

Council Resolution to Amend the 2016-2020 Subdivision Staging Policy

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Completed: 05/30/2019

Description

The proposed Council resolution would amend the 2016-2020 Subdivision Staging Policy to allow the Planning Board to approve a residential development application in an area under a moratorium, if the project is estimated to generate ten or fewer school students and either:

- (1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure within or adjacent to a state-designated Opportunity Zone; or
- (2) Has more than 50% affordable housing units for families earning 60% or less of area median income.

Summary

Staff recommends transmitting comments to the County Council in support of the resolution with some modifications. The amendment is estimated to have a limited impact on student enrollment since not many projects will meet the criteria. At the same time, the amendment provides the Planning Board with the opportunity to approve projects that could help advance two worthy goals – eliminating blight within our communities and encouraging the creation of more affordable housing.

Background

Formerly called the Growth Policy, the Subdivision Staging Policy (SSP) seeks to ensure that Montgomery County's infrastructure, particularly schools and transportation, keeps pace with new development. The policy is typically updated on a quadrennial basis to ensure that the best available tools are used to help achieve this goal. County law requires that the next scheduled update be adopted by the County Council by November 15, 2020. Planning staff is preparing for that update effort, and the Planning Board will have numerous opportunities to craft a policy recommendation for the Council's review.

County Code §33A-15(f), however, allows the County Council, County Executive, or the Planning Board to initiate an amendment to the adopted SSP at any time. On April 23, 2019, Councilmembers Craig Rice

and Hans Riemer sponsored and introduced an amendment to the SSP that would allow residential development applications to be approved by the Planning Board in areas under moratorium if certain conditions existed. County Code further requires that the Planning Board provide any comments to the County Council on the proposed amendment within 45 days of receiving the amendment (i.e., the day of its introduction). June 7, 2019 marks the 45th day.

Currently, the SSP establishes moratoria on the approval of new residential development applications under the following conditions:

- For any of the County's 25 public high school clusters, if projected capacity utilization in five years is greater than 120% cluster-wide at any school level (elementary, middle or high school).
- For any of the County's 134 individual public elementary school service areas (representing individual and paired schools), if the school's projected capacity utilization exceeds 120% and the school's enrollment is projected to be 110 students or more over capacity.
- For any of the County's 40 individual public middle school service areas, if the school's projected capacity utilization exceeds 120% and the school's enrollment is projected to be 180 students or more over capacity.

Under the current FY19 test, there are two cluster service areas and five individual elementary school service areas under moratoria. Under the upcoming FY20 test (the full results of which will be presented to the Planning Board for certification on June 20), there are four cluster service areas and 13 individual elementary school service areas going into moratoria (only eight of these, however, are fully located outside of the four clusters going into moratoria).

There are currently two exceptions that allow the Planning Board to approve a development application in an area under moratorium:

- If the project has a net increase of three or fewer units.
- If all of the project's residential units are age-restricted for seniors.

Proposed Amendment

The proposed amendment, introduced on April 23, 2019 by Councilmembers Riemer and Rice, would establish criteria for a new moratorium exception. Generally, the amendment would allow the Planning Board to approve a project in an area under moratorium if it would produce 10 or fewer students at any school and either replace a blighted structure in or adjacent to an Opportunity Zone, or provide a large share of affordable housing.

Specifically, below is the full text of the proposed amendment, as introduced:

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

- (1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or
- (2) Is a project having more than 50% affordable housing units for families earning 60% or less of AML.

Detailed Review and Staff Recommendations

The proposed amendment demonstrates the County's need to balance competing policy priorities. There are three existing public policy goals that are impacted by this proposed amendment:

1. *Adequate School Capacity.* One of the primary goals of the SSP is to ensure adequate school capacity exists to accommodate the enrollment impacts of new development on a timely basis. The SSP in part attempts to achieve this goal by placing a moratorium on residential development approvals in areas served by schools that exceed certain enrollment thresholds. By allowing development in areas under moratoria, this proposed amendment presents a small challenge to the SSP's pursuit of this goal. However, limiting the estimated enrollment impact to no more than ten students at any one school ensures that no individual project will have too deleterious an impact on school adequacy. At the same time, because few projects are expected to meet the moratorium exemption criteria, staff does not expect a wave of project approvals that would collectively place an excessive enrollment burden on any one school. **Ultimately, staff believes the enrollment impact limitation in the proposed SSP amendment adequately restrains the potential impairment of the adequate school capacity goal.**
2. *Blight Reduction.* Blighted structures are a detriment to a neighborhood and become a public hazard if left unmitigated. It is clearly in the public interest to rid neighborhoods of blighted or condemned buildings, particularly in economically-distressed communities such as Opportunity Zones. This proposed amendment would allow the replacement or remediation of blighted buildings in such environments, notwithstanding the existence of a residential development moratorium. **Despite the potential impact on school enrollment, staff believes that the proposed SSP amendment supports an important public priority of encouraging reinvestment and revitalization in underserved communities, which can have long-term benefits beyond the timeframe of a moratorium.**
3. *Increased Affordable Housing.* The final goal impacted by the proposed SSP amendment is to increase the availability of affordable housing across the County. The 2017 Rental Housing Study noted an inadequate supply of affordable units, especially for units with deeper affordability levels than are typically reached by moderately priced dwelling units, which are

offered at 70 percent of the area median income (AMI). This amendment would allow the Planning Board to approve projects providing 50 percent or more of its units at 60 percent or less of AMI. Despite evidence that structures with higher rates of affordable housing generate more students,¹ **staff believes this is a worthy tradeoff given the proposed exemption's enrollment impact limitations and the fact that very few projects are likely to meet the affordability criteria.**

Not only does this amendment demonstrate a balanced approach to achieving policy goals, it provides the Planning Board with the opportunity to do the same at the project level. While the amendment would *allow* the Planning Board to approve certain residential projects in areas under moratorium, it does not *require* the Planning Board to do so. With every application that comes before it, the Planning Board can weigh the public interests in pursuing more affordable housing or removing a community blight against the adequacy of schools and the project's estimated impacts on enrollment.

The following provides a detailed breakdown of the proposed amendment, section by section, with staff commentary and recommendations in bold.

PART A: Limits on Student Generation

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

- (1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or
- (2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Student Generation.

As of July 1, 2019, staff will begin using a new set of student generation rates to estimate the enrollment impacts of development applications. These new rates are calculated based on housing stock data and Montgomery County Public Schools enrollment data from September 2018. The details of these updated rates will be presented to the Planning Board along with the FY20 Annual School Test on June 20, 2019.

¹ A quick review of a sample of high-rise structures with large shares of affordable units found that the units in these structures generate approximately 87 percent more students than high-rise units generally across the County. This is hardly surprising, given that the affordable housing policies mostly target families with children.

Using these new rates, staff has calculated the following unit counts to estimate the number of multifamily units that can be built within the ten-student threshold proposed by the amendment:

Region	Multifamily Low-rise	Multifamily High-rise
East Region Blair, Einstein, Kennedy, Northwood, Wheaton, Blake, Paint Branch and Springbrook clusters	43 units	124 units
Southwest Region Bethesda-Chevy Chase, Churchill, Walter Johnson, Richard Montgomery, Rockville, Whitman, and Wootton clusters	73 units	268 units
Upcounty Region Clarksburg, Damascus, Gaithersburg, Magruder, Northwest, Poolesville, Quince Orchard, Seneca Valley, Sherwood, and Watkins Mill clusters	60 units	549 units

It is important to note that we typically assess the net student enrollment impacts with a credit provided for units demolished offsetting the estimated number of students generated by the new residential units. In the case of the demolition of a condemned or previously condemned residential structure that is vacant, the enrollment impact estimate would be based solely on the proposed new residential units.

Staff believes that the ten-student threshold is sufficient mitigation to the potential further over-utilization of schools already in moratorium and therefore recommends that the Planning Board support this particular language in the amendment.

PART B1: Condemned Structures Exception

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

- (1) **Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or**
- (2) is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Blighted Structures.

Staff has significant concerns over use of the term “blighted” as a condition of possible project approval by the Planning Board because “blight” is a subjective term, with limited objective guidance or definition

in the County Code. The term “blight” appears several times in the Code, in reference to “blighted plants,” “visual blight” or “blighted areas.”

Visual blight is defined (County Code §26.2) as:

Keeping, storing, scattering over, or accumulating any of the following which can be viewed at ground level from a public right-of-way or from neighboring premises:

- (a) rubbish, lumber, packing materials, or building materials;
- (b) abandoned, discarded or unused object or equipment, including any furniture, appliance, can or container, automobile part or equipment;
- (c) abandoned, disabled, dismantled, or unused vehicle or part of a vehicle; or
- (d) pile of dirt, mulch, sand, gravel, concrete, or other similar construction materials.

Visual blight also includes any other condition or use of a building or surrounding land which because of its appearance, viewed at ground level from a public right-of-way or from neighboring premises, is likely to reduce the value of nearby property. *Visual blight* does not include building or construction materials intended to be used for any repair or renovation activity for which a building permit was issued and has not expired, and stored for the time reasonably necessary to promptly complete the work for which the permit was issued.”

Even if the amendment were revised to reference visual blight, this definition provides some subjectivity since a structure’s status as blighted could be based solely on its appearance.

Chapter 56 of the County Code, on Urban Renewal and Community Development, allows the Director of the Department of Housing and Community Affairs to create and administer a Demolition Loan Program that would provide commercial property owners with loans to cover all or part of the cost of demolishing a building and clearing the land under certain conditions, including areas “the Director finds is blighted or threatened with blight.”

Further, in the purpose of the Urban Renewal code, there are several references to the “spread of blight” and “blighted areas,” which are then defined as areas “in which a majority of buildings have declined in productivity by reason of obsolescence, depreciation or other causes to an extent they no longer justify fundamental repairs and adequate maintenance.”

Nevertheless, the term “blighted” continues to provide a measure of subjectivity. In the case of urban renewal efforts, the County Code indicates that the County Council must designate “blighted *areas*” by resolution. However, there is no mechanism currently to officially designate a *structure* as blighted.

Condemned Structures.

Compared to “blighted,” “condemned” is more objective. County Code identifies the Department of Housing and Community Affairs (DHCA) as the agency tasked with officially identifying a structure as condemned, whether it is a residential structure or not. Section 26-13 of the County Code provides the standards for condemnation:

- (a) Standards for condemnation. The enforcing agency may condemn as unfit for human habitation any individual living unit, dwelling, or dwelling unit or its premises, or as unsafe for human occupancy or use any nonresidential structures or its premises, which:
- (1) is entirely or partly so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or the public;
 - (2) lacks, entirely or partly, illumination, ventilation, heating, water supply, or sanitation facilities, as required by this Chapter;
 - (3) is, because of its general condition, unsanitary or otherwise dangerous to the health or safety of the occupants or the public;
 - (4) contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid container, or other equipment, on the premises or in the structure which is in disrepair or a condition that the Director finds presents a hazard to the life, health, property, or safety of the occupants or the public;
 - (5)
 - (A) is vacant and unoccupied for the purpose for which it was built;
 - (B) has remained substantially in that condition for at least one year; and
 - (C) has been cited for 5 or more violations of this Chapter, none of which has resulted in a 'not guilty' finding by a court;
 - (6) or is a public nuisance.

Because condemnation is an official designation, the condemned status of a structure is something that Planning staff can verify through DHCA staff.

Staff recommends removal of the term “blighted” from the title and text of the amendment.

Previously Condemned Structures.

However, staff has concerns that the phrase “previously condemned” in the proposed amendment is not accompanied by a timeframe for when the structure had been condemned. Previously remediated structures that are currently occupied and serving as a source of naturally affordable housing or commercial space may not necessitate an exception to a moratorium.

But rather than establish a potentially arbitrary timeframe for the term “previously condemned,” **staff recommends modifying the amendment to read “previously condemned and currently vacant.”²**

Adjacency.

Officially, the term “adjacent” refers to properties across a right-of-way. **Staff recommends adding the term “abutting,” which refers to properties immediately touching each other.**

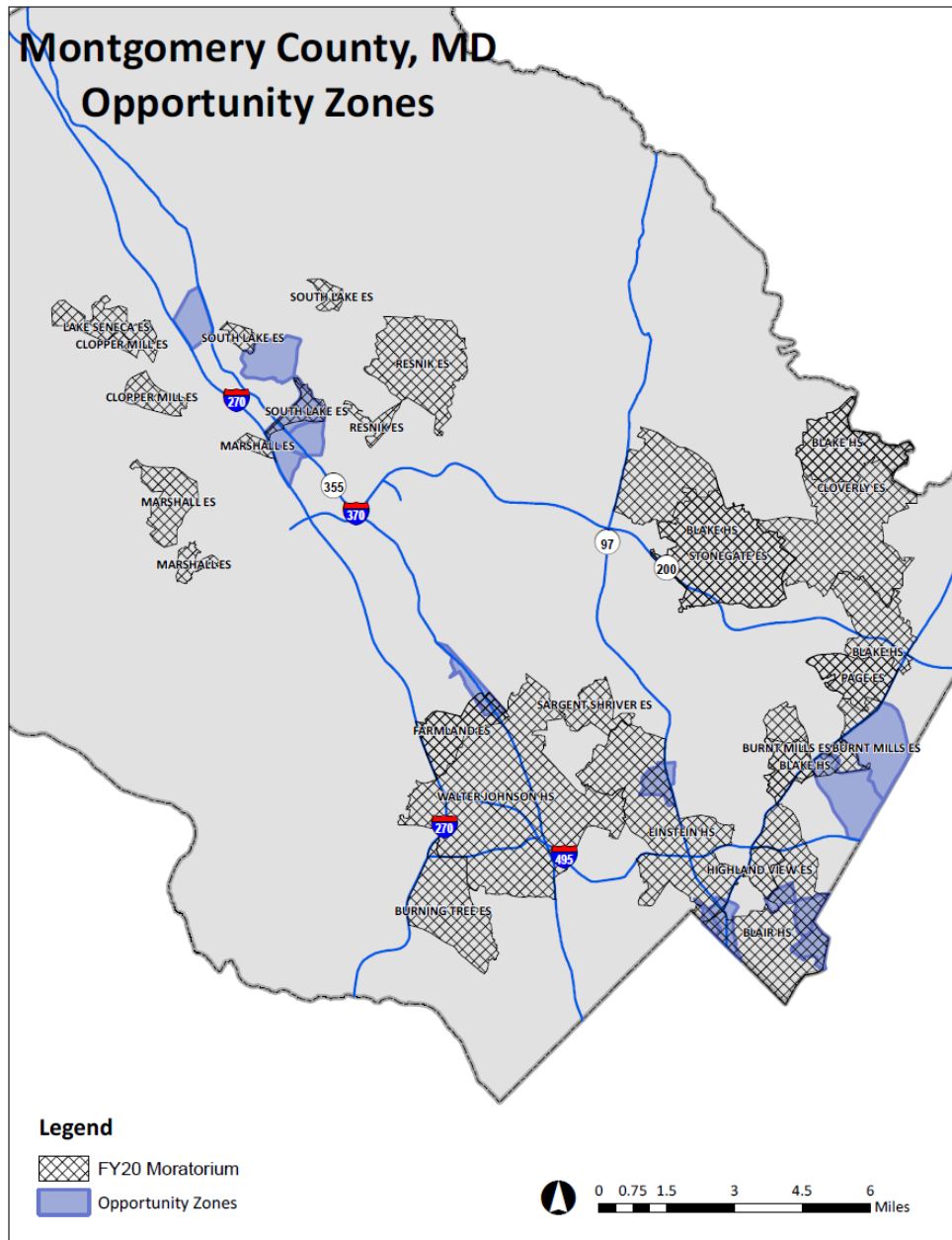
Opportunity Zones.

Opportunity Zones are designated by the Maryland Department of Housing and Community

² The amendment, as introduced, suggests the term “uninhabited” be used, but staff believes that implies that the moratorium exception only applies to condemned *residential* properties, whereas “vacant” is inclusive of commercial structures that could also be adaptively reused or completely rebuilt as residential uses.

Development (DHCD) as part of a nationwide effort to provide tax incentives for investment in distressed communities. According to DHCD, a neighborhood qualifies as an Opportunity Zone if it has “an individual poverty rate of at least 20 percent and median family income no greater than 80 percent of the area median.”³

The following map highlights the location of Montgomery County’s has 14 Opportunity Zones, relative to the areas entering a residential development moratorium for FY20:



³ See <https://dhcd.maryland.gov/Pages/OZ/OZ-FAQ.aspx>.

Potential Impacts of the Condemned Structures Exception.

A review of the County’s [Housing Code Violations database](#) revealed a list of 45 condemned structures or units located in or adjacent to an Opportunity Zone (adjacent defined for these purposes as properties located within a 100-foot buffer of an Opportunity Zone). Only 25, however, are in areas that will be in moratorium in FY20. Of the 25 locations, 11 are single family detached homes and two are single family attached homes. Generally, redevelopment of these individual homes would take the shape of a teardown/rebuild project that would result in no net unit change, or a net change that would fall within the existing 3-unit de minimis moratorium exception. Of the remaining, 11 are individual dwelling *units* that have been condemned that are located within multifamily *structures* that are *not* condemned, and therefore do not qualify for the proposed moratorium exception, which only applies to condemned *structures*. That leaves one parcel currently condemned that could benefit from this amendment – 850 Sligo Avenue, which is a former office structure.⁴

Of the 20 condemned properties located in or adjacent to an Opportunity Zone, but *not* located within an FY20 moratorium area, five are single family detached units, 11 are single family attached units, two are individual dwelling units within multifamily structures that are not condemned, and two are individual units within office/retail structures that are not condemned.

Summary of Condemned Properties Located In or Adjacent To an Opportunity Zone.

FY20 Moratorium	Structure or Unit	Use Category	Count	Impacted by Amendment
Yes	Structure	Single Family Detached	11	N
Yes	Structure	Single Family Attached	2	N
Yes	Unit	Multifamily	11	N
Yes	Structure	Office/Retail	1	Y
No	Structure	Single Family Detached	5	N
No	Structure	Single Family Attached	11	N
No	Unit	Multifamily	2	N
No	Unit	Office/Retail	2	N

⁴ Five locations were identified as previously condemned and within or adjacent to an Opportunity Zone, but only three are within areas that will be in moratorium in FY20. Of those three locations, one is a single family detached home and two are individual units within multifamily structures. Therefore, currently there are no previously condemned structures that would be impacted by the proposed amendment.

PART B2: Affordable Housing Exception

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

- (1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or
- (2) **Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.**

Potential Impacts of the Affordable Housing Exception.

Discussions with Area Team staff revealed four potential projects across the County in various stages of the application process that may fall into the category of providing 50 percent of their units affordable to 60 percent of area median income. One, the Forest Glen Apartments, is located in the Einstein cluster, which is scheduled to go into moratorium on July 1. The applicant, Montgomery Housing Partnership, filed for a local map amendment that the Planning Board approved on February 7, 2019. The District Council adopted the local map amendment on April 30, 2019. Documents pertaining to the local map amendment suggest the applicant intends to replace the 72 existing low-rise apartments with 220 high-rise apartments.⁵

The three other potential projects are all in the pre-application stage. Only one of these is located in an area slated for moratorium (the Walter Johnson cluster). Typically, projects requesting this high a share of affordable housing at 60 percent of AMI are rare given the deeper levels of affordability and the higher percentage of affordability set asides. These projects typically involve low income housing tax credit units built by a non-profit developer. Nevertheless, it is impossible to predict how many projects meeting the amendment requirements may come forward in the future.

⁵ It is possible this project may not qualify for the exemption once the preliminary plan application is submitted. A binding element of the floating zone plan adopted by the District Council requires the applicant to include a minimum of 20% moderately priced dwelling units (MPDUs) in the project. MPDUs are only required to be affordable to families earning 70 percent of AMI. It is unclear whether the applicant intends to provide additional units affordable to families earning 60 percent of AMI.

Consolidated Amendment Modification Recommendations

The following modifications to the proposed amendment reflect the staff recommendations described above:

S7.3 ~~[[Blighted/]]~~Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

- (1) Replaces or remediates a~~[[n uninhabited blighted or]]~~ condemned or previously condemned ~~and currently vacant~~ structure located within, ~~abutting~~ or adjacent to a state-designated Opportunity Zone, or
- (2) Is a project having more than 50% affordable housing units for families earning 60% or less of AML.

Attachment

[SSP Amendment Resolution as introduced on April 23, 2019.](#)

ATTACHMENT

AGENDA ITEM #3B

April 23, 2019

Introduction

MEMORANDUM

April 19, 2019

TO: County Council
GO

FROM: Glenn Orlin, Deputy Director

SUBJECT: Resolution to amend the 2016-2020 Subdivision Staging Policy (SSP) in association with blighted/condemned buildings or affordable housing

PURPOSE: Introduction

Councilmembers Rice and Riemer are sponsoring this amendment to the 2016-2020 SSP to allow a project with housing to be approved in a cluster or individual school service area that is in moratorium, if the project would generate 10 or fewer school students and either:

- (1) replaces or remediates an uninhabited blighted or condemned or previously condemned structure within or adjacent to a state-designated Opportunity Zone; or
- (2) has more than 50% affordable housing units for families earning 60% or less of area median income.

A memorandum from Councilmember Rice, the Lead Sponsor, is on ©1-2. The proposed resolution is on ©3-4. A public hearing on this amendment is scheduled for June 11, 2019. The Executive and the Planning Board have up to 45 days to provide their respective comments to the Council. The Council can act on this amendment after the public hearing and receiving these comments.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

CRAIG RICE
COUNCILMEMBER
DISTRICT 2

MEMORANDUM

To: Council President Nancy Navarro
Council Vice President Sidney Katz

From:  Councilmember Craig Rice

Date: April 17, 2019

Re: 2016-2020 Subdivision Staging Policy Amendment, Allocation of Staging Ceiling to Preliminary Plans of Subdivision

I would like to introduce a Subdivision Staging Policy (SSP) Amendment that would give the Planning Board an opportunity to approve a subdivision in a cluster or school service area that is currently in moratorium by taking into consideration improvements made to a distressed community area or advancement of our public policy initiative of increasing affordable housing. Language addition as follows:

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- (1) **Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or**
- (2) **Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.**

Montgomery County now has 14 areas designated as Opportunity Zones which encourage investment and redevelopment and help enhance these underserved communities. These are the areas that most likely have blighted and/or condemned structures that plague a community. This SSP amendment would allow the Planning Board to consider the overall community benefits in allowing development in or adjacent to these areas to help spur growth and vitality.

The other part of the SSP speaks to a valued public policy initiative of increasing our inventory of affordable housing throughout the county. This amendment would allow development in a cluster currently over-capacity only if it included greater than 50% of affordable housing units for families

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earning 60% or less of AMI. We need to ensure our families of greatest need have access to housing throughout Montgomery County.

Moratoriums were put in place for a good reason and I do not want to diminish the purpose they serve. This SSP amendment ensures that any new development would not significantly add to the overburden of capacity of schools in moratorium by enacting a strict limit of (10) or less students that any new development might generate.

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Lead Sponsor Councilmember Rice; Co-Sponsor Councilmember Riemer

SUBJECT: Amendment to the 2016-2020 Subdivision Staging Policy in association with blighted/condemned buildings or affordable housing

Background

1. On April 17, 2018 the County Council approved Resolution 18-1087, amending the 2016-2020 Subdivision Staging Policy.
2. County Code §33A-15(f) allows either the County Council, County Executive, or the Planning Board to initiate an amendment to the Subdivision Staging Policy.
3. On April 23, 2019, in accordance with §33A-15, the Council introduced proposed technical amendments to amend Resolution 18-1087 in association with blighted/condemned buildings or affordable housing.
4. On June 11, 2019, the County Council held a public hearing on the Draft Amendment to the Subdivision Staging Policy.
5. The Council's Planning, Housing, and Economic Development Committee conducted a worksession on the Draft Amendment to the Subdivision Staging Policy.
6. The Council conducted a worksession on the Draft Amendment to the Subdivision Staging Policy, at which careful consideration was given to the public hearing testimony, updated information, recommended revisions and comments of the County Executive and Planning Board, and the comments and concerns of other interested parties.

Action

The County Council for Montgomery County, Maryland, approves the following Resolution:

The 2016-2020 Subdivision Staging Policy is amended as follows:

* * *

Guidelines for Transportation Facilities

* * *

S Public School Facilities

* * *

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster or school service area, the Planning Board nevertheless may approve a subdivision in that cluster or school service area if the subdivision generates 10 or fewer students in any given impacted school, and:

- (1) Replaces or remediates an uninhabited, blighted, condemned, or previously condemned structure located within or adjacent to a state-designed Opportunity Zone, or
- (2) Is a project having more than 50% affordable housing units for families earning 60% of less of area median income.

* * *

This is a correct copy of Council action.

Megan Davey Limarzi, Clerk of the Council