



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

MCPB
Item # 50
3/27/08

March 19, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *GK*
Community-Based Planning Division

Ralph Wilson, Zoning Supervisor
Development Review Division

FROM: Judy Daniel, Team Leader, Bethesda-Chevy Chase/North Bethesda Team *JD*
Community-Based Planning Division (301.495.4559)

SUBJECT: Zoning Text Amendment for TOMX Zone

STAFF RECOMMENDATION: APPROVE revisions to Zoning Text Amendment previously transmitted.

When the Planning Board completed review of the Twinbrook Sector Plan in January, it left the new square foot calculation for Transferable Development Rights (TDRs) out of the Zoning Text Amendment (ZTA) required to revise the TOMX Zones. The Planning Board made this decision in order to allow further time for evaluation of the research being completed by the Research Team and Dick Tustian. The staff is now prepared to support the conclusion of that research which indicates a value of 1,800 square feet per TDR for any residential use and 1,500 square feet per TDR for any non-residential use, as noted in the attached revised ZTA. The attached memo from the Research staff (Attachment 1) explains how they came to recommend these numbers.

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

These are major accomplishments in the expansion of potential for the TDR program that also further 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 it must move into the more 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 Twinbrook, the Sector Plan specifically recommends the following TDR potential. This recommendation reflects a need to balance the creation of TDR receiving capacity with the potential of market resistance to the purchase of TDRs to achieve full development capacity.

As discussed in prior worksessions with the Planning Board, the TDR program is not advanced if the added density potential is above what the market would want to build, or if the price of the TDRs puts the added density beyond what would be profitable. When that occurs, development can occur at the maximums possible without the use of TDRs, undercutting the desired density and urban mix of uses desired in the Plan area; as has occurred in other Plans. With these factors in mind, the following TDR capacity is recommended in the Plan:

Area 1	Metro Core Area	TOMX-2/TDR	Zone	Plan Specific Recommendation
Area 2	Metro Core Area	Standard Method	* Up to .5 FAR	
Area 6	Technology Employment Area	Optional Method	* 20% residential density bonus with TDRs	
Area 8	Technology Employment Area		* Up to 1.5 FAR – No TDR use required	* 1.5-2.0 FAR with TDRs – <i>residential only</i>
Area 5	Technology Employment Area	TOMX-1/TDR	Zone	Plan Specific Recommendation
		Standard Method	* Up to .3 FAR	
		Optional Method	* 20% residential density bonus with TDRs	
			* Up to .5 FAR – No TDR use required	* .3- .5 FAR – with TDRs <i>residential or commercial</i>
			* .5-1.0 FAR – with TDRs	* .5-1.0 FAR – with TDRs <i>residential with TDRs</i>

These recommendations reflect the desired jobs/housing balance in Twinbrook, established before the TDR recommendations were contemplated. Significant additional housing potential has long been a goal in the Twinbrook area, so additional use of TDRs for commercial potential would have been detrimental to that goal.

This Plan recommendations result in the following TDR receiving capacity potential in the TOMX Zones in Twinbrook:

Area	Size / Acres	FAR Increment	SF	SF per TDR	TDR Capacity
1	6	1.5 - 2.0	130,680	1,800 (R)	73
2	2	1.5 - 2.0	43,560	1,800 (R)	25
5	9	.3 - .5	78,408	1,500 (NR)	53
		.5 - 1.0	196,020	1,800 (R)	109
6	6	1.5 - 2.0	130,680	1,800 (R)	73
8	15	1.5 - 2.0	326,700	1,800 (R)	182
Total					515

As mentioned previously, the TDR square foot recommendations were derived from by the Research and Technology Center staff, using methodology described in more detail in their attached memo. In summary, they were asked by the Planning Board to determine a methodology for setting a conversion rate that would allow TDRs to be used to buy additional density in units of square footage. The conversion formula is based on the assumption that commercial receiving areas will be competing with residential receiving areas. Their object was to determine what level of commercial density would interest a developer who has been willing to use TDRs available in increments of residential density. Their goal was to find a comparable or competitive increment of commercial density; and the inquiry involved a comparison between the sales value of residential space and the capitalized value of commercial space.

ZTA Modifications

Further, the Zoning Review group at the County Council considered the ZTA in February and strongly recommended certain technical changes before introduction. 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 has 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.

The attached ZTA (Attachment 2) highlights where the requested changes have been made. The staff recommends support for the revised version of the ZTA.

JD:ha: g:\judy\TOMX ZTA PB Memo and
g:\judy\TOMX ZTA Language

Attachments:

1. Research memorandum
2. Revised Zoning Text Amendment

ATTACHMENT 1



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

March 19, 2008

Memorandum

To: Judy Daniel

From: Jacob Sesker, Research & Technology Center, 301-650-5619

Re: TDR Residential to Commercial Conversion

Purpose

The purpose of this memorandum is to clarify the rationale behind the methodology used in the TDR Residential-to-Commercial Conversion formula.

Introduction

The Research & Technology Center was asked to advise the Planning Board regarding how to set a conversion rate in order to allow these instruments to be used to buy additional commercial or mixed-use square footage. A memorandum summarizing the findings and analysis was submitted to Richard Tustian on January 18, 2008 and was presented to the Planning Board on January 24, 2008. That memorandum clearly set forth the calculation methodology, but only summarily addressed the underlying rationale. The purpose of this memorandum is to clarify that rationale.

Rationale

The conversion formula contained in the January 18th memorandum is based on the assumption that commercial receiving areas will be competing with residential receiving areas. The conversion proceeds down the path from a residential unit to residential square feet and then from residential square feet to commercial square feet.

In future TDR receiving areas this agency will probably not be zoning for residential density below the townhouse level. As such, the lion's share of residential units would be either townhouse units or multi-family units. Of those two categories, townhouse is typically the more valuable unit. This is true for a

variety of reasons, including that the units are larger and that there is no need for structured parking (as would be the case in dense multi-family developments). Because the townhouse is the most valuable residential unit that we will likely see in our future receiving areas, it was chosen to serve as the baseline for this analysis.

In converting a townhouse to commercial square footage we opted to equate "commercial" with "Class A Office". As was discussed with the Planning Board on January 24th, this decision was made because the future receiving areas are unlikely to be planned or zoned for surface-parked, stand-alone retail. Instead, these areas are likely to be a mix of housing and office above ground-floor retail. Thus, the office space is more likely to require additional density than retail space.

Finally, it is unlikely that any developer would buy additional density at a metro station to construct Class B office space, medical office space, or similar low-value products. While such space is built (not all of it ages and depreciates from Class A to Class B), it is hard to imagine such low-value uses being built near transit in Montgomery County—the land costs are simply too high.

Conclusion

The rationale outlined above was used as the justification for the assumptions used in the TDR residential-to-commercial conversion formula, which was outlined in detail in the attached memorandum (January 18, 2008).



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

January 18, 2008

Memorandum

To: Dick Tustian

From: Jacob Sesker, Research & Technology Center, 301-650-5619

Re: TDR Residential to Commercial Conversion

Finding

Commercial space is roughly 20% more valuable than office space. Approximately 1,500 square feet of commercial space has the same value as 1,800 square feet of residential space.

Introduction

The TDR program in Montgomery County has been in place for a quarter of a century. Until now the program has served to provide purchasers of TDRs with additional residential density (measured in dwelling units). The Research & Technology Center was asked to advise the Planning Board regarding how to set a conversion rate in order to allow these instruments to be used to buy additional commercial or mixed-use square footage.

This was not, *per se*, an inquiry into the inherent value to developers of additional commercial density. The value of additional commercial density to developers is very project-specific, and depends upon the difference between the income generated by the extra density and the cost of building that extra density.¹ Instead, this inquiry involved simply a comparison between the sales value of residential space and the capitalized value of commercial space. *In essence the question herein addressed is: if a*

¹ Neither the income nor the cost lends itself to tidy generalization. While the financial feasibility of using TDRs at a particular price can be calculated for individual projects using *pro forma* analysis of that project's costs and revenues, it is not practical to attempt to calculate that feasibility for all projects across Montgomery County.

developer is willing to use a TDR now to by a certain increment of residential density, what would be a comparable or competitive increment of commercial density?

Assumptions

The following assumptions were made in this analysis:

- In converting dwelling units to square feet, the analysis assumed that a townhome represents the most representative “base” dwelling type. This assumption is reasonable based upon the nature of current and future receiving areas, and the fact that townhomes represent a “midpoint” between single-family and multi-family development.
- While comparisons of the value of existing office space and existing residential space are informative, the most relevant comparisons are between the values of new office space and new residential space.
- “Commercial” for calculation purposes will be limited to office; however, it is envisioned that TDRs could also be used for retail density.
- “Office” is assumed to be Class A office space.

Analysis

Step One: Convert Townhouse Dwelling Unit to Townhouse Square Footage

According to the Census Update Survey, the median size of a townhome built in Montgomery County between 2000 and 2005 is 1,816 square feet.² Analysis of parcel file data shows a similar result, with a median size of new townhomes of 1,792 square feet. Given these numbers, it is assumed that one townhouse equals 1,800 square feet.

Step Two: Calculate the Value (Per Square Foot) of a New Townhouse

In 2006, the median price of new townhouses in Montgomery County was \$ 518,510. Assuming a size of 1,816 square feet, the median price was \$285 per square foot.

Step Three: Calculate the Value (Per Square Foot) of New Class “A” Office Space

According to the GVA Advantis (Q2 07) office market report, the average rent for Class A office space is \$30.70. This average rent includes all Class A office space, no matter the age. It is assumed that the countywide average value of new Class A office space would be closer to \$35 per square foot.³ Accounting for operating expenses of 30% and the countywide vacancy rate of 10% and then capitalized⁴ at 6% the value is \$350 (capitalized at 6.50% it would be \$323).⁵

² As a reference point, the median size of SFD homes built between 2000 and 2005 is 3,348 square feet.

³ Because there are relatively few new Class “A” buildings in the County, it is possible only to estimate the countywide average Class “A” rents for new office space. New Class A office countywide would probably range from \$25 to \$50, with trophy level rents of \$45-\$50 attainable in downtown Bethesda.

⁴ In real estate, “capitalization” refers to the process of converting a net income stream from rentals to a sale value.

Step Four: Establish a Ratio of the Values (Per Sq. Ft.) of Townhouses and Class "A" Office Space

The value of new Class "A" office space, as established in Step Three (above) is roughly \$323 to \$350. The value of a new townhome, as established in Step Two (above), is \$285 per square foot. New Class "A" office space is roughly 13% to 23% more valuable than new townhouse residential space. Put differently, new townhouse space is 12% to 19% less valuable than new Class "A" office space.⁶

Step Five: Apply the Ratio of Values (Established in Step Four) to the Townhouse Square Footage (Established in Step One)

New townhouse space is 12% to 19% less valuable than Class "A" office space. In order to determine how much office space has the same value as 1,800 square feet of new townhouse, the 1,800 figure is multiplied by 81% and 88%--doing so establishes a range of 1,458 square feet to 1,584 square feet. Based on this methodology, approximately 1,500 square feet of new Class "A" office space has the same value as 1,800 square feet of new townhouse space.

Implications

The Planning Board has yet to determine how the new system will work. Examples of possible variations include the following:

- 1 TDR=1 dwelling unit or 1,500 square feet of commercial
- 1 TDR=1,800 square feet of residential or 1,500 square feet of commercial
- 1 TDR=1,800 square feet of commercial or residential

In spite of these and other unknowns, the following conclusions are reasonable:

- Commercial space is roughly 20% more valuable than residential space
- A townhouse dwelling unit is roughly equivalent in value to 1,500 square feet of commercial space

⁵ "Korpacz Real Estate Investor Survey, Q3 07," Price Waterhouse Coopers. Cap rates of 6% and 6.5% are based upon the results of investor survey responses for the Q3 07 Suburban Maryland office market.

⁶ For example, \$350 is 23% more than \$285, whereas \$285 is 19% less than \$350.

ATTACHMENT 2

PROPOSED CHANGES FROM ZONING REVIEW COMMITTEE INCORPORATED

Zoning Text Amendment No: 07-
Concerning: Modify Transit-Oriented Mixed
Use Zone
Draft No. & Date: 1 – 12/6/07
Introduced:
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:

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

modifying the Transit Oriented Mixed-Use Zone, including the transferable development rights provisions; and to make plain language, stylistic and consistency modifications to that zone and to Article D to accommodate the TOMX Zone

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)
ARTICLE 59-D “ZONING DISTRICTS—APPROVAL PROCEDURES”

*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:**

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

Sec. 59-C-13.1. Zone[s] established.

59-C-13.11 Zone[s] permitted.

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

TOMX-1.0

TOMX-1.0/TDR

TOMX-2.0

TOMX-2.0/TDR

Sec. 59-C-13.2. Provisions of the Transit Oriented, Mixed Use Zone[s].

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

59-C-13.211. Description.

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

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

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

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

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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 if the
41 increase is consistent with a master plan or sector plan recommendation [recommendations].
42 Land is eligible for classification [shall be classified] in any transit oriented, mixed-use zone only
43 if it is recommended for the zone in an approved and adopted master plan or sector plan. The
44 TOMX zones are intended to accomplish the following:

- 45
- 46 (a) To create mixed use transit oriented development with an interconnected street system
47 defined by buildings, open spaces, public facilities and amenities that are arranged to
48 create a setting for community life.
 - 49
 - 50 (b) To provide incentives and flexible development standards for mixed-use, transit and
51 pedestrian oriented development that create a compatible network of interconnecting
52 streets, open squares, plazas, defined streetscapes, and civic and community oriented
53 uses as recommended in applicable master and sector plans.
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 - 55 (c) To encourage land assembly in a compact and efficient form that achieves a compatible
56 mix of uses in accordance with the approved and adopted master plan and sector plan.
 - 57
 - 58 (d) To provide housing, including affordable housing, near transit station development areas.
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 - 60 (e) To encourage Leadership in Energy and Environmental Design (LEED) standards for
61 sustainable and efficient design.
 - 62
 - 63 (f) To improve access within the mixed use transit station development areas as well as from
64 the surrounding communities.

65 **59-C-13.213. Reserved.**

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67 **59-C-13.214. Location.**

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

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

(a) **Standard Method of Development:** The standard method requires compliance with a specific set of development standards and permits a range of uses and a density compatible with these standards. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. Site plans must be approved in accordance with section 59-D-3.

(b) **Optional Method of Development:** The Optional Method of Development promotes additional densities, and supports innovative design and building technologies to create a pedestrian-oriented and mixed-use development pattern. Approval of the Optional Method of Development is dependent on providing required public amenities and facilities. The public facilities and amenities are intended to support the additional densities permitted under the Optional Method of Development. The procedure for the approval of the Optional Method of Development is set forth in Section 59-D-2: Site plans must be approved in accordance with Section 59-D-3. If residential uses are included in a development, Moderately Priced Dwelling Units must be provided as required by Chapter 25A and workforce housing units must be provided as required by Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

59-C-13.22. Land uses.

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

* * *

	TOMX 1.0 and 2.0	
(a) Residential:	Standard	Optional
Dwellings	P	P
Group home, small or large	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

(a) Residential (cont):	Standard	Optional
Life care facility	P	P
Personal living quarters	P	P
(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 including 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
Eating and drinking establishment, excluding drive-in	P	P
Department stores		P
Drug store	P	P
Florist shop	P	P
<u>Convenience [F] food and beverage store, without fuel sales</u>	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	P	P
Art, music and photographic studios	SE	SE
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, Group day care, or Child day care center	P	P
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

(d) Services (cont.):	Standard	Optional
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
Theaters, indoor	P	P
<u>Theater, legitimate</u>	<u>P</u>	<u>P</u>

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

59-C-13.23. Development standards.

The development standards applicable to the Standard Method and Optional Method of Development are set forth in this section. In addition to the requirements specified in this table, all Optional Method of Development projects must be consistent with the guidelines established in the applicable master plan or sector plan.

Zoning Text Amendment 07-

	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] a TOMX zone[s] where such lot is designated for [one of these] the zone[s] on an approved and adopted master plan or sector plan, where 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 Development ³ (floor area ratio):	<u>0.5</u>	<u>1.0</u> ⁵	[FAR] 0.5	[FAR] 2.0 ⁵
59-C-13.235. Maximum Building Heights:				
<u>[- in stories]</u>	<u>2</u>		<u>4</u>	
- 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				
<u>[- in stories]</u>	<u>2</u>		<u>3</u>	
- in feet	<u>28</u>		35 [feet]	
	Standard	Optional	Standard	Optional
59-C-13.236. Minimum Setbacks (in feet):				
- From an adjacent TOMX Zone ⁴	<u>15 [feet]</u>		15 [feet]	
- From an adjacent commercial or industrial zone	<u>20 [feet]</u>		20 [feet]	
- From an adjacent single family residential zone	<u>25 [feet]</u>		25 [feet]	
- From a public right-of-way	<u>10 [feet]</u>		10 [feet]	

- 107
- 108 1 The required standard method public use space may be reduced to 5% if the Planning Board finds
- 109 that the reduction is necessary to accommodate the construction of MPDUs, including any bonus
- 110 units, on-site.
- 111 2 The required optional method public use space may be reduced or eliminated to accommodate the
- 112 construction of MPDUs, including any bonus density units, on-site, if an equivalent amount of
- 113 public use space is provided off-site in the same transit station development area within a
- 114 reasonable time.

115 3 The maximum dwelling unit density or residential (FAR) may be increased in proportion to any
116 MPDU density bonus provided on-site.

117 4 If the proposed building or the adjacent building has windows or apertures facing the lot line that
118 provide light, access or ventilation to a habitable space the setback shall be 15 feet. If the
119 adjacent building does not have windows or apertures no setback is required.

120 5 Unless a lower standard is recommended in the applicable master or sector plan.

121
122 **59-C-13.237. Special standards and guidelines for Standard Method and Optional**
123 **Method of Development projects.**

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125 (a) Public use space, amenities and facilities: The mixed-use character of the Transit
126 Oriented, Mixed Use Zones requires significant public amenities to create a transit and
127 pedestrian-oriented mixed-use environment.

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129 Public amenities and facilities are not limited to the definition in Section 59-A, but also
130 include: pocket and urban parks, town squares, public plazas and water features, wide
131 sidewalk areas, bus shelters, benches, special street lighting and paving, construction and
132 enhancement of pedestrian tunnels and bridges, public art, landscaping of public areas,
133 and improvements to pedestrian access to transit stations. Public amenities do not
134 include road improvements or other capital projects that are required to provide adequate
135 facilities in a timely basis to serve the property.

136
137 All public amenities must be in locations that are accessible to the public. The location,
138 type and nature of the public amenities must be shown on any project plan and site plan
139 as required by Section 59-D-3 and Section 59-D-2.

- 140
141 (b) Site Plan Guidelines for the Optional and Standard Method of Development:
- 142 - Orient all buildings to streets, which will encourage pedestrian-oriented
 - 143 development.
 - 144 - Locate off-street parking to the side, rear or below grade if feasible.
 - 145 - Create a continuous building line with varied facade setbacks to accentuate open
 - 146 space and building entrances. Blank building facades should be avoided.
 - 147 - Increase public safety and activity at street level with activating uses such as
 - 148 storefront retail, residential entrances, office lobbies, and restaurants.

- 149 - Provide continuous, direct and convenient pedestrian and bicyclist pathways, and
- 150 connections to transit stations.
- 151 - Promote pedestrian safety with clearly designated crosswalks and sidewalks, and
- 152 include street trees and landscaping on all streets.
- 153 - Screen and locate service and loading areas to reduce visibility from any street.
- 154 - Locate mechanical equipment within buildings or within a mechanical equipment
- 155 penthouse. If mechanical equipment is located on a roof or is freestanding, it
- 156 must be effectively screened. The provisions of this guideline do not apply in the
- 157 case of one-family residential development.

158

159 (c) Site Plan Streetscape Guidelines:

- 160 - Provide street lighting designed to avoid an adverse impact on surrounding uses,
- 161 while also providing a sufficient level of illumination for access and security.
- 162 - Provide a canopy of closely spaced street trees along each street.
- 163 - Provide street furniture such as benches, trash receptacles and planters.
- 164 - Enhance crosswalk areas with accessible curb ramps unless prohibited by the
- 165 Department of Public Works and Transportation.

166

167 **59-C-13.2371. Off-street parking.** Required off-street parking must be provided pursuant to
168 Article 59-E and off-street parking spaces for mixed-use projects must be provided pursuant to
169 Sec. 59-E-3.1.

170

171 **59-C-13.238. Special standards for the Optional Method of Development.**

172 (a) **Density and mix of uses:** In approving the mix of uses and the proposed densities, the
173 Planning Board must consider the size of the parcel, and the relationship of the existing
174 and proposed building or buildings to the surrounding uses. The mix of uses and the
175 proposed densities must conform to the approved and adopted master plan or sector plan.

176 (b) **Building height and setbacks:** The maximum building height permitted for any
177 building and the minimum building setback requirements must be determined in the
178 process of project plan review. In approving height limits or setback requirements, the
179 Planning Board must take into consideration the size of the lot or parcel, the relationship
180 of existing and proposed buildings to surrounding uses, the need to preserve light and air
181 for the residents of the development and residents of surrounding properties, and any
182 other factors relevant to the height or setback of the building. The proposed building

183 height and the proposed setbacks must conform to the approved and adopted master plan
184 or sector plan.

185 (c) **Transfer of public use space, density and mix of uses:** The Planning Board may
186 approve the transfer of public use space, density and any mix of uses between lots within
187 the same transit station development area. The transfer of density must be located away
188 from the boundaries of the transit station development areas when the boundaries abut or
189 confront either one-family residential development or properties recommended for one-
190 family residential development in the approved and adopted master plan or sector plan.
191 Any transfer of public use space and density and any mix of uses must be determined
192 through the combined densities and use mixes of all properties involved in the density
193 transfers, must conform to the approved and adopted master plan or sector plan and must
194 be approved as part of a combined project plan for all relevant parcels in accordance with
195 the provisions in Section 59-D-2 and Section 59-D-3.

196

197 **59-C-13.239. Existing buildings and uses.**

198 Any lawful structure, building or established use that existed before the applicable Sectional Map
199 Amendment adoption date, is a conforming structure or use and may be continued, structurally
200 altered, repaired, renovated or enlarged up to 10 percent of the gross building floor area or 7,500
201 square feet, whichever is less. However, any enlargement of the building that is more than 10
202 percent of the gross floor area or 7,500 square feet, whichever is less, or construction of a new
203 building must comply with the standards of the TOMX zones.

204

205 **59-C-13.24 Transferable development rights zones.**

206 **59-C-13.241. Method of development.** The following [2] methods of development are possible
207 in any TOMX/TDR zone:

208 (a) **Standard method of development.** Development under the standard method for any
209 TOMX/TDR zone must comply with the requirements and procedures for development
210 and density limitations contained in the corresponding TOMX zone, except that greater
211 residential densities may be permitted pursuant to Section 59-C-13.242. Development
212 must also conform to the special regulations for developments in a TOMX zone using
213 transferable development rights contained in Section 59-C-13.243.

214 (b) **Optional method of development.** Development under the optional method for any
215 TOMX/TDR zone must comply with the requirements and procedures for development
216 and density limitations contained in the corresponding TOMX zone and must conform to

217 any [the] numeric limits set in the applicable master or sector plan concerning floor area
218 ratio, dwelling units per acre, building heights and setbacks.
219 [In all other respects the development] Development must be consistent with the master
220 or sector plan, however greater [residential] densities may be permitted pursuant to
221 Section 59-C-13.242. Development must also conform to the special regulations for
222 developments using transferable development rights contained in Section 59-C-13.243.
223 [The] These special regulations require conformance to any [the] numeric limits that may
224 be set in the applicable master or sector plan concerning floor area ratio, dwelling units
225 per acre, building heights and setbacks. In all other respects the development must be
226 consistent with the applicable master or sector plan.
227

	<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) Standard Method 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. <u>Allowed</u> [The Residential] FAR may be increased by a maximum of 20% <u>for residential uses</u> by the use of TDRs, ¹		
[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) Optional Method Development standards [- Optional method of development must conform to each of the following]:		
1. Maximum density of development (FAR) without TDRs (<u>a lower standard, reflecting no less than the Standard Method requirement, may be established in applicable master or sector plan</u>)	<u>.5</u>	<u>1.5</u> [1.6] ²
2. Maximum density of development (FAR) with TDRs (<u>a lower standard may be established in an applicable master or sector plan</u>) ¹	<u>1.0</u>	<u>2.0</u>
[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]		
-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.	<u>TOMX 1.0</u>	TOMX 2.0

- 229
- 230 1 The applicable Master or Sector Plan may also set a maximum density in dwelling units per acre
- 231 which may be increased by a maximum of 20% through the use of TDRs.
- 232 2 The applicable Master or Sector Plan may set a higher maximum density without the use of
- 233 TDRs.

234 **59-C-13.243. Special regulations for development using transferable development rights.**

235
236 **59-C-13.2431. Applicability.** The following procedures and regulations apply to the transfer of
237 development rights to land classified in a TOMX/TDR zone. The Planning Board may approve
238 development on or subdivision of such land at densities not to exceed the maximum density
239 permitted in the applicable TOMX/TDR zone. The development must conform to any [the]
240 numeric limits in the applicable master or sector plan concerning floor area ratio, dwelling units
241 per acre, building heights and setbacks. In all other respects the development must be consistent
242 with the applicable master or sector plan.

243
244 Where the applicable Master or Sector Plan recommends calculating TDR based on square
245 footage, one TDR will be required for 1,800 square feet of residential space, or 1,500 square feet
246 of non-residential space. Where the applicable master or sector plan recommends only residential
247 use of TDRs, one TDR will be required for each dwelling unit, regardless of square footage.

248
249 [Any increase in the residential FAR above the residential FAR and dwelling units per acre
250 allowed under the standard and optional methods of development of 59-C-13.215 and 59-C-
251 13.23 must not exceed 20% of the maximum dwelling units per acre or FAR permitted without
252 TDRs and must be based on a ratio of one single-family dwelling unit for each TDR, and 2
253 multi-family dwelling units for each TDR; however, within a designated Metro Station Policy
254 Area, a ratio of three multi-family dwelling units for each TDR and two one-family units for
255 each TDR applies.]

256
257 **59-C-13.2432. General provisions.**

258 (a) A development right must be created, transferred and extinguished only by means of
259 documents in a recordable form approved by the Planning Board, including an easement and
260 appropriate releases. The TDR easement must limit [the] future construction [of one-family
261 dwellings] on a property in the RDT zone to the total number of development rights
262 established by the zoning of the property minus all development rights previously transferred
263 in accordance with this section, the number of development rights to be transferred by the
264 instant transaction, and the number of existing one-family detached dwellings on the
265 property.

266

- 267 (b) The transfer of development rights must be recorded among the land records of Montgomery
268 County, Maryland.
269
- 270 (c) A property developed under a TOMX/TDR zone must conform to the requirements of
271 Chapter 25A requiring MPDUs.
272
- 273 (d) A property developed with transferable development rights must include MPDUs as
274 required by Chapter 25A and workforce housing units as required by Section 59-A-6.18
275 and Chapter 25B. The number of MPDUs and any resulting bonus density must be
276 calculated after the base density of a property has been increased by a transfer of
277 development rights. The calculation of the number of workforce housing units must be
278 based on the total number of market dwelling units in the development including any
279 transfer of development rights, but not counting any MPDUs or resulting bonus density
280 units. The MPDU density bonus does not require the acquisition of additional development
281 rights.
282

283 **59-C-13.2433. Development approval procedures under the standard and optional method of**
284 **development.**
285

- 286 (a) A request to utilize development rights on a property under the standard and optional
287 method must be in the form of a preliminary subdivision plan submitted in accordance with
288 Chapter 50.
- 289 (b) A site plan must be submitted and approved in accordance with the provisions of Division
290 59-D-3.
- 291 (c) The Planning Board must approve a request to use transferred development rights if the
292 request:
- 293 (1) is in accordance with provisions of this chapter;
 - 294 (2) is in accordance with Chapter 50, title "Subdivision of Land";
 - 295 (3) conforms to [the] any numeric limits in the applicable master or sector plan
296 concerning floor area ratio, dwelling units per acre, building heights, and
297 setbacks; and is in all other respects [the development is] consistent with the
298 applicable master or sector plan; and
 - 299 (4) achieves a desirable development compatible with [both] site conditions, and
300 surrounding existing development, and [with] anticipated future development.

301
302 (d) Prior to Planning Board approval of a final record plat for a subdivision using transferred
303 development rights, an easement to the County in the form required by Section 59-C-
304 2432(a) above limiting future construction of dwellings on a property in the RDT zone by
305 the number of development rights received must be recorded among the land records of
306 Montgomery County, Maryland.

307
308 (e) A final record plat for a subdivision using transferred development rights must contain a
309 statement setting forth the development proposed, the zoning classification of the property,
310 the number of development rights used, and a notation of the recordation of this
311 conveyance required by Section 59-C-2432(b).

312
313 **59-C-13.2434. Development standards applicable to the standard and optional method of**
314 **development.**

315
316 (a) The final density achieved for any property located in a TDR receiving area developed
317 under the procedures herein must be determined by the Planning Board and must
318 conform to the site plan provisions (Division 59-D-3) and subdivision regulations
319 (Chapter 50).

320
321 (b) In making the determination as to the final density, the Planning Board will consider the
322 following factors to determine whether the development:

- 323
324 (1) conforms to [the] any numeric limits in the applicable master or sector plan
325 concerning floor area ratio, dwelling units per acre, building heights, and setbacks;
326 and is in all other respects [the development is] consistent with the approved master
327 or sector plan;
328 (2) preserves environmentally sensitive and priority forest areas, and mitigates
329 unavoidable impacts on the natural environment;
330 (3) facilitates good transit serviceability and creates a desirable and safe pedestrian
331 environment; and
332 (4) achieves compatibility with surrounding land uses.

333
334 **Sec. 2. Article 59-D is amended as follows:**

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

336 **INTRODUCTION**

337 * * *

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

Plan Approvals Required

341
 342

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>				<u>X</u>	
TOMX 2.0				X	
<i>Optional Method</i>					
* * *					
<u>TOMX 1.0</u>			<u>X</u>	<u>X</u>	
TOMX 2.0			X	X	

343
 344

345 DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD
346 ZONES, AND RMX ZONES.

347

348 59-D-2.0 Zones enumerated.

349

350 The Planning Board is authorized to approve development under the optional method of development
351 procedures described in Section 59-C-6.2 of the CBD zones, Section 59-C-10 of the RMX Zones, Section
352 59-C-13 of the TOMX Zones and the approval procedure set forth in this Division, for the following
353 zones:

354 * * *

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

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

357

358 * * *

359 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the date of Council
360 adoption.

361

362

363 This is a correct copy of Council action.

364

365

366

367

368

Linda M. Lauer

369 Clerk of the Council