratio, dwelling units per acre, building heights and setbacks. [In all other respects the
 152 development] Development must be consistent with the master or sector plan[.];
 153 however, greater [residential] densities may be permitted [pursuant to] under Section 59-
 154 C-13.242. Development must also conform to the special regulations for developments
 155 using transferable development rights contained in Section 59-C-13.243. [The] These
 156 special regulations require conformance to any [the] numeric limits that may be set in the
 157 applicable master or sector plan concerning floor area ratio, dwelling units per acre,
 158 building heights and setbacks. In all other respects the development must be consistent
 159 with the applicable master or sector plan.

| | <u>TOMX 1.0/TDR</u> | <u>TOMX 2.0/TDR</u> |
|--|---------------------|---------------------|
| 59-C-13.242. Development Standards-Transferable Development Rights Zone(s): | | |
| (a) Land uses. Uses allowed in the TOMX/TDR zones are those uses allowed in the following zone(s): | <u>TOMX 1.0</u> | TOMX-2.0 |
| (b) <u>Standard Method</u> Development Standards [-Standard method must conform with each of the following]: | | |
| [-]1. Maximum density of development (FAR) without TDRs | <u>0.3</u> | 0.5 |
| [-]2. [The Residential FAR may be increased by a maximum of 20% by the use of TDRs.] <u>Maximum density of development (FAR) with TDRs.*</u> | <u>0.36</u> | <u>0.6</u> |
| [- Maximum dwelling units per acre without TDRs | | 20] |
| [Dwelling units per acre may be increased by a maximum of 20% by the use of TDRs.] | | |
| [-]3. All other development standards must be in accord with the development standards applicable to the following zones and as specified in the special regulation provisions of Section 59-C-13.243: | <u>TOMX 1.0</u> | TOMX 2.0 |
| (c) <u>Optional Method</u> Development standards [- Optional method of development must conform to each of the following]: | | |

| | | |
|---|----------|-------------|
| [-]1. Maximum density of development (FAR) without TDRs (a lower standard, reflecting no less than the Standard Method requirement, may be established in applicable master or sector plan) | .5 | [1.6] 1.5** |
| 2. Maximum density of development (FAR) with TDRs (a lower standard may be established in an applicable master or sector plan) ¹ | 1.0 | 2.0 |
| [The Residential FAR may be increased by a maximum of 20% by the use of TDRs] | | |
| [- Maximum dwelling units per acre without TDRs] | | [40] |
| [Dwelling Units per acre may be increased by a maximum of 20% by the use of TDRs] | | |
| [-] 3. All other development standards must comply with the development standards of the applicable zone and as specified in the special regulation provisions of Section 59-C-13.243. | TOMX 1.0 | TOMX 2.0 |

160

161 * The applicable master or sector plan may also set a maximum density in dwelling units per acre
 162 which may be increased by a maximum of 20% through the use of TDRs.

163 ** The applicable master or sector plan may set a higher maximum density without the use of TDRs.

164 **59-C-13.243. Special regulations for development using transferable development rights in the**
 165 **TOMX/TDR zone.**

166

167 **59-C-13.2431. Applicability.** The following procedures and regulations apply to the transfer of
 168 development rights to land classified in a TOMX/TDR zone. The Planning Board may approve
 169 subdivision of such land at densities not to exceed the maximum density permitted in the
 170 applicable TOMX/TDR zone. The development must conform to any [the] numeric limits in the
 171 applicable master or sector plan concerning floor area ratio, dwelling units per acre, building
 172 heights and setbacks. In all other respects the development must be consistent with the applicable
 173 master or sector plan.

174

175 Where the applicable master or sector plan recommends calculating TDR based on square
 176 footage, one TDR will be required for 1,800 square feet of residential space, or 1,500 square feet
 177 of non-residential space. Where the applicable master or sector plan recommends only residential
 178 use of TDRs, one TDR will be required for each dwelling unit, regardless of square footage.

179 [Any increase in the residential FAR above the residential FAR and dwelling units per acre
 180 allowed under the standard and optional methods of development of 59-C-13.215 and 59-C-13.23

181 must not exceed 20% of the maximum dwelling units per acre or FAR permitted without TDRs
182 and must be based on a ratio of one single-family dwelling unit for each TDR, and 2 multi-family
183 dwelling units for each TDR; however, within a designated Metro Station Policy Area, a ratio of
184 three multi-family dwelling units for each TDR and two one-family units for each TDR applies.]
185

186 **59-C-13.2432. General provisions.**

- 187 (a) A development right must be created, transferred and extinguished only by means of
188 documents in a recordable form approved by the Planning Board, including an
189 easement and appropriate releases. The TDR easement must limit [the] future
190 construction [of one-family dwellings] on a property in the RDT zone to the total
191 number of development rights established by the zoning of the property minus all
192 development rights previously transferred [in accordance with this section], the number
193 of development rights to be transferred by the instant transaction, and the number of
194 existing one-family detached dwellings on the property.

195 * * *

196 **59-C-13.2433. Development approval procedures under the standard and optional method of**
197 **development.**

- 198
- 199 (a) A request to use development rights under the standard or optional method must be in the
200 form of a preliminary subdivision plan submitted [in accordance] under Chapter 50.
- 201 (b) A site plan must be submitted and approved [in accordance with] under the provisions of
202 Division 59-D-3.
- 203 (c) The Planning Board must approve a request to use transferred development rights if the
204 request:
- 205 (1) [is in accordance with] satisfies the provisions of this chapter;
206 (2) [is in accordance with] satisfies Chapter 50, title "Subdivision of Land";
207 (3) conforms to [the] any numeric limits in the applicable master or sector plan
208 concerning floor area ratio, dwelling units per acre, building heights, and
209 setbacks; and is in all other respects [the development is] consistent with the
210 applicable master or sector plan; and
211 (4) achieves a desirable development compatible with [both] site conditions, [and]
212 surrounding existing development, and anticipated future development.
213

214 (d) [Prior to] Before the Planning Board [approval of] approves a final record plat for a
215 subdivision using transferred development rights, an easement to the County in the form
216 required by Section 59-C-2432(a) above limiting future construction of dwellings on a
217 property in the RDT zone by the number of development rights received must be recorded
218 among the land records of Montgomery County, Maryland.

219
220 (e) A final record plat for a subdivision using transferred development rights must contain a
221 statement setting forth the development proposed, the zoning classification of the property,
222 the number of development rights used, and a notation of the recordation of this
223 conveyance required by Section 59-C-2432(b).

224
225 **59-C-13.2434. Development standards applicable to the standard and optional method of**
226 **development.**

227
228 (a) The final density achieved for any property located in a TDR receiving area developed
229 under the procedures herein must be determined by the Planning Board and must
230 conform to the site plan provisions (Division 59-D-3) and subdivision regulations
231 (Chapter 50).

232
233 (b) In making the determination as to the final density, the Planning Board will consider the
234 following factors:

235
236 (1) conforms to [the] any numeric limits in the applicable master or sector plan
237 concerning floor area ratio, dwelling units per acre, building heights, and setbacks;
238 and is in all other respects [the development is] consistent with the approved master
239 or sector plan;

240 (2) preserves environmentally sensitive and priority forest areas, and mitigates
241 unavoidable impacts on the natural environment;

242 (3) facilitates good transit serviceability and creates a desirable and safe pedestrian
243 environment; and

244 (4) achieves compatibility with surrounding land uses.

245 * * *

246 **Sec. 2. Article 59-D is amended as follows:**

247 **ARTICLE 59-D. ZONING DISTRICTS—APPROVAL PROCEDURES.**

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254

INTRODUCTION

* * *

The following table is provided for the convenience of the public, citing the appropriate sections of article 59-C and indicating the types of plans required in each zone. In event of conflict between this table and the provisions of article 59-C, the latter must govern.

Plan Approvals Required

| Zone | Section Number | Development Plan (Division 59-D-1) | Project Plan Optional Method (Division 59-D-2) | Site Plan (Division 59-D-3) | Diagrammatic Plan (Division 59-D-4) |
|------------------------|----------------|------------------------------------|--|-----------------------------|-------------------------------------|
| * * * | | | | | |
| <i>Standard Method</i> | | | | | |
| * * * | | | | | |
| <u>TOMX 1.0</u> | | | | X | |
| <u>TOMX 1.0\TDR</u> | | | | X | |
| TOMX 2.0 | | | | X | |
| <u>TOMX 2.0\TDR</u> | | | | X | |
| <i>Optional Method</i> | | | | | |
| * * * | | | | | |
| <u>TOMX 1.0</u> | | | X | X | |
| <u>TOMX 1.0\TDR</u> | | | X | X | |
| TOMX 2.0 | | | X | X | |
| <u>TOMX 2.0\TDR</u> | | | X | X | |

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* * *

Sec. 3. Division 59-D-2 is amended as follows:

DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES [AND], RMX ZONES, AND TOMX ZONES.*

Sec. 59-D-2.0. Zones enumerated.

The Planning Board is authorized to approve development under the optional method of development procedures described in Section 59-C-6.2 of the CBD zones, Section 59-C-10 of the RMX Zones, Section 59-C-13 of the TOMX Zones and the approval procedure set forth in this Division, for the following zones:

267 * * *

268 TOMX-1 - Transit Oriented Mixed-Use, 1.0

269 TOMX-2 - Transit Oriented Mixed-Use, 2.0

270 TOMX-1/TDR - Transit Oriented Mixed-Use, Transferable Development Rights, 1.0

271 TOMX-2/TDR - Transit Oriented Mixed-Use, Transferable Development Rights, 2.0

272 * * *

273 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the date of Council
274 adoption.

275

276 This is a correct copy of Council action.

277

278

279 _____
Linda M. Lauer

280 Clerk of the Council