



INCENTIVE ZONING UPDATE

IMPROVING THE PUBLIC BENEFITS POINT SYSTEM FOR CR AND EMPLOYMENT ZONES

Description

Summary of Analysis for the Incentive Zoning Update Study

| | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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SUMMARY

Montgomery planning is undertaking a review of the incentive zoning point system (point system) for mixed use and employment zones, which allow high density development near transit or within clusters of life science and office uses. To achieve these greater densities, the optional method of development is applied to the Commercial Residential (CR), Commercial Residential – Town (CRT), Life Science Center (LSC), and Employment Office (EOF) zones. Developers must provide public benefits, like affordable housing, environmental features, or public infrastructure to maximize the allowable density in these zones. The Planning Board publishes and maintains a set of implementation guidelines to provide criteria for planning department staff and applicants to evaluate the adequacy of the public benefits proposed in an optional method application.

While these incentive zones comprise only three percent of the county’s land area, the Planning Board has approved almost 37 million square feet of development in these zones through the optional method of development since the policy’s inception in 2010. The policy has undergone some minor-to-moderate changes throughout its 13-year history, albeit without a comprehensive countywide review. Since the implementation guidelines were last updated in 2017, the County Council has passed several major policies and programs related to planning and development, including the County’s new General Plan (Thrive Montgomery 2050), a Climate Action Plan (CAP), and the Racial Equity and Social Justice (RESJ) Law. Each of these policies provides high level guidance regarding how the incentive zones and point system could be enhanced. In addition, there are other policies that interact with the incentive zones and point system, including the county’s inclusionary zoning law, and two farmland preservation programs. Just as planning priorities, market conditions, and development standards evolve over time, so do the needs for public benefits, thereby impacting the effectiveness of the point system and implementation guidelines.

This staff report presents a summary of analysis undertaken by planning staff to date, and it adheres to the scope of work approved by the Planning Board for this study in April 2023. Staff has undertaken an objective, data driven approach to examine every aspect of the policy, from its theoretical underpinnings and financial assumptions to the experience of implementing it through the entitlement process. Included within this report are lessons learned by comparing Montgomery County’s approach with regional and national peer jurisdictions.

PROJECT INFORMATION

Summary of Analysis

Date

12/14/2023

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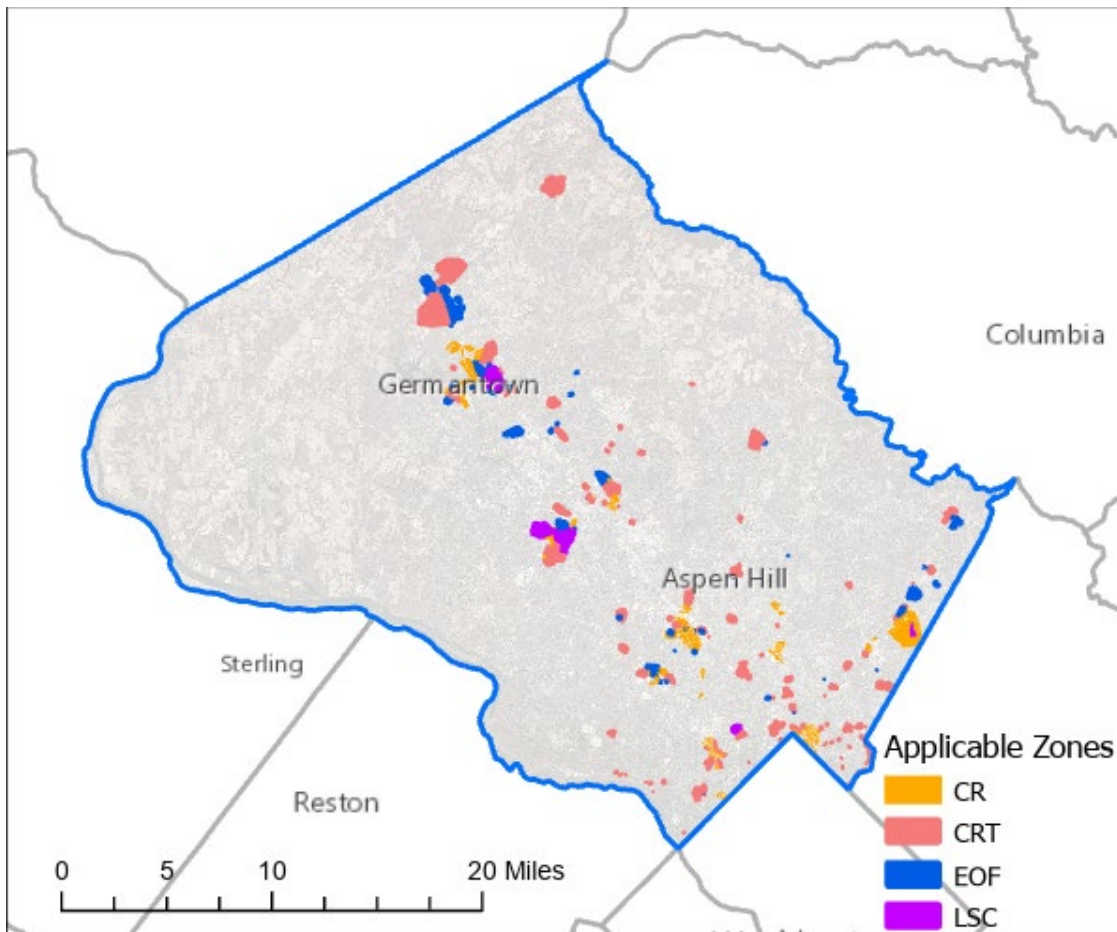
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Planning Board Information

MCPB Item No. 7



The optional method of development is applicable to the Commercial Residential (CR), Commercial Residential - Town (CRT), Life Science Center (LSC), and Employment Office (EOF) zones.

TABLE OF CONTENTS

| | |
|----------------------------------------------------------------|----|
| INTRODUCTION | 6 |
| Overview and Context | 6 |
| How Does the Current Point System Work? | 8 |
| Goals of the Study | 9 |
| KEY TAKEAWAYS | 11 |
| SUMMARY OF ANALYSIS..... | 13 |
| Reviewing the Performance of the Point System Since 2010 | 14 |
| Purpose | 14 |
| Methodology | 14 |
| Summary of Total Development | 15 |
| Key Takeaways | 15 |
| Qualitative Assessment of Implementation Guidelines..... | 22 |
| Purpose | 22 |
| Methodology | 22 |
| Key Takeaways | 23 |
| Financial Feasibility Impacts of Public Benefits..... | 28 |
| Purpose | 28 |
| Methodology | 28 |
| Public Benefit Cost Analysis | 29 |
| Financial Feasibility Analysis..... | 37 |
| Benchmarking Case Studies | 49 |
| Purpose | 49 |
| Methodology | 49 |
| National Municipalities | 49 |
| Local Jurisdictions | 50 |
| Key Findings..... | 52 |
| Regional Regulatory Review | 54 |
| Purpose | 54 |
| Methodology | 55 |
| Key Takeaways | 58 |
| COMMUNITY OUTREACH AND ENGAGEMENT AND ENGAGEMENT | 60 |
| PROJECT SCHEDULE | 61 |

STAY CONNECTED..... 61

ATTACHMENTS 63

LIST OF TABLES

Table 1: Minimum Points and Public Benefit Categories Requirements by Zone 8

Table 2: List of Public Benefits in the Incentive Density Implementation Guidelines..... 10

Table 3: Top Ten Public Benefits 17

Table 4: Existing Public Benefit Categories vs. Overall County Policy Priorities 24

Table 5: Summary of Public Benefit Cost Estimates..... 32

Table 6: Summary of MPDU Feasibility Impacts 35

Table 7: Summary of Development Scenarios and Prototypes..... 38

Table 8: Urban and Suburban Scenario Feasibility Analysis 43

Table 9: Exurban and Life Science Scenario Feasibility Analysis 46

Table 10: TOD Scenario Feasibility Analysis..... 48

Table 11: Comparison of Approach to Public Benefits by Jurisdiction..... 56

LIST OF FIGURES

Figure 1 – Map of Montgomery County Incentive Zones 7

Figure 2: Frequency of Public Benefits in Approved Site Plans, Countywide 16

Figure 3: Average Points Awarded by Public Benefit (out of 100), Countywide..... 19

Figure 4: Public benefits in approved site plans compared to public benefit priorities in master plans since 2010 21

Figure 5: Example of Prototype Feasibility and Calculation of Feasibility Surplus 39

Figure 6: Demonstration of Leftover Feasibility in Surplus in the Urban Optional Method (with Overlay Zone Density) Prototype 40

Figure 7: Jurisdictions by Value of Incentive and Public Benefits Negotiating Process..... 57

INTRODUCTION

OVERVIEW AND CONTEXT

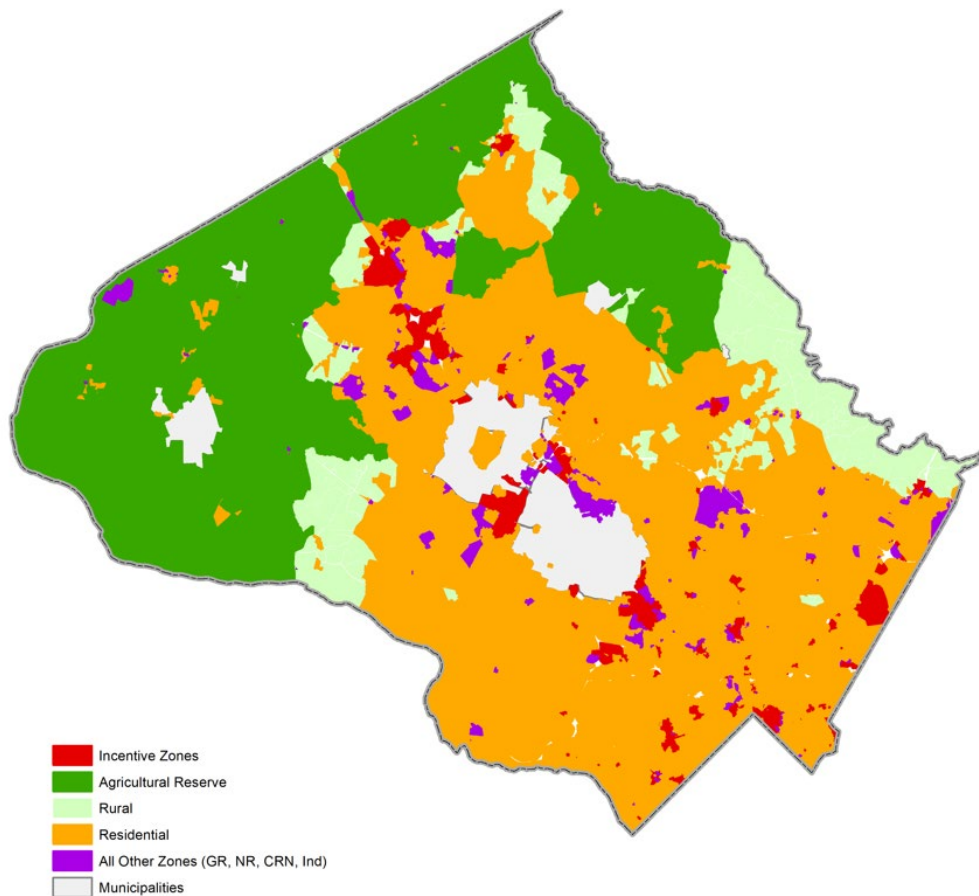
A central goal for creating the CR and Employment zones was to provide a flexible zone for infill development throughout the commercial areas of the county that would encourage a mix of uses and provide public benefits commensurate with an appropriate range of densities. The point system was designed to provide greater transparency regarding what developers were being asked to deliver as a condition of approval, standardizing the list of amenities. Another key goal was to ensure a faster and more efficient development review process while keeping the community informed regarding the delivery of public benefits in exchange for the approved density.

The public benefits are selected from a menu of amenities intended to focus on features such as site and building design, accessibility, housing, and environmental sustainability. Since the policy's inception in 2010, Montgomery Planning has approved Optional Method Projects and the corresponding public benefit requirements with a point system as delineated in section [59.4.5](#) of the zoning code and further elaborated in the [Incentive Density Implementation Guidelines](#). The guidelines state that in approving any incentive density based on the provision of public benefits, the Planning Board must consider the policy objectives and priorities of the applicable master or sector plan and design guidelines, among other factors related to the size and context of the project. This directive therefore established a key role sector plans have since played in prioritizing which public benefits are considered during the optional method of development approval process.

As a part of the 2014 Zoning Rewrite, development standards for optional method projects were also modernized for the CR and Employment Zones. Notably, while several changes to the point system were discussed by the Planning Board and the Planning, Housing, and Economic Development (PHED) committee, only a few changes were implemented in the final version of the new code as adopted by the full council. However, the new code did enable the application of the incentive zones and the point system countywide. Since 2014, the CR, CRT, LSC, and EOF zones have been applied within several new master planning areas, thereby expanding the optional method of development and the point system to new parts of the county.

A review and update are necessary to modernize the policy and align it with evolving county priorities and market conditions, particularly as it governs some of the largest and most economically significant developments in the county.

Figure 1 – Map of Montgomery County Incentive Zones



Source: Montgomery Planning, 2023

Figure 1 shows a map of Montgomery County, highlighting the incentive zones and placing them in the context of countywide zoning. As measured in terms of parcel size, the total size of Montgomery County is 318,543 acres. The incentive zones comprise 8,370 acres, or three percent of land countywide. While these zones account for a small portion of the county’s land, they have seen more than 37 million square feet of development approved by the Planning Board since 2010.

HOW DOES THE CURRENT POINT SYSTEM WORK?

The point system is the mechanism for granting density in the CR and Employment zones, in return for public benefits as part of the optional method of development. A project larger than the greater 0.5 FAR or 10,000 square feet of gross floor area in CR and LSC zones is required to include public benefits. For the CRT and EOF zones, the threshold is the greater of 1.0 FAR or 10,000 square feet of gross floor area. If a project does not exceed the threshold for size and FAR, it does not need to provide public benefits and is called standard method of development.

CR and Employment Zone Designation

CRT 2.0 C 1.0 R 1.5 H 60

CRT sets the uses and some requirements.
2.0 means the overall maximum building floor ratio (FAR) is a maximum of two times the size of the lot.
C 1.0 is the maximum commercial FAR within the total 2.0 FAR.
R 1.5 is the maximum residential floor area within the total 2.0 FAR.
H 60 is the maximum building height—60 feet.

Table 1: Minimum Points and Public Benefit Categories Requirements by Zone

| Zone | Tract Size OR Max Total FAR | Minimum Public Benefit Points | Minimum Number of Benefit Categories |
|------|---------------------------------|----------------------------------|-----------------------------------------|
| CRT | < 10,000 SF OR < 1.5 max FAR | 25 | 2 |
| | ≥ 10,000 SF OR ≥ 1.5 max FAR | 50 | 3 |
| CR | < 10,000 SF OR < 1.5 max FAR | 50 | 3 |
| | ≥ 10,000 SF OR ≥ 1.5 max FAR | 100 | 4 |
| LSC | < 10,000 SF OR < 1.5 max FAR | 15 | 1 |
| | ≥ 10,000 SF OR ≥ 1.5 max FAR | 30 | 2 |
| EOF | < 10,000 SF OR < 1.5 max FAR | 30 | 2 |
| | ≥ 10,000 SF OR ≥ 1.5 max FAR | 60 | 3 |

Source: Montgomery County Zoning Ordinance, 2023.

As shown in Table 2, the ‘menu’ of public benefits developers may provide covers a wide range of amenities. The categories of public benefits are selected during the Sketch Plan review and the actual public benefits are evaluated at the Site Plan review stage. Some public benefits are awarded points on a discretionary basis, where there is a maximum number of points and general guidelines for reviewers to assess the proposed public benefit. Other public benefits are awarded points on a

formulaic basis, where the portion of the public benefit is relative to the site size and the number of points is determined as a fraction of the maximum available points awarded for the public benefit. Projects receive points for transit proximity based on the site's distance to various types of transit facilities. Finally, there is no maximum number of points projects can receive for Moderately Priced Dwelling Units (MPDUs). Projects are also exempt from providing public benefits if the MPDUs provided equal or exceed 20 percent of a project's total residential density.

GOALS OF THE STUDY

The overarching goal for this study is to identify best practices and recommend actionable changes to the point system while ensuring a balance between the public benefits required, the costs of development, and county policy priorities. Staff has identified the following as key steps needed to achieve this goal. These were presented to the Planning Board in April and have been summarized below:

- Review the performance of the Points System since its inception in 2010.
- Modernize the Points System to address current real estate and building industry practices.
- Align the Points System with updated county priorities, including guidance from:
 - Thrive Montgomery 2050
 - Climate Action Plan
 - County's Racial Equity law
 - Sector Plan Recommendations
- Improve coordination of Points System with existing legislation including:
 - Inclusionary Zoning Law
 - Preservation Programs including Building Lot Termination (BLTs) & Transfer of Development Rights (TDRs)
- Develop clear standards to effectively maximize the positive impact of public benefits.

Table 2: List of Public Benefits in the Incentive Density Implementation Guidelines

| | | | | | |
|--------------------|---------------------------------------------------------------------------------------------|---------------------------|--------------------|--------------------------------------------------------------|---------------------------|
| Category 1: | Major Public Facility | Maximum Points (a) | Category 5: | Quality Building and Site Design | Maximum Points (a) |
| Subcategories: | None. Planning Board approves or denies the choice of public facility included in a project | 70 | Subcategories: | Architectural Elevations | 20 |
| | | | | Exceptional Design | 10 |
| | | | | Historic Resource Protection | 20 |
| Category 2: | Transit Proximity | | | Public Art | 20 |
| Subcategories: | None. Points awarded based on distance and type of transit. | 50 | | Public Open Space | 15 |
| | | | | Structured Parking | 20 |
| | | | | Tower Step-Back | 10 |
| Category 3: | Connectivity and Mobility | | Category 6: | Protection and Enhancement of the Natural Environment | |
| Subcategories: | Advance Dedication | 30 | Subcategories: | Building Lot Terminations | 30 |
| | Minimum Parking | 10 | | Cool Roof | 10 |
| | Neighborhood Services | 15 | | Energy Conservation and Generation | 15 |
| | Public Parking | 25 | | Habitat Preservation and Restoration | 20 |
| | Through-Block Connection | 20 | | Recycling Facility Plan | 10 |
| | Transit Access Improvement | 20 | | Transferable Development Rights | 20 |
| | Streetscape Improvement | 20 | | Tree Canopy | 15 |
| | Trip Mitigation | 20 | | Vegetated Area | 10 |
| | Way Finding | 10 | | Vegetated Roof | 15 |
| | | | | Vegetated Wall | 10 |
| Category 4: | Diversity of Uses | | Category 7: | Retained Buildings | |
| Subcategories: | Adaptive Buildings | 15 | Subcategories: | None | 100 |
| | Care Centers | 20 | | | |
| | Dwelling unit Mix | 10 | | | |
| | Enhanced Accessibility | 20 | | | |
| | Live/Work | 15 | | | |
| | MPDU (b) | n.a. | | | |

Notes:

(a) The maximum number of points for certain categories is different in the [Bethesda Overlay Zone \(BOZ\)](#).

(b) There is no maximum number of points for MPDUs, and projects providing 20 percent MPDUs do not need to provide any other public benefits.

Source: Montgomery Planning, 2023.

KEY TAKEAWAYS

This report summarizes the purpose, methodology and key findings from the various and wide ranging quantitative and qualitative analysis conducted as part of the incentive zoning update study.

The key takeaways below summarize consolidated themes and significant observations from the study overall. Many of these takeaways were reinforced by findings from the various analyses, while some were important findings from a specific analysis.

Uneven development activity across the four incentive zones.

- A majority of the approved optional method projects with public benefits are located in the CR zone. Of the 67 projects approved, 53 have been in the CR zone, 13 in the CRT zone, one in the EOF zone, and no projects in the LSC zone.
- A combination of factors, including limited development activity in some parts of the county, limited zoning capacity in certain zones, and a higher threshold for the standard method of development in the CRT and EOF zones may explain why optional development is concentrating within the CR zone.
- The regional and national peer jurisdiction review also reveals that such programs are typically successful in downtown locations with high zoning capacities and strong market demand for density that can support an exchange of public benefits.
- Given the wide range of market conditions across the county, it is not surprising that a singular program has not been consistently effective in the four incentive zones.

An expansive menu in need of updates.

- Montgomery County has the largest menu of discrete, defined public benefits menu compared to all regional and national jurisdictions reviewed in this study.
- Several public benefits are outdated, like wayfinding, while others have been superseded by newer regulations such as the LATR guidelines and updated building code standards.
- Within such a large menu itself, there is overlap in public benefits in terms of their definitions and policy goals, which can lead to public benefits competing with each other. For example, BLTs and TDRs are both aimed towards farmland preservation, but the purchase of BLTs is mandatory in the CR and LSC zones while TDRs are an optional benefit. As a result, projects have consistently purchased BLTs but not a single project purchased TDRs. The BLT requirement directly explains the lack of TDR purchases.
 - By contrast, peer jurisdictions tend to have one public benefit or mechanism for each policy goal they aim to advance.
- Other jurisdictions with similarly successful programs require regular review and updates. This is difficult to achieve with Montgomery County's point system, which is codified in the zoning ordinance. It is not a simple process to update the requirements, as evidenced by the limited and minimal tweaks to the policy over the past 13 years.

A subset of public benefits is repeatedly delivered in optional method projects.

- Despite the vast menu, optional method projects have delivered a handful of public benefits repeatedly regardless of the underlying zone or market conditions.
- Typically, these public benefits are features inherent to development, such as structured parking, which is necessary in high-density, transit-oriented developments on small lots.
- Otherwise, the frequently received benefits are either de jure requirements like MPDUs, BLTs etc. or de facto requirements, like a cool roof, which is an increasingly standard feature in development because of increasing energy standards and demand for green buildings.
- The point system itself does not have a mechanism to prioritize the delivery of specific benefits.
 - Guidance regarding public benefit priorities was delegated to master plans, although master plans have not consistently influenced the choice of public benefits. More recent masterplans like the Bethesda Downtown Plan have taken a more aggressive approach to ensuring the selected benefits are included within projects, with greater success.

Considerations of cost and feasibility were not a key determinant in the creation of the current system.

- Balancing public benefit costs and financial feasibility of development applications was not quantitatively assessed during the creation of the current menu of public benefits and their corresponding points.
- This is in stark contrast to many national and regional jurisdictions, particularly in Virginia, where development applications are required to submit financial data related to the cost of providing public benefits and the value of incentive density in order to ensure a sense of proportionality.
- Peer jurisdiction also directly tie the amount of incentive density an applicant is seeking to the cost of public benefits, whereas in Montgomery County, public benefits unlock a higher threshold of density, regardless of how much additional density is utilized.
 - With a wide range of site sizes and mapped FARs in the incentive zones, this can lead to inconsistent relative values of public benefits. On sites with low FARs, or a small gap between standard method and optional method FARs, the public benefit costs can lead to infeasibility because the additional density does not justify the additional cost. On sites with high FARs, the cost of public benefits may not scale with the significant amount of value that maximizing FARs can generate.
- High-density development is more complex, expensive, and therefore riskier, than lower density alternatives. Where optional method FAR is not significantly higher than standard method FAR, other incentives like tax waivers, expedited review, and alternative means of compliance that reduce the overall development cost and risk are sometimes necessary to compel applicants to pursue the optional method of development.
- Finally, the cost and feasibility implications of providing public benefits are also influenced by the construction type, lot size and achievable heights, all of which impact the final cost of including a specific benefit within a project.

An indirect mechanism of exchange and negotiation.

- Montgomery County is unique in that negotiations for public benefits take place after the incentive zoning has already been mapped to a parcel through a sector plan’s Sectional Map Amendment or a Local Map Amendment. In most other jurisdictions, this process takes place during an active rezoning application. An ongoing rezoning provides a strong incentive for all parties involved to find consensus and think creatively to achieve common goals. Recent masterplans like the Downtown Bethesda Plan have tried to simulate such conditions by creating a floating overlay zone that holds a portion of the incentive density in a common pool until it is requested to be applied to a specific parcel through a regulatory application.
- The framework of the current point system is a vestige of the LEED-Neighborhood Design (ND) model of certification, which is essentially a scorecard for evaluating the elements included in a given development.
 - As noted, this “scoring approach” is unique to Montgomery County and means applicants often look to the menu after having made critical decisions related to their project and then devise a strategy to reach the points required. However, the intent of the point system was to actively guide the provision of desired public benefits.

A stronger alignment with updated county goals is required.

- Since they were originally based on the LEED ND model, the current public benefit categories do not directly align with current county priorities, including Thrive Montgomery 2050, the Climate Action Plan, Vision Zero, the Racial Equity and Social Justice Act, and others. This makes it difficult to evaluate the efficacy of the point system in moving the needle on specific policy outcomes.
 - Reviewing the performance of the point system is also inhibited by a lack of digital data collection regarding development data and public benefits in optional method applications.
 - Master plans have prioritized specific public benefits but have not always been effective at ensuring their delivery. The Bethesda Downtown Plan is an exception in that it made most public benefits that were prioritized as de jure or de facto requirements and it prohibited certain public benefits that were not meaningful for the context. In doing so, it created a smaller but more predictable version of the menu with most public benefits a requirement rather than a choice.

SUMMARY OF ANALYSIS

Planning staff have undertaken a comprehensive analysis of the incentive zoning policy and point system in Montgomery County. Given its complexity, staff employed a variety of techniques to assess different aspects of the policy. Staff began with reviewing the performance of the policy by analyzing quantitative data on approved optional method development. Staff also studied the theoretical and economic foundations underpinning the policy through a review of the language and rubric in the implementation guidelines and a detailed financial feasibility analysis of optional method

development prototypes. Finally, staff reviewed case studies of successful incentive zoning policies and approaches from around the United States, with a special emphasis on understanding regulatory review processes within the Washington, D.C. region.

The list below summarizes the range of analytical efforts staff have conducted. Each analysis is described and summarized within this report. Detailed memorandums for each analysis and their components are included in as attachments to this staff report.

Summary of Analytical Efforts:

- Review of the performance of the policy since 2010 in terms of total development and public benefits approved under the Optional Method.
- Evaluation of the clarity, quality, and practicality of the implementation guidelines and requirements, as well as the rubric and structure of public benefits menu.
- Assessment of the cost to provide public benefits, with special focus on understanding the cost of providing MPDUs for points.
- Financial feasibility analysis of prototypical standard method and optional method projects to understand the value of incentive density, the ability to support additional costs, and the impacts of including public benefits in a pro forma.
- Study of other successful incentive zoning programs nationwide for benchmarking and identifying best practices to consider as a part of this update.
- Comprehensive review of the regulatory processes in neighboring jurisdictions to review high density development near transit in exchange for public benefits.

REVIEWING THE PERFORMANCE OF THE POINT SYSTEM SINCE 2010

PURPOSE

To gain an objective understanding of the current policy's performance, planning staff collected data about how many and what type of public benefits have been approved. Staff analyzed the data overall and by subset, including but not limited, planning divisions, specific master plan geographies, and equity emphasis areas. Staff also compared the approval of actual public benefits to the ones that were prioritized by master plans and other county programs. This portion of the analysis is primarily concerned with the of public benefits through the optional method projects in the incentive zones since the policy was established in 2010. A more detailed description of the methodology and results of this analysis can be found in Attachment A. Below, staff has summarized the key data points and takeaways.

METHODOLOGY

Planning staff developed a dataset of all optional method development in the incentive zones between September 1st, 2010, and August 17th, 2022, when staff began collecting data. Since Montgomery Planning has only monitored optional method development in the incentive zones for specific sector plans, identifying relevant projects across the county required cross-checking the Intake and Regulatory Coordination (IRC) Division's development application dataset with the in-house GIS dataset that tracks approved development applications. Optional method projects in incentive zones are easy to identify because they must have approved sketch and site plans. The dataset in this analysis was created by identifying all projects in CR/CRT/LSC/EOF zones with approved sketch and site plans (i.e., optional method projects) since January 2010, when the policy was approved. This dataset has undergone several rounds of quality control and staff will continue to monitor and remove any errors.

SUMMARY OF TOTAL DEVELOPMENT

Between September 1st, 2010, and August 17th, 2022, the Planning Board approved 64 sketch plans, associated with 67 approved site plans. There has been 37.6 million square feet of development approved in these 64 sketch plans. Of this, the Planning Board has approved 30.2 million square feet in 67 site plans, and therefore eligible for seeking a building permit.

The 64 projects are associated with 567 total public benefits, meaning development applications include an average of nine public benefits to meet their minimum points requirements.

The 22.2 million square feet of residential development under the optional method in the incentive zones translates to 18,802 units, including 2,936 Moderately Priced Dwelling Units (MPDUs), in line with most master plan requirements and importantly, above the county's minimum requirement of 12.5 percent.

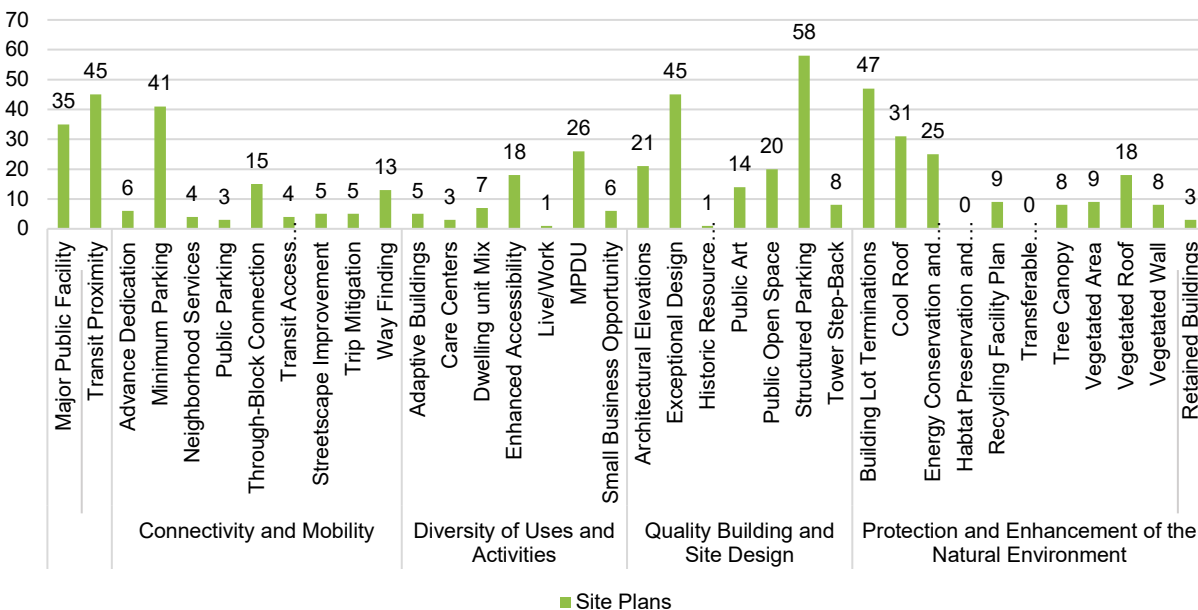
There is 3.9 million square feet of nonresidential development approved in Downcounty site plans, which is 34 percent of total approved development in Downcounty. By contrast, there is 3.5 million square feet of nonresidential development approved in Midcounty site plans, which is just 21.5 percent of total approved development in Midcounty.

KEY TAKEAWAYS

Projects deliver a handful of public benefits repeatedly.

There are 36 unique types of public benefits developers may include to meet their minimum required points for optional method development, across seven categories. However, as shown in Figure 2, the ten most frequent public benefits account for 66 percent of the 567 total public benefits included in approved site plans. The top ten most common public benefits included in approved site plans are: Structured Parking, Building Lot Terminations, Exceptional Design, Transit Proximity, Minimum Parking, Major Public Facility, Cool Roof, MPDU, Energy Conservation and Generation, and Architectural Elevations.

Figure 2: Frequency of Public Benefits in Approved Site Plans, Countywide



Source: Montgomery Planning, 2023

Additionally, the delivery of public benefits is not sensitive to geography, as Downcounty and Midcounty share eight of the top ten public benefits among their site plans. With just three optional method projects in Upcounty, there have not been enough public benefits approved to enable a meaningful comparison.

Out of the 36 public benefits, the top ten public benefits are either features inherent to a development, incentivized through policies other than the point system, or a de facto requirement due to Master Plan recommendations, the building code, energy efficiency standards enforced by other agencies like the Department of Environmental Protection (DEP) and DPS or as outlined in certification systems like LEED.

Table 3: Top Ten Public Benefits

| Inherent to Development | Other Incentive Programs | De Facto Requirement |
|--------------------------------|---------------------------------|----------------------------------------|
| Structured Parking (1) | BLTs (2) | Cool Roof (7) |
| Transit Proximity (4) | Exceptional Design (3) | Energy Conservation and Generation (9) |
| Minimum Parking (5) | Architectural Elevations (10) | |
| Major Public Facility (6)* | MPDUs (8) | |

** In most instances, the major public facility awarded points has been either a bikeshare facility or bicycle parking, or a payment towards parks development.*

Source: Montgomery Planning, 2023.

Some of the most frequent public benefits are inherent to development in the incentive zones.

The incentive zones are intended to be located around transit. Consequently, sites and tracts in these zones are small, meaning a typical project in the dataset could not accommodate minimum parking requirements with surface parking, explaining why all but nine projects in the dataset include structured parking as a public benefit. The high cost of structured parking further incentivizes developers to minimize parking, therefore earning points for Minimum Parking. Indeed, Transit Proximity, Structured Parking, and Minimum Parking are associated with an average of 27, 16, and ten points, respectively, out of 100 points, which is the minimum requirement in the CR zone. Therefore, developers may receive approximately 53, or half, of their minimum required points for features that are inherent to the project based on the site location and zoning. For smaller projects in the CR zones, the minimum required points are 50, in which case these three benefits would earn all the required points.

Other frequent public benefits are required or compelled by policies and standards outside the point system.

Similar to inherent public benefits, there are incentives and requirements governed by other policies that are awarded points under the existing point system. This helps to explain the high frequency of BLTs, Exceptional Design, Architectural Elevations, and MPDUs, for example. All development in CR and LSC (but not CRT and EOF) zones are required to purchase BLTs but are also awarded points for purchasing the required BLTs. With most projects located in CR zones, BLTs are the second most frequent public benefit included in approved site plans after structured parking. For planning staff to adequately review the project, make necessary site plan findings and assure conformance with the applicable sector plan and urban design guidelines, the applicants need to provide detailed architectural elevations which are included in the Certified Site Plan Set that Department of Permitting Services (DPS) uses as an enforcement document. If the applicant agrees to substantially conform to the design, materials, and details as shown on these drawings, the project would likely be eligible for points for Architectural Elevations. Finally, projects in Bethesda and Silver Spring are

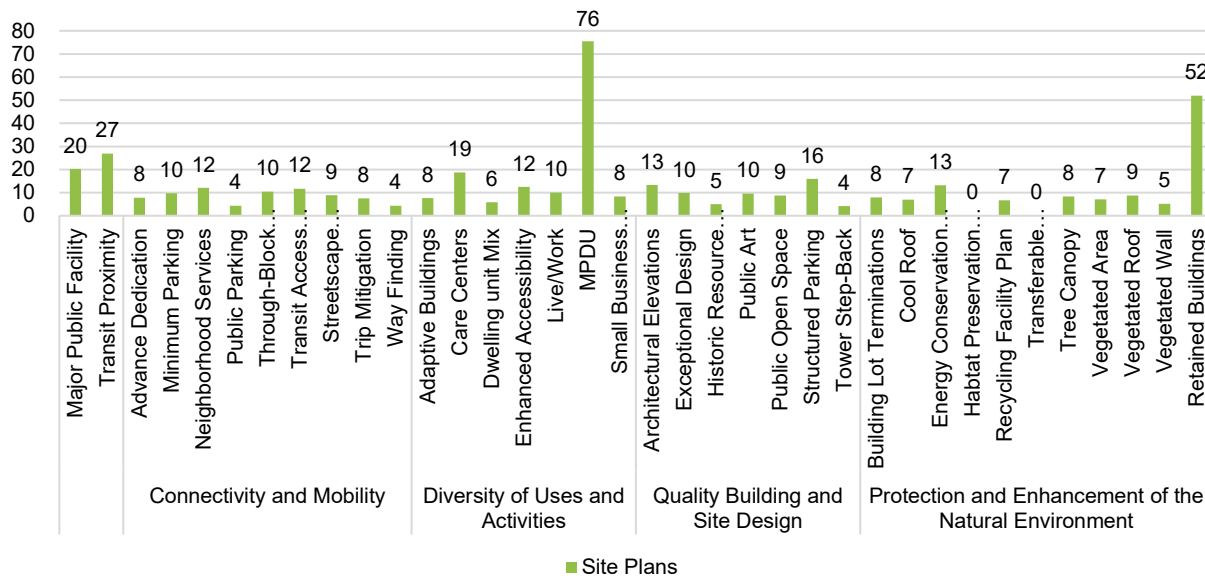
subject to a Design Advisory Panel (DAP) and as a result, must incorporate exceptional design and earn a minimum number of points.

Cool Roofs and Energy Conservation and Generation as public benefits are de facto requirements given the county's current green building code, DEP's energy performance regulations, and market expectations set by certification standards like LEED. These requirements compel developers to choose public benefits like a cool roof, while industry standards like LEED and the corresponding demand to live or work in energy efficient buildings also compels developers to provide similar public benefits regardless of the point system.

Regulatory reviewers seek to award points for developers going above and beyond meeting the minimum regulatory requirements. Nonetheless, the data suggests that even if developers are going above minimum requirements, they still prefer to meet higher standards for the more common public benefits than including the less common or unused public benefits such as schools, adaptive reuse, live/work units, care centers, etc.

Based on the average points awarded per public benefit in the dataset, developers can typically receive more than half their points for providing public benefits that are either features inherent to a development, incentivized through policies other than the point system, or a de facto requirement under the building code or other standards like LEED. For example, the average points awarded for Transit Proximity (27), Structured Parking (16), Minimum Parking (10), Exceptional Design (10), and Architectural Elevations (13), total 76 out of a minimum of 100 points. If a project included all these public benefits and provided 15 percent MPDUs in a Master Plan Area that will award points for any MPDU above 12.5 percent, the project would receive 30 points at minimum bringing the total to 106 points. Such a project would not need to provide any other public benefits. The average points awarded per public benefit is summarized in Figure 3.

Figure 3: Average Points Awarded by Public Benefit (out of 100), Countywide



Note:

(a) There are 67 total site plans in the dataset, countywide.

(b) This figure shows the average award for MPDUs is 76 points. However, this includes outlier projects that provided 20 percent MPDUs, receiving well over 150 points for doing so. Removing these ten projects lowers the average MPDU points awarded to 38, which is in line with the amount of MPDU points a project would earn for providing 15 percent MPDUs while earning points for MPDUs above 12.5 percent.

Source: Montgomery Planning.

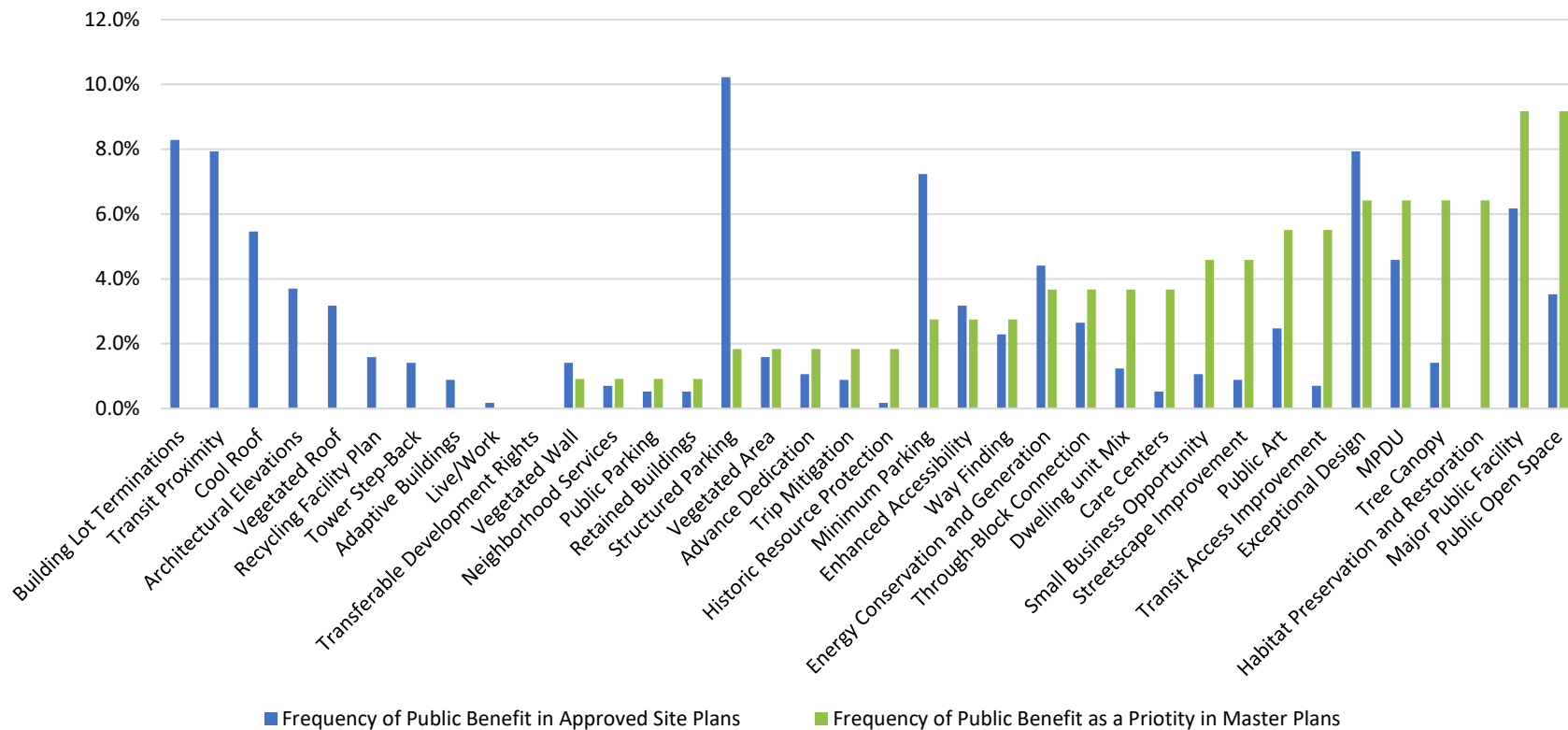
Master Plans have had limited success in guiding the selection of public benefits for optional method projects within their boundaries.

Master Plans are legal documents adopted by the County Council and are intended to guide the choice of which public benefits developers include in their projects. The intent of this feature was to ensure that the community has an opportunity to shape which public benefits are prioritized through the master planning process. The list of Master Plan public benefit priorities is shown in Attachment A.

Despite master plan prioritization, the distribution of the frequency of public benefits in approved site plans suggests master plans have not guided the choice of public benefits as intended. As of 2023, 14 approved master plans have specifically prioritized public benefits for development in the incentive zones. The top ten public benefits mentioned in master plans are: Major Public Facility, Public Open Space, MPDU, Exceptional Design, Habitat Preservation and Restoration, Tree Canopy, Transit Access Improvement, Public Art, and Streetscape Improvement. Of these, only Major Public Facility, MPDU and Exceptional Design are among the top ten public benefits in approved site plans. As noted, MPDUs and Exceptional Design are associated with additional policy guidance and incentives. In fact, there appears to be a mismatch between public benefits prioritized in master plans and public benefits in approved site plans, as indicated in Figure 4. Many of the most common public benefits in

approved site plans are not prioritized in any master plan, including BLTs, Transit Proximity, and Cool Roofs. Structured parking, the most common approved public benefit, is prioritized in just two master plans.

Figure 4: Public benefits in approved site plans compared to public benefit priorities in master plans since 2010



Source: Montgomery Planning.

QUALITATIVE ASSESSMENT OF IMPLEMENTATION GUIDELINES

PURPOSE

The Implementation Guidelines are the primary tool for evaluating the provision of public benefits in exchange for incentive density. This document guides applicants, planning staff, the planning board, and reviewers from other county agencies to ensure that the public benefits provided with an optional method project are commensurate with the size and intensity of a project. The Implementation Guidelines provide a transparent framework for negotiations related to approving the points requested and confirming that the public benefits provided align with the goals and recommendations of the applicable master plans, design guidelines, and relevant countywide regulations. It is therefore critical to understand the quality of instruction in the current document and how it interfaces with other planning documents, the zoning ordinance, and relevant parts of the overall county code. The overarching goal is to ensure that changes proposed to the point system are reflected in an updated version of the Implementation Guidelines in a clear and easy to use manner. Since the policy's inception in 2010, these guidelines have only undergone minor updates.

METHODOLOGY

The project team crowd-sourced insights from planning staff from all Area Divisions, the Countywide Planning and Policy Division, the Research and Strategic Projects Division, as well as the Intake and Regulatory Coordination Division. The project team leveraged their expertise and experience in development review and master planning to a comprehensive review of the current guidelines. Master planners from various geographic areas commented on the usefulness of the document in sector planning efforts when specific public benefits are prioritized, while regulatory planners critiqued the effectiveness of the guidance provided while negotiating for public benefits as a part of development review. Staff from Countywide Planning Division compared the guidance for awarding points to the de jure requirements of policies like the Local Area Transportation Review (LATR) and Moderately Priced Dwelling Units (MPDU) programs, while the Intake Division staff highlighted the pros and cons of monitoring the delivery of specific public benefits in the field as articulated in the Implementation Guidelines.

Planning staff also engaged representatives from Montgomery Parks and county agencies including the Departments of Transportation (MCDOT), Permitting Services (DPS), Environmental Protection (DEP), and Housing and Community Affairs (DHCA) to similarly evaluate the guidelines and share their observations. Additionally, planning staff received input from members of the Technical Working Group representing the development community, a nonprofit research organization, design professionals, engineers, attorneys, and staff from local government. This provided planning staff with a wealth of insights from various perspectives about the efficacy of the current guidelines document.

Each public benefit's intent statements and descriptions from the incentive guidelines was reviewed for clarity, requirements for compliance, and consistency across the implementation guidelines.

The minimum requirements and definitions were evaluated for sufficiency in today's regulatory context and compared to contemporary standards for overlapping requirements outlined in other portions of the county code. Staff also convened in-depth discussions about the quality of public benefits that were approved, whether the guidance was still relevant, and whether staff actively referenced the implementation guidelines during master planning and development review. Finally, staff critically evaluated the minimum submittal requirements and enforcement of public benefits as stipulated in the guidelines for each public benefit.

KEY TAKEAWAYS

Below are key takeaways distilled by planning staff from the various comments and observations shared by internal and external experts.

The current categories of public benefits do not directly align with the county's policy priorities.

As previously mentioned, the existing menu of public benefits is loosely based on categories derived from the LEED for Neighborhood Development (ND) model. In 2010, LEED ND presented a sensible template for creating a menu of public benefits particularly for the *2010 White Flint Sector Plan*, for which the menu was exclusively designed. The central goal of the plan was to retrofit a suburban, auto-oriented community into a transit-oriented mixed-use neighborhood. These goals aligned well with the objectives of LEED ND. However, over time, the Point System was expanded to apply to other planning areas and eventually became a tool that can be applied anywhere in the county through the four incentive zones.

This expansion of the point system and lack of regular updates to it has meant that the existing seven categories of public benefits do not directly with the County's policy priorities. Since the point system is established in the zoning ordinance, it is not simple to regularly update it, and indeed the point system has not kept up with evolving policy priorities and trends in development. This disconnect makes it difficult to gauge progress towards achieving specific policy goals, such as the production of more affordable and attainable housing, or mitigating the negative effects of climate change, to name a few.

For example, the policy still incentivizes the provision of live-work units, which was intended to support fine-grained, mixed-use development. Given the ongoing challenges of operating brick and mortar commercial operations and the mass adoption of teleworking, live work units as a public benefit have limited utility in achieving current policy goals such as regional economic competitiveness and housing affordability. Live-work units are not demonstrably cheaper to own or rent and there are a limited number of small businesses that can meaningfully benefit from this type of a unit. Further, teleworking makes the need for this special type of commercial unit obsolete for many professions.

Similarly, the point system includes specific design elements like a Tower Step-Back that have been superseded by a greater emphasis on overall Design Excellence for development projects. The image below shows a side-by-side comparison of the existing benefit categories and what planning staff considers the county's current policy priorities.

Table 4: Existing Public Benefit Categories vs. Overall County Policy Priorities

Existing Benefit Categories:

- Major Public Facilities
- Transit Proximity
- Connectivity & Mobility
- Diversity of Uses and Activities
- Quality Building & Site Design
- Protection and Enhancement of Natural Environment
- Retained Buildings

Current County Policy Priorities:

- Affordable & Attainable Housing
- Mitigating Effects of Climate Change
- Regional Economic Competitiveness
- Racial Equity & Social Justice
- Corridor Focused Growth
- Complete Communities
- Design Excellence
- Vision Zero

Source: Montgomery Planning, 2023.

Some benefits have universal applicability while others are more suited to specific locations and/or project types.

Some of the public benefits can be included in any project, whether it is an urban infill building, a mixed-use campus, or a nonresidential project. For example, Minimum Parking is universally applicable because all projects will include some parking, and so every project has an opportunity to reduce its parking program for points. Similarly, every building can have a Cool Roof. Some applicants may eschew a Cool Roof for rooftop amenities or other facilities and features, but like minimum parking, the opportunity to earn points from Cool Roofs is universally applicable. Conversely, transit proximity is not universally applicable because a site is either up to one mile from transit, or not.

Other public benefits are more widely applicable because of policy requirements. BLTs, for example, are required in the CR and LSC zones. Similarly, residential projects within High Income Areas are required to provide a minimum of 15% percent MPDUs and receive points for going beyond the base 12.5% percent.

The option for alternative means of compliance can also render a public benefit universal, although not all public benefits currently offer alternative means of compliance. The most common form is a

fee in-lieu, which is an option for applicants seeking points for public benefits including Public Open Space, Historic Resource Protection, and Streetscape Improvements.

On the other hand, geographic and market considerations limit or favor certain benefits over others, making them more “contextual”. For example, Habitat Preservation and Restoration requires a habitat on-site to preserve or restore. Similarly, while most sites necessitate structured parking, on larger sites, there is enough land for surface parking and the market may not support structured parking, which is generally more expensive.

The current criteria create overlap, conflicts, and direct competition between public benefits.

The provision of certain features can satisfy additional requirements and potentially be awarded points for multiple public benefits. As projects undergo review from a Design Advisory Panel (DAP) for Exceptional Design, a requirement under more recent masterplans, they are also expected to include features like a tower step back that makes the project eligible for an additional public benefit. With an emphasis on quality of materials, these projects often carry conditions of approval to ensure that the materials approved by the DAP are incorporated into the building, making them further eligible for points for Architectural Elevations. This ability to satisfy multiple criteria using the same features has a cost implication and can influence the choice of such benefits over more singular elements listed on the menu.

Additionally, certain benefits directly “compete” with each other, meaning the provision of one may disincentivize the inclusion of another. For example, BLTs and TDRs are both geared towards environmental preservation. However, the purchase of BLTs is a requirement within the CR and LSC Zones, but TDRs are an optional benefit. The density incentives for BLTs are also better aligned with building types typically associated with transit-oriented development since the density is awarded on a per square foot basis versus a TDR, which awards only one dwelling unit per TDR purchased. Applicants therefore provide BLTs with optional method projects, but no project has purchased a TDR for public benefit points since the policy’s inception in 2010.

Certain benefits and criteria are outdated.

Certain benefits are no longer effective due to changes in technology, market conditions, and lifestyle preferences. For example, the Wayfinding public benefit was more useful when physical signs were the primary way motorists and pedestrians navigated their way to a destination. The need for such elements has been made redundant since most people now use smartphones and digital navigation tools to get from place to place.

In some instances, certain evaluating criteria for benefits have been superseded by newer regulatory tools, and updates in standards related to buildings, construction, and energy have leapfrogged other public benefit requirements. For example, the LATR guidelines largely dictate what type of pedestrian and bicycle mobility improvements a project must deliver, making the use of a public benefit such as Trip Mitigation less impactful. Similarly, upgrades to the county’s public recycling and composting

infrastructure have leapfrogged what would be required to earn points under the Recycling Facility Plan public benefit.

Multi-agency review and approvals for specific benefits can add time and process and deter the provision of specific public benefits.

Certain public benefits require parallel review and final approval from agencies other than the planning department. For example, an applicant requesting points for Public Art must undergo a review by the Art Review Panel, in conjunction with the ongoing regulatory review. In some instances, this coordination can add time to the overall approval of the project and deter applicants from seeking points for providing such public benefits.

In other cases, public benefits as defined in the implementation guidelines are not based on standards for those facilities as enforced by other agencies. For example, the provision of public parking requires the applicant to design and build those parking spaces to MCDOT's standards for public parking which are typically higher than parking spaces for private use. The approval of this benefit for points therefore requires additional coordination and sign-off from MCDOT staff.

Certain benefits are hard to enforce and monitor after they are delivered.

Many public benefits do not require ongoing maintenance and serve as perpetual features of a project or building. However, the current menu of public benefits is extensive and spans elements that are off-site improvements located within public rights-of-ways and properties, on-site amenities that are placed outdoors and readily accessible from adjoining streets, as well as features that are typically located inside buildings. While each public benefit identifies a procedure for enforcement, typically through DPS, ongoing monitoring and enforcement for certain public benefits is challenging. Public benefits such as Vegetated Roofs, Enhanced Accessibility Units, and Energy Conservation and Generation are typically located within or on top of buildings, away from public view. In many cases, Planning and DPS staff only monitor the implementation of public benefits if someone files a complaint.

On the contrary, public benefits like Neighborhood Services, Care Centers, and Public Art require the applicants to enter complex covenants and long-term commitments for enforcement that may deter their inclusion within optional method projects.

There is a range in the quality and type of guidance included for achieving points.

Given the variety of elements that are included within the menu, the quality of guidance for reviewing each benefit and allotting points for its provision varies. The scoring criteria for a given public benefit can be discretionary, where staff decide the points based on the criteria, or determined through a formula. For many of the formula-based public benefits, the formula is generally based on the ratio of the size of the public benefit compared to the site size, and not necessarily reflecting the cost or

complexity of including the public benefit or recognizing the substantive differences between public benefits in the menu.

Minimum point requirements also change by zone, which leads to inconsistent weights of public benefits based on zone. For example, the maximum points for advanced dedication in a CR zone is 30, which is 30 percent of the minimum required 100 points. However, Advanced Dedication in a CRT zone is also worth 30 points, but the minimum requirement is 50 points, meaning the public benefit is worth up to 60 percent of the points requirement. The points formula for BLTs also demonstrate this issue. In the CR zone, an applicant must purchase BLT easements, or make payments to the ALPF, in an amount equal to 7.5 percent of the incentive density floor area while in the LSC zone, that requirement equals 50 percent of the incentive density floor area. The implementation guidelines do not suggest a reason for such discrepancies.

Further, certain intent statements do not clearly align with what is required as the actual public benefit or directly correspond with the suggested methodology for calculating the points that can be approved. The intent statement for Neighborhood Services promotes walkability in denser development, but the methodology for awarding points counts neighborhood services within a radius as the crow flies, not actual walking time which can be drastically different, depending on the quality of the pedestrian infrastructure in place.

Lastly, the formulas for certain public benefits are confusing and do not align with the intent statement. Points awarded for providing a cool roof are reduced for larger sites, but the intent statement or the formula is not clear as to why a larger building with a cool roof might be worth fewer points.

There is inconsistency in awarding points for benefits that are inherent features or de-facto requirements.

Some public benefits are required by law but still awarded points under certain conditions. Within high income areas, the minimum percentage of MPDU's required equals 15 percent but applicants are still awarded points for going beyond the countywide minimum requirement of 12.5 percent. However, in Bethesda, this is not the case and projects must go beyond the 15 percent threshold to earn points.

Similarly, recent master plans like Silver Spring and Bethesda have discouraged the approval of points for Transit Proximity even though this benefit still exists on the countywide menu.

A subset of public benefits like structured parking are inherent to creating developable projects for development near transit. Certain regulatory teams award points for such benefits while others refrain. The inherent or de facto public benefits will likely generate these discrepancies unless addressed comprehensively as part of this update.

FINANCIAL FEASIBILITY IMPACTS OF PUBLIC BENEFITS

PURPOSE

Understanding the cost of each public benefit is critical for reviewing the performance of the point system and ensuring the update balances public benefit requirements, development costs, and achieving planning goals. While the original authors of the incentive zoning policy attempted to balance cost impacts and number of points for providing public benefits, the policy was not designed with this specific goal in mind. Additionally, the policy has evolved to apply countywide, where different market conditions can mean public benefits have varying cost impacts by location. This analysis provides a comprehensive understanding of the cost impacts and considerations for each of the 36 public benefits in the menu. While applicants do not choose to provide public benefits based on cost alone, it is an important factor in their decision and helps explain the frequency of each public benefit in optional method projects since 2010.

This rigorous analysis of these costs, with the benefit of looking back on 13 years of optional method projects, sheds light on how to maintain and improve the balance of public benefit requirements, development costs, and achieving planning goals.

The goals of the feasibility analysis are to:

1. Establish a baseline understanding of financial and practical implications of including each of the 36 public benefits in optional method development.
2. Estimate the value of incentive density by determining the difference in feasibility impacts of different standard method and optional method prototypes under a range of market conditions.
3. Determine the cost of providing public benefits for the optional method prototypes under different conditions.

METHODOLOGY

Analyzing costs alone is not sufficient for comparing public benefits to each other or to the value of the incentive density. Some public benefits have discrete, lump-sum costs that are the same regardless of project size or location. Other public benefits have varying costs because they are measured and scored as a percentage of the project's site or building size, meaning the costs scale. Some public benefits have operating costs in addition to the cost of constructing or providing the public benefit, and some even generate revenue. Therefore, it is not enough to compare public benefits by cost. Rather, public benefits must be compared in terms of feasibility impact – how does each public benefit change the cost and revenue equation of a project?

This study assesses feasibility impacts using a three-step approach. First, the consultant for this study, Hayat Brown, estimated the costs and considerations for each public benefit individually. Hayat Brown used proprietary internal databases, construction cost databases Marshall & Swift and

RS Means and a review of developer pro formas, validated through discussions with members of the development community including applicants and general contractors active in Montgomery County.

Next, Hayat Brown developed pro forma models for five unique development scenarios. In each scenario, planning staff created detailed models of a standard method development and an optional method development without minimum required public benefits. A summary of these development prototypes is available in Attachment D. The difference in overall project feasibility between the standard method and optional method prototypes is equal to the ‘value of incentive density’. While the point system does not exist to capture this value entirely, there must be some balance between the cost of public benefits and the value of the incentive density.

In the third and final step, Hayat Brown tested pro forma models for the same development scenarios but in this step, included the cost of providing minimum required public benefits. This step helped determine how balanced are the cost of providing public benefits as compared to the value of incentive density. This step also allowed for a comparison of the feasibility impacts of each public benefit and relative point values (i.e., the cost per point by public benefit) in the five scenarios. In this staff report, we summarize findings from all three steps of the feasibility analysis.

PUBLIC BENEFIT COST ANALYSIS

The goals of the cost analysis are to:

1. Gain a current understanding of the costs, in 2023 dollars, associated with providing each public benefit identified in the Implementation Guidelines.
2. Assist with understanding the overall magnitude of the costs that applicants incur when providing various combinations of public benefits to receive incentive density under the optional method of development.
3. Create a baseline understanding of costs for providing public benefits so that cost can be compared with the value generated by incentive density.
4. Generate a defensible set of costing assumptions to inform financial analysis focused on understanding how public benefits impact project feasibility.

Key Takeaways

From this cost analysis alone, there are several important takeaways to consider for the Point System update. These findings are consistent with findings from the other analyses this study has undertaken, including the frequency of public benefits and the qualitative assessment of the implementation guidelines.

First, most public benefit cost estimates are ranges, and some of those ranges are the same for different public benefits. The implementation guidelines create thresholds of points for each public benefit, meaning more complex or higher-quality versions of the public benefits can achieve more points. Therefore, it is understandable that given project considerations for points specifically,

different applicants may face different costs for the same public benefits. Moreover, some of the cost and range estimates are the same for different public benefits. As identified in the qualitative assessment of the implementation guidelines, there are overlapping definitions and criteria among the public benefits, meaning the approach for pricing them is the same and leads to the same costs. For example, from a price perspective, the cost to build a Through-Block Connection or a pedestrian connection that qualifies for a Transit Access Improvement can be quite similar, even if they function differently within a project.

Second, although the cost analysis does not enable a direct comparison of public benefits, it reveals which ones are likely to be more expensive as a part of a development costs. The more expensive cost estimates are for Adaptive Buildings, Affordable Housing, Structured Parking, Public Parking, Care Centers, and Building Lot Terminations (BLTs). However, of these only Adaptive Buildings and Care Centers are truly additive to a development program.

While expensive, applicants include MPDUs and parking spaces not for points but as requirements or inherent features of development. It is unlikely that an applicant would build a structured garage over a surface lot just for points, for example, particularly when a surface space costs less than \$3,000 per space compared to between \$35,000 and \$55,000 per structured parking space. If a structured garage is necessary, the development will include it. On the other hand, most projects do not include care centers and the cost to build one reflects their strict design and safety requirements. The high cost of Adaptive Buildings and Care Centers explains their low frequency as public benefits.

Third, some benefits do not have upfront costs. These include Recycling Facility Plan, Trip Mitigation, Transit Proximity, Dwelling Unit Mix, Small Business Opportunity, and Neighborhood Services. Recycling Facility Plan, Trip Mitigation and Dwelling Unit Mix do not require the construction of an additional feature or facility, and do not generate any significant maintenance costs. They are also outdated.

Fourth, it is difficult to estimate the cost of some public benefits, but these challenges are related to other issues within the public benefit as identified in other sections of this study. Major Public Facility is an open-ended public benefit and points have been awarded for a wide range of facilities that have drastically different costs. A developed park is significantly more expensive than one bikeshare station, so the range would be too large to be meaningful. As noted throughout this analysis, it is unlikely an applicant would provide a large expensive facility for points alone, meaning the point system is not enough of an incentive.

Public Art, Habitat Preservation and Restoration, and Historic Resource Protection can also accommodate a wide range of features or facilities, and there are relatively few examples of these public benefits in optional method development applications because the opportunity to provide them is limited or because of the time it would take to meet the requirements. While the costs may not be an obstacle for applicants seeking to utilize these public benefits, the costs are nonetheless difficult to define.

The full, detailed cost analysis prepared by Hayat Brown is available as Attachment B. For each public benefit, Hayat Brown provides a description, a summary of the costing methodology including the source for the cost, the range of estimates, and a summary of any additional considerations, such as operating expenses and nuances highlighted in the implementation guidelines that can affect the cost. A summary of public benefit costs is provided in Table 5.

Table 5: Summary of Public Benefit Cost Estimates

| Public Benefit | Public Benefits | Unit | Cost Estimate | | |
|-------------------------------------------------------|----------------------------------------------------|---------------------------------------|---------------|-----------|--|
| | | | Min. | Max. | |
| Major Public Facilities | Developed Park | per square foot | \$25 | \$200 | |
| | Bike Share | mid-size station | \$55,000 | \$55,000 | |
| Connectivity and Mobility | Advance Dedication | n.a. | n.a. | n.a. | |
| | Minimum Parking | per space | \$2,800 | \$55,000 | |
| | Neighborhood Services | n.a. | n.a. | n.a. | |
| | Public parking | per space | \$2,800 | \$70,000 | |
| | Through-Block Connections | per square foot | \$40 | \$85 | |
| | Transit Access Improvements | per square foot | \$40 | \$85 | |
| | Streetscape Improvements | | | | |
| | Streetscape | per square foot | \$60 | \$85 | |
| | Underground Utilities | per linear foot | \$1,200 | \$1,800 | |
| | Trip Mitigation | n.a. | n.a. | n.a. | |
| | Way Finding | Total | \$10,000 | \$40,000 | |
| Diversity of Uses and Activities | Adaptive Buildings | % increase in hard construction costs | 2% | 5% | |
| | Care Centers | per square foot | \$141 | \$158 | |
| | Dwelling Unit Mix | n.a. | n.a. | n.a. | |
| | Enhanced Accessibility for Seniors or the Disabled | n.a. | n.a. | n.a. | |
| | Live/Work | n.a. | n.a. | n.a. | |
| | Moderately Priced Dwelling Units | n.a. | n.a. | n.a. | |
| | Small Business Opportunities | n.a. | n.a. | n.a. | |
| Quality Building and Site Design | Architectural Elevations | per square foot | \$20 | \$73 | |
| | Exceptional Design | per square foot | \$20 | \$73 | |
| | Historic Resource Protection | n.a. | n.a. | n.a. | |
| | Public Open Space | per square foot | \$25 | \$200 | |
| | Public Art | n.a. | n.a. | n.a. | |
| | Structured Parking | per space | \$35,000 | \$55,000 | |
| | Tower Step-Back | per square foot | \$20 | \$73 | |
| Protection and Enhancement of the Natural Environment | Building Lot Termination (BLT) | per BLT | \$250,000 | \$250,000 | |
| | Cool Roof | per square foot | \$5 | \$10 | |
| | Energy Conservation and Generation | | | | |
| | Energy Conservation | % increase in hard construction costs | 2% | 10% | |
| | Energy Generation | per watt | \$3.50 | \$5.25 | |
| | Habitat Preservation and Restoration | n.a. | n.a. | n.a. | |
| | Recycling Facility Plan | n.a. | n.a. | n.a. | |
| | Transferable Development Right (TDR) | per TDR | \$20,000 | \$20,000 | |
| | Tree Canopy | per tree | \$800 | \$800 | |
| | Vegetated Area | per square foot | \$10 | \$20 | |
| | Vegetated Roof | per square foot | \$35 | \$45 | |
| | Vegetated Wall | per square foot | \$80 | \$150 | |

Note:

Public benefit costs listed as “n.a.” denote benefits with no upfront costs, benefits whose costs were impractical to define, or benefits that were never provided. MPDUs were costed separately.

Source: Hayat Brown, 2023; Montgomery Planning, 2023.

MPDU Cost Analysis

MPDUs are one of most important public benefits from a policy priority perspective and one of the most common public benefits included for points in optional method projects. Whether in the incentive zones or not, MPDUs can receive outsized attention within development review, both in negotiations and as a matter of policy. Stakeholders in the development community and public agencies supporting this study have also indicated that MPDUs are perceived to be one of, if not the most, expensive public benefits in the menu. Given their significance and some complexities in isolating their cost impact, this analysis utilizes a comprehensive approach to understand the full scope of cost, and revenue implications of including MPDUs in optional method projects for points.

MPDUs require a specialized approach for estimating their costs and feasibility impacts because pro formas do not typically distinguish between market rate units and MPDUs when evaluating construction costs and revenues. One of the reasons to use a specialized approach is MPDUs generate revenue through rent. Typically, MPDU rents in new construction range are affordable to households earning between 60 and 70 percent of the Area Median Income (AMI). Therefore, this analysis identifies the feasibility impacts of MPDUs as opposed to the cost alone, because the true ‘cost’ must account for revenues as well.

Another reason MPDUs require a specialized approach is to account for the range of feasibility impacts across building types. High-rise concrete buildings have different costs than mid-rise apartment buildings constructed primarily with wood, and both have different costs compared to townhomes and single-family detached units, which are generally larger than apartments.

Finally, there are incentives outside of the point system for developers to provide additional MPDUs above the minimum required 12.5 percent of total dwelling units. These incentives include height and density bonuses, an impact fee reduction/waiver, and a Payment In Lieu of Taxes (PILOT) policy for development on WMATA-owned property. For projects within the incentive zones, providing 20 percent MPDUs or more eliminates the requirement to provide any other public benefits. These incentives all affect the underlying economics of a project, and therefore change the feasibility impacts of MPDUs. This study navigates these nuances with a rigorous and comprehensive approach to pro forma modeling, comparing costs and revenue of projects with different levels of MPDUs across building types.

This analysis is part of the incentive zoning update and specifically, the public benefit cost exercise as part of evaluating the feasibility impacts of providing public benefits. This analysis focuses on the incremental cost of providing MPDUs for points in the incentive zones. For example, if the minimum required number of MPDUs is 20 and the project provides 25 MPDUs, only five of the 25 MPDUs would be worth points, and the cumulative feasibility impacts of those five units would be the cost of the public benefit. Furthermore, this analysis does not test the feasibility of providing single-family detached MPDUs as this is not a form of development that occurs in the incentive zones.

This analysis does not estimate the effects of the minimum MPDU requirement on housing production in the County. Nonetheless, it is important to note that this analysis does not question the merits of the MPDU program. Montgomery County has one of the oldest and most significant inclusionary zoning policies in the country. Minimum MPDU requirements and incentives for additional MPDUs exist not only to generate a supply of affordable housing but also to create mixed-income communities.

Methodology

This analysis utilizes static pro forma models to answer the question: “How do additional MPDUs and applicable incentives change the feasibility of the same project with the minimum required MPDUs and no incentives?”. The models test three unique building prototypes with 12.5 percent MPDUs, 15 percent MPDUs, and 25 percent MPDUs¹. The analysis isolates the total development costs and market value for the MPDUs. The difference in costs and revenues for the MPDUs, which leads to either a feasibility surplus or gap, is the feasibility impact per MPDU. In each model with MPDUs worth points, this impact per unit is multiplied by the number of MPDUs worth points to obtain a cumulative impact of the public benefit.

There are models for three prototypical developments:

- Concrete high-rise on an urban 0.75-acre site
- Five-story wood building over a concrete podium (“Five-Over-One”) on a suburban 3.0-acre site
- Townhomes on a suburban 25-acre site

The dimensions of each prototype are based on real-world example of optional method projects in Montgomery County. The variation in building types also reflects variations in market conditions and land values, so assumptions regarding rents, sale prices, and site acquisition costs differ in each prototype. Each prototype is modified to account for density or height bonuses, as applicable, for including more MPDUs. This means the prototypes with 15 and 25 percent MPDUs are generally either larger and/or taller than the prototypes with 12.5 MPDUs.

This analysis utilizes static pro forma models, where feasibility is calculated by subtracting total development costs from the market value of the project. In rental products, the market value (or capitalized market value) of the project is determined by dividing the net operating income by a conservative cap rate of five percent. In the for-sale products, the market value is the cumulative sales revenue of the project minus marketing costs.

¹ Models do not test MPDU thresholds higher than 25 percent because there are no additional incentives for providing more than 25 percent MPDUs. However, providing more than 25 percent MPDU may make a project eligible for outside funding. This is not tested.

This analysis uses static pro forma models in place of traditional cash flow models. To be conservative, for each prototype, the model with 12.5 percent MPDUs is designed to be *marginally feasible*, meaning the development costs are outweighed by the project’s value, but the gap between the two is slightly below what developers and lenders are generally comfortable with. Cash flow models require more detailed project assumptions, but since the analysis assumes marginal feasibility, the additional assumptions and variables in cash flow models that do not exist in simple static pro formas would have to be tweaked to ensure marginal feasibility. Static pro formas also allow for a direct comparison of a project’s value to the cost of providing MPDUs in cumulative, overall terms.

A project would be feasible if the yield-on-cost (YOC) is 1.2 percentage points above the cap rate. With a cap rate of five percent, a feasible project would generate a YOC of 6.2 percent. A marginally feasible project would have a YOC between 5.75 percent and 6 percent. These yields are what developers and lenders may consider enough to proceed with a project, but the project would be risky. A YOC above 6.2 percent would move forward.

MPDU Cost Analysis Key Takeaways

MPDUs generate a feasibility gap ranging from \$10,000 to \$151,000, depending on the building type and material.

In each of the three prototypes, MPDUs generate a feasibility gap on a per door basis. This means for each MPDU, the market value they generate based on their income-restricted rents or sale prices is less than the cost to construct the units. Since each MPDU generates a feasibility gap, the cumulative effect of MPDUs worth points also generates a feasibility gap, implying MPDUs reduce project feasibility. As shown in Table 6, the feasibility gap per MPDU ranges from \$10,000 in the wood-built mid-rise model, to \$151,000 in the townhomes model. In total, the feasibility gap ranges from \$220,000 to \$10.6 million. Importantly, the townhome prototype generates the largest feasibility gap for two reasons: the units are larger than the multifamily prototypes, and the pricing structure for for-sale MPDUs generates less market value than rental MPDUs. This is discussed further below.

Table 6: Summary of MPDU Feasibility Impacts

| Building Prototype | MPDU Impact on Feasibility Surplus/(Gap) | | | |
|-----------------------|------------------------------------------|---------------|-------------|----------------|
| | 15% MPDUs | | 25% MPDUs | |
| | per MPDU | Total | per MPDU | Total |
| High Rise | n.a. | n.a. | (\$90,000) | (\$3,968,000) |
| Mid Rise | (\$11,000) | (\$220,000) | (\$10,000) | (\$690,000) |
| Townhomes | (\$150,000) | (\$1,950,000) | (\$151,000) | (\$10,570,000) |

Source: Montgomery Planning, 2023.

Zoning and Site Size Affect the Feasibility of Providing Additional MPDUs for Points.

While building material is the most significant factor affecting the MPDU feasibility impacts, zoning,

site size, and the tenure of the MPDU (rental or owner unit) can all change the feasibility impact within a building type. Zoning and site size drastically affect the applicability of height and density bonuses for providing additional MPDUs. When projects cannot take advantage of these bonuses, the additional MPDUs are not offset by an increase in market-rate units, meaning each additional MPDU will worsen the financial feasibility of the overall project. In these instances, a project is unlikely to provide more MPDUs just for points, as other public benefits may be able to generate a similar number of points with a smaller cost or feasibility impact. For example, a single mid-rise building is unlikely to exceed 400 units. If the underlying zoning (i.e., maximum FAR and height) on the site allows for a 400-unit mid-rise building, the density bonus is nullified. By comparison, if the zoning was lower and allows for a building that is big enough for 350-units, the building could provide more MPDUs and obtain bonus density such that the building could accommodate 400 units.

By testing a range of construction types on a range of sites, we found three general scenarios explain the relationship between MPDUs and the height and density bonuses:

1. A project receives a height bonus to accommodate the additional MPDUs only.
2. A project receives a density bonus that allows it to build both more MPDUs and Market Rate units.
3. A project cannot increase its building program through a height or density because it is limited by material type or site size, meaning each additional MPDU comes at the expense of a market rate unit.

In general, the height and density bonuses do not significantly improve feasibility but do offset negative feasibility impacts where they can be applied. Improving feasibility with additional MPDUs would require a project taking advantage of the density bonus associated with each additional MPDU and receiving an impact fee reduction/waiver.

Inconsistent pricing standards for for-sale and rental MPDUs undermine feasibility of larger, for-sale MPDUs.

The tenure of MPDUs also significantly changes the feasibility of MPDUs within a building type because pricing standards are different for for-sale and rental units. Whereas rental units must charge a rent that is effectively equal to 25 percent of gross monthly income for households earning 60 or 70 percent of Area Median Income (AMI), ownership MPDUs are based on the cost to construct the unit. This policy makes rental units significantly more valuable for developers as the rent is not tied to size of the underlying unit. All one-bedroom units, for example, must charge a rent affordable to households earning 60 or 70 percent of AMI whether the unit is 700 square feet or 950 square feet. This means that in certain projects, the rent per square foot for MPDUs can even exceed the market-rate rents per square foot, although market-rate units are generally larger than MPDUs.

While MPDU rents are based on the ability to pay, MPDU sale prices are not. Chapter 25A stipulates lump-sum values associates with different unit types (single family detached, duplex, etc.) that the developer must charge. For example, a developers can sell a four-plex townhome MPDU for up to

\$140,000. Developers can charge more if the units include an additional bathroom above the minimum required for MPDUS, but those additional costs are also stipulated in Chapter 25A as lump-sum values based on the additions.

The Department of Housing and Community Affairs (DHCA) publishes MPDU sale prices. The most recent average sale price for MPDU townhomes was approximately \$250,000. Using standard homeownership cost assumptions and the current Montgomery County property tax rate, for-sale MPDUS would be affordable to households earning between 50 and 60 percent of AMI. This is lower than the AMI requirement for rentals. Townhomes in this analysis generate a feasibility gap of \$149,000 per door using these pricing standards. Applying a sale price affordable to 60 to 70 percent of AMI would reduce the feasibility gap to \$42,000, which is smaller than the feasibility gap generated by MPDUs in an urban high rise.

FINANCIAL FEASIBILITY ANALYSIS

The goals of the feasibility analysis are:

1. Estimate the value of incentive density as determined by calculating the difference between standard method and optional method development under a range of planning and market contexts.
2. Establish the portion of the value of incentive density that can support public benefit costs.
3. Compare the estimated costs of public benefits to this 'leftover feasibility surplus' that can support public benefit costs.

Methodology

The feasibility analysis was developed to estimate the value of incentive density and its relationship to the cost of providing public benefits. Planning staff prepared five detailed development scenarios, with each scenario including one standard method development prototype and at least one optional method prototype. The analysis spans an urban scenario, suburban scenario, exurban scenario, a life sciences scenario, and one mixed-use transit-oriented development (TOD) scenario.

Each scenario assumes the same site, where the standard method prototype is single-story retail development, or townhomes in the case of the exurban scenario. The optional method prototypes test mixed-use development ranging from high rises in the urban scenario, a mid-rise multifamily building in the suburban scenario, a large residential development with a mix of building types in the exurban scenarios, and mixed-use development and an employment component in the life sciences and TOD scenarios. The prototypes tested in each scenario, and assumptions about each scenario, are summarized in Table 7. A detailed description of each prototype, including images of the models and a summary of all assumptions can be found in Attachment D.

Table 7: Summary of Development Scenarios and Prototypes

| | Urban | Suburban | Exurban | Life Science | TOD |
|-------------------------------------------------|---------------------------|---------------------|---------------------------|------------------------------------|--------------------------------|
| Assumptions | | | | | |
| Site Size | 0.75 acres | 3 acres | 25 acres | 20 acres | 25 acres |
| Location/Market | Downtown Bethesda | North Bethesda | Great Seneca Area | Great Seneca Area | North Bethesda |
| Zoning | CR8.0 C4.0 R8.0 H200 | CR3.0 C1.5 R3.0 H90 | CRT1.25 C0.5 R1.25 H60 | LSC1.25 H100 | CR3.5 C2.5 R3.0 H150 |
| Prototypes | | | | | |
| Standard Method | Retail Pad | Strip Retail | Towns/2-Over-2s | Life Science Office/Lab | Shopping Center |
| Square Feet | 15,400 | 51,000 | 832,800 | 430,000 | 320,700 |
| Optional Method | 11-Story High Rise | 5-Over-1 | Towns/2-Over-2s/MF | Life Science/Housing/Retail | Mixed Use |
| Square Feet | 205,700 | 348,100 | 1,366,500 | 1,079,400 | 3,740,900 |
| Alternative Optional Method Prototypes 1 | 17-Story High Rise | | | | Mixed-Use (Less Office) |
| Square Feet | 321,500 | | | | 3,065,500 |
| Alternative Optional Method Prototypes 2 | | | | | Towns/2-Over-2s |
| Square Feet | | | | | 832,800 |

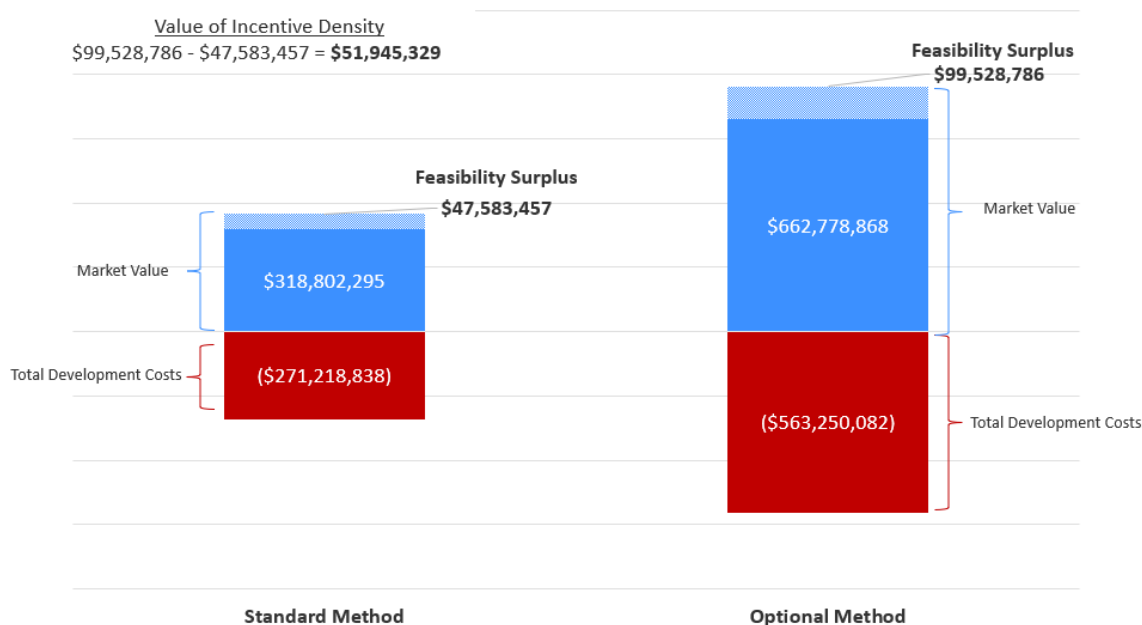
Note:

A detailed description of each scenario and prototype can be found in Attachment D.

Source: Montgomery Planning, 2023.

The difference between the feasibility surplus or gap² of standard method prototypes and the larger optional method prototypes serves as the estimate for the value of incentive density. Notably, there is no target value that would incentivize the choice of an optional method project over a standard method project. This analysis does establish a sense of scale for the value of the incentive density. Figure 5 demonstrates the concept of feasibility surplus for the standard method and optional method prototypes in the Life Sciences scenario, and also shows the calculation of the value of incentive density.

Figure 5: Example of Prototype Feasibility and Calculation of Feasibility Surplus



Source: Montgomery Planning, 2023.

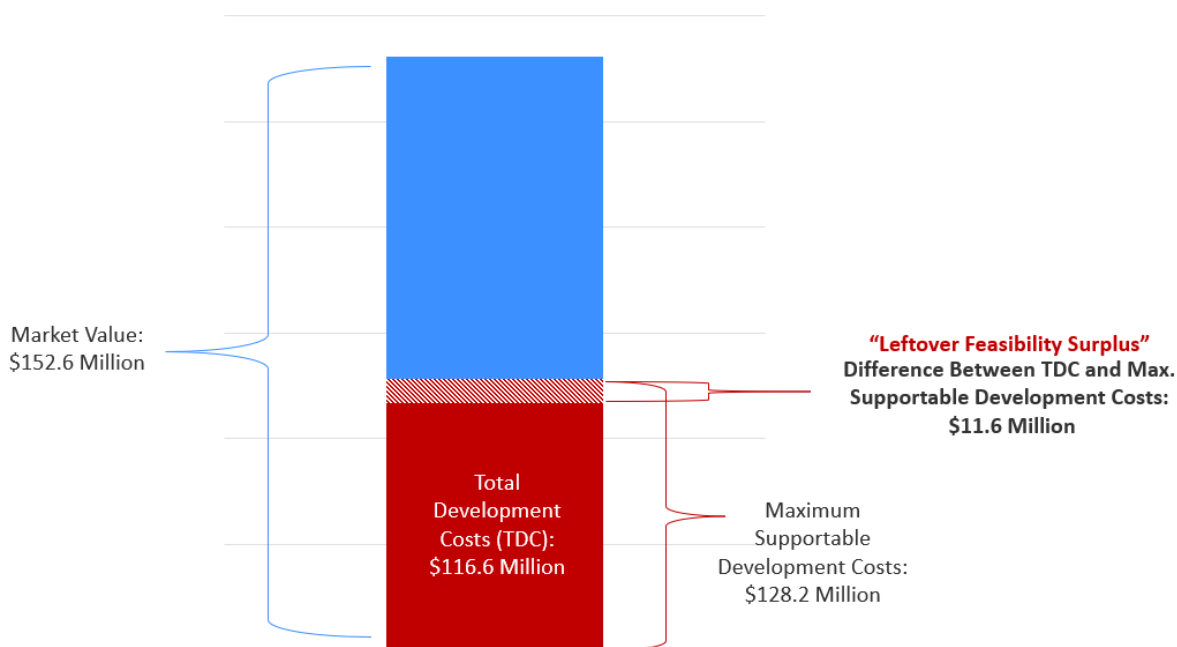
This analysis also estimates the amount development costs could increase by, while remaining within a target Return on Cost³ (ROC). ROC is typically presented as a percentage. Lenders and developers seek a minimum ROC to determine whether their project is feasible, with the target ROC depending on the product type. Housing products tend to have lower minimum ROC thresholds than nonresidential products because housing development is less risky from a financial perspective. This analysis calculates the dollar amount development by which costs could increase by while remaining within the target ROC.

² Feasibility surplus or gap is equal to Total Development Costs minus Market Value for each prototype.

³ Return on Cost (ROC) is equal to net operating income (NOI) divided by total development costs in rental products, and sale proceeds divided by total development costs in for-sale products.

In the example shown in Figure 6 below, the estimated market value of \$152.6 million can support total development costs of up to \$128.2 million and maintain an ROC of 6.25 percent. The example, which shows the value and costs of the urban overlay zone prototype, shows that the actual development costs are estimated to be \$116.6 million, implying total development costs could increase by up to \$11.6 million. This value is equal to the maximum dollar amount a development budget could increase by to accommodate public benefit requirements. In other words, this is the ‘leftover feasibility surplus’ that should be balanced by the cost to provide public benefits.

Figure 6: Demonstration of Leftover Feasibility in Surplus in the Urban Optional Method (with Overlay Zone Density) Prototype



Source: Montgomery Planning, 2023.

There are two feasibility models for each optional method prototype. The first model does not include the minimum required public benefits and is used to determine the value of incentive density as shown in Figure 6. Notably, the first model does assume some public benefits included within the prototype. For example, based on staff assumptions, the suburban prototype would receive points for transit proximity, structured parking, minimum parking, and BLTs regardless of the minimum 100-point requirement. There are no additional costs above what an applicant would already build to receive points for these four public benefits. BLTs are required in the CR zone, and findings from the incentive update study generally have found certain public benefits to be inherent to development itself.

However, these inherent benefits do not total the minimum required 100 points. Using approved applications, staff determined assumptions for the rest of the public benefits, which Hayat Brown used to develop a second model that tests the impact of the increase in costs due to the public

benefits. The second model not only increases the total development costs by the cost of the public benefits, but also accounts for any operating expenses or revenue impacts it may have. The operating expenses and revenue impacts of public benefits are discussed in the costing section of the feasibility analysis section of this report. The estimated cost of the public benefits is then compared to the leftover feasibility surplus from the first model, with which they should be balanced.

Financial Feasibility Analysis Key Takeaways

Applicants are incentivized to pursue optional method density and provide public benefits where standard method development is not feasible.

The first finding is that the value of incentive density is highest when the standard method prototype is infeasible. In the urban and suburban scenarios, which assume 0.75-acre and three-acre lots, respectively, the standard method prototypes do not pencil. The standard method prototype in both scenarios are small retail developments and consistent with current development trends. The market value of the rent they generate does not cover the cost to build the prototypes. In the urban scenario, the standard method prototype generates a feasibility gap of \$625,000 while the suburban prototype generates a gap of \$4.3 million.

By contrast, the two optional method prototypes in the urban scenario, and the single optional method prototypes in the suburban scenario exceed their target ROC. In the urban scenario prototypes, the feasibility surplus ranges from \$19.8 million to \$36 million, with ROCs of 6.61 percent and 6.87 percent, respectively. Both exceed the target ROC of 6.25 percent, suggesting the development costs can increase to accommodate public benefits and remain above the 6.25 percent threshold. This feasibility surplus above the target ROC is urban optional prototypes ranges from \$4.4 million to \$11.6 million. The suburban optional method prototype also exceeds its target ROC of 6.375 percent, which is slightly higher than the required ROC for the urban high-rise prototypes because the suburban mid-rise assumes lower rents and is considered a less valuable asset. The suburban mid-rise model has an ROC of 6.66 percent, implying development costs can increase by \$3.9 million and remain above the ROC threshold.

As shown in Table 8, the estimated cost of public benefits in the urban and suburban scenarios ranges from \$2.7 million to \$3.4 million. The cost of public benefits is below the leftover feasibility surplus in all three models, and including the cost of the public benefits maintains an ROC above the target threshold in the urban models. The cost of public benefits falls marginally below the target ROC in the suburban model, in part due to the smaller gap between the actual and target ROC in the mid-rise prototype. Nonetheless, this prototype would be considered feasible in most pro forma analysis.

Notably, the cost of public benefits in the urban prototype does not increase proportionally with the increase in leftover feasibility surplus. Although the overlay zone prototype is taller and more expensive, it generally includes the same public benefits as the smaller prototype. While the public benefit costs increase slightly in the overlay zone prototype compared to the other urban optional

method prototype, the overlay zone prototype public benefits costs are 70 percent less than the amount the prototype could support in public benefit costs.

Table 8: Urban and Suburban Scenario Feasibility Analysis

| | Urban | | Suburban |
|---------------------------------------------|----------------------|------------------------|-----------------|
| Standard Method | No OZ Density | With OZ Density | Suburban |
| <u>Feasibility</u> | | | |
| Total Development Costs | \$5,706,452 | \$5,706,452 | \$19,722,377 |
| Market Value | \$5,081,569 | \$5,081,569 | \$15,377,505 |
| Feasibility Surplus/(Gap) | (\$624,883) | (\$624,883) | (\$4,344,873) |
| <u>Feasibility Metrics</u> | | | |
| Target ROC | 7.50% | 7.50% | 7.50% |
| Actual ROC | 5.79% | 5.79% | 5.07% |
| Optional Method | No OZ Density | With OZ Density | Suburban |
| <u>Feasibility</u> | | | |
| Total Development Costs | \$76,784,923 | \$116,626,122 | \$87,673,530 |
| Market Value | \$96,611,160 | \$152,622,248 | \$108,568,017 |
| Feasibility Surplus/(Gap) | \$19,826,237 | \$35,996,126 | \$20,894,486 |
| <u>Feasibility Metrics</u> | | | |
| Target ROC | 6.25% | 6.25% | 6.38% |
| Actual ROC | 6.61% | 6.87% | 6.66% |
| Feasibility Surplus Above Target ROC | \$4,368,452 | \$11,576,566 | \$3,864,209 |
| Optional Method with Public Benefits | No OZ Density | With OZ Density | Suburban |
| <u>Feasibility</u> | | | |
| Total Development Costs | \$80,184,954 | \$122,415,424 | \$92,838,871 |
| Market Value | \$96,611,160 | \$152,622,248 | \$108,568,017 |
| Feasibility Surplus/(Gap) | \$16,426,206 | \$30,206,824 | \$15,729,146 |
| <u>Feasibility Metrics</u> | | | |
| Target ROC | 6.25% | 6.25% | 6.38% |
| Actual ROC | 6.33% | 6.55% | 6.29% |
| Public Benefit Costs | \$2,726,624 | \$3,353,939 | \$2,752,716 |
| Optional Method Analysis | No OZ Density | With OZ Density | Suburban |
| Feasibility Surplus Above Target ROC | | | |
| Minus Public Benefit Costs | | | |
| Dollar Value | \$1,641,828 | \$8,222,627 | \$1,111,494 |
| Percentage of Surplus Leftover | 38% | 71% | 29% |

Source: Hayat Brown, 2023; Montgomery Planning, 2023.

Standard method townhome and life science development can be a viable alternative to optional method development because they can generate higher returns and because optional development does not provide significantly more value to justify the additional risk.

In the Exurban and Life Science models, the standard method prototype is feasible, with returns on cost above the minimum threshold for the development type. The feasibility is driven by the fact that these scenarios assume larger sites that can accommodate a significant amount of development without incentive density.

The Exurban standard method prototype is a townhome development within the CRT zone, where the optional method threshold is 1.0 FAR. The Exurban standard method prototype generates a feasibility surplus of \$47.5 million and an ROC of 22.5 percent, which is above the 20 percent target ROC. The optional method prototype does generate a larger feasibility surplus of \$74.5 million, but it generates a lower ROC of 21.7 percent, which is still above the 20 percent threshold. With a lower ROC and a feasibility surplus that is not proportionally higher relative to development costs but would incur more risk to achieve, optional method development is a less viable alternative to standard method development on large sites. In the Exurban prototype, the value of incentive density is \$26.9 million but unlike in the urban and suburban scenarios, the standard method alternative also generates large and sufficient returns.

Considering the high optional method threshold in CRT zones, 1.0, and the fact that mapped densities can be as low 1.25 FAR, the increase in density is not enough to incentivize a larger development program that includes public benefits. In fact, the optional method prototype with the cost of public benefits included generates a return of just 19.0 percent. Without public benefits, the optional method prototype has a lower ROC than the standard method prototype, and by adding public benefit costs without an offset of significantly more density, the feasibility worsens, suggesting public benefits could disincentivize optional method development in Exurban areas. However, market conditions greatly influence overall feasibility. In a market where the price point for townhomes is higher, the optional method prototype may generate a higher ROC than the standard method prototype. Nonetheless, this conservative analysis suggests that public benefit costs are supported only by a significant increase in density.

Similarly, in the Life Science scenario, the standard method prototype is both feasible and generates an ROC higher than the optional method prototype. The standard method prototype resembles the type of life science development that currently exists in Montgomery County. It is a single use with a large portion of the lot undeveloped, and although this analysis assumes a structured parking garage, the site is large enough where an applicant could potentially provide surface parking instead. These factors, along with the high rent commanded by single use life science office/lab developments helps explain why there is no precedent for a mixed-use life science campus in Montgomery County.

The standard method Life Science prototype is a safer investment and represents a product developers are comfortable building. The optional method prototype introduces multi-family

residential and a small amount of retail and some additional life science development. However, the multi-family building, which is a 5-over-1 building type, is only marginally feasible and because residential uses are limited to 30 percent of the site where the total FAR is just 1.25, there is not enough multifamily development to support a higher ROC than the standard method prototype. The Life Science scenario would need more density to support a significantly more dynamic development program that incorporates a mix of uses to support investment and mitigate the risk.

The leftover feasibility surplus in the Life Science prototype, which is equal to the amount development costs can increase by to accommodate public benefits, is \$3.8 million. The optional method prototype is only marginally feasible, generating an ROC of 6.97 percent compared to a target ROC of 6.92 percent. As a result, this leftover feasibility surplus is far below the estimated cost of public benefits, which is \$9.3 million. The cost of public benefits is consistent with the large size of the project and in line with the proportion of public benefit costs to total development costs in each scenario. However, given the marginal feasibility of the optional method life science prototype, the public benefit costs are not balanced with the leftover feasibility surplus. Therefore, there is an incentive to build standard method development in the Life Science areas and a disincentive to build optional method development with public benefits. The feasibility analysis of the exurban and Life Science scenarios is shown in Table 9.

Table 9: Exurban and Life Science Scenario Feasibility Analysis

| Standard Method | Exurban | Life Science |
|---------------------------------------------|----------------|---------------------|
| <u>Feasibility</u> | | |
| Total Development Costs | \$211,294,252 | \$271,218,838 |
| Market Value | \$258,837,597 | \$318,802,295 |
| Feasibility Surplus/(Gap) | \$47,543,345 | \$47,583,457 |
| <u>Feasibility Metrics</u> | | |
| Target ROC | 20.00% | 7.01% |
| Actual ROC | 22.50% | 7.06% |
| Optional Method | Exurban | Life Science |
| <u>Feasibility</u> | | |
| Total Development Costs | \$343,443,696 | \$563,250,082 |
| Market Value | \$417,889,034 | \$662,778,868 |
| Feasibility Surplus/(Gap) | \$74,445,339 | \$99,528,786 |
| <u>Feasibility Metrics</u> | | |
| Target ROC | n.a. | 6.92% |
| Actual ROC | 21.68% | 6.97% |
| Feasibility Surplus Above Target ROC | \$10,265,061 | \$3,790,328 |
| Optional Method with Public Benefits | Exurban | Life Science |
| <u>Feasibility</u> | | |
| Total Development Costs | \$349,590,450 | \$584,259,919 |
| Market Value | \$415,988,613 | \$662,778,868 |
| Feasibility Surplus/(Gap) | \$66,398,164 | \$78,518,949 |
| <u>Feasibility Metrics</u> | | |
| Target ROC | n.a. | 6.92% |
| Actual ROC | 18.99% | 6.72% |
| Public Benefit Costs | \$5,333,857 | \$9,327,628 |
| Optional Method Analysis | Exurban | Life Science |
| Feasibility Surplus Above Target ROC | | |
| Minus Public Benefit Costs | | |
| Dollar Value | \$4,931,203 | (\$5,537,301) |
| Percentage of Surplus Leftover | 48% | -146% |

Source: Hayat Brown, 2023; Montgomery Planning, 2023.

While large, significant developments theoretically generate the highest returns and can support expensive public benefit packages, there is limited demand for multi-phased mixed-use

development, suggesting the maximum value of incentive density on large sites may not be realistic to balance with public benefit requirements.

The Transit Oriented Development (TOD) scenario tested two relatively dense, optional method mixed-use prototypes and one residential optional method prototype that does not maximize the mapped density assumption of 3.5 FAR. The standard method prototype they are compared to is a grocery-anchored shopping center. As a retail-only development, the target FAR is eight percent, while the prototype generates an ROC of 7.79 percent, suggesting the standard method prototype is not feasible. This reflects the current trends in new retail development, which is increasingly included as part of mixed-use development.

By comparison, all three optional method prototypes in the TOD scenarios are feasible, generating an ROC significantly higher than the standard method prototype. At 25-acres, the site could also accommodate a townhome development similar to the Exurban standard method prototype, although the mixed-used development in the TOD scenario would still generate a higher ROC than a standard method townhome prototype. This is because the 25-acre site assumes a maximum density of 3.5 FAR, which allows for a dynamic mix of retail, housing, and office.

Both mixed-use prototypes effectively maximize the mapped density and as such, represent significant projects on the scale of North Bethesda's Pike and Rose. The estimated development costs are over \$1 billion. Therefore, even though the site has the potential for a large and successful urbanized mixed-use center, there must also be enough demand to support a project of this scale and obtain financing. This suggests that where the market is not strong enough to support maximizing mapped densities, the value of incentive density is diminished.

As shown in Table 10, if a developer could viably finance a \$1 billion project, then the TOD scenario generates an incentive density of between \$263 million to \$338 million based on the mixed-use prototypes. By contrast, the townhomes optional method prototype generates an incentive density value of \$76 million, but this may be more achievable than the larger mixed-use prototype. Therefore, while the mixed-use prototype could support between \$19 million and \$27 million in public benefit costs, there are likely few opportunities to obtain public benefits on that scale. The \$9.1 million generated by the optional method townhomes prototype may be a more realistic value to balance to public benefit costs on large TOD site.

Importantly, the menu of public benefits also has few mechanisms to capture public benefits on the scale of tens of millions of dollar. While the major public facility public benefit could achieve this in theory, the points for the major public facility would still be capped at 70 in the CR zone, and the menu offers other public benefit options that can achieve the minimum required points without incurring costs that scale with intensity of development. The cost of public benefits in the two TOD mixed-use prototypes demonstrates this point. While the package of public benefits is by far the costliest of any scenario, between 62 and 65 percent of the leftover surplus is not captured by the cost of public benefits. So, while the cost of public benefits does increase with project size, the menu may

be less efficient at extracting proportional public benefits from significant projects that generate large feasibility surpluses.

Table 10: TOD Scenario Feasibility Analysis

| Standard Method | TOD | | |
|------------------------------------------------------------------------|------------------|--------------------|------------------|
| | Mixed Use | Alternative | Townhomes |
| Feasibility | | | |
| Total Development Costs | \$121,311,910 | \$121,311,910 | \$121,311,910 |
| Market Value | \$135,011,457 | \$135,011,457 | \$135,011,457 |
| Feasibility Surplus/(Gap) | \$13,699,547 | \$13,699,547 | \$13,699,547 |
| Feasibility Metrics | | | |
| Target ROC | 8.00% | 8.00% | 8.00% |
| Actual ROC | 7.79% | 7.79% | 7.79% |
| Optional Method | Mixed Use | Alternative | Townhomes |
| Feasibility | | | |
| Total Development Costs | \$1,466,813,895 | \$1,064,631,905 | \$223,438,368 |
| Market Value | \$1,804,877,456 | \$1,327,367,303 | \$299,200,830 |
| Feasibility Surplus/(Gap) | \$338,063,561 | \$262,735,397 | \$75,762,462 |
| Feasibility Metrics | | | |
| Target ROC | 6.93% | 6.92% | 20.00% |
| Actual ROC | 7.30% | 7.38% | 33.91% |
| Feasibility Surplus Above Target ROC | \$77,733,674 | \$70,905,147 | \$31,074,788 |
| Optional Method with Public Benefits | Mixed Use | Alternative | Townhomes |
| Feasibility | | | |
| Total Development Costs | \$1,558,266,253 | \$1,134,218,226 | \$244,630,896 |
| Market Value | \$1,762,070,320 | \$1,315,629,924 | \$299,183,099 |
| Feasibility Surplus/(Gap) | \$203,804,067 | \$181,411,697 | \$54,552,203 |
| Feasibility Metrics | | | |
| Target ROC | 6.93% | 6.92% | 20.00% |
| Actual ROC | 6.71% | 6.87% | 22.30% |
| Public Benefit Costs | \$19,062,827 | \$26,948,445 | \$9,141,000 |
| Optional Method Analysis | Mixed Use | Alternative | Townhomes |
| Feasibility Surplus Above Target ROC Minus Public Benefit Costs | | | |
| Dollar Value | \$58,670,848 | \$43,956,702 | \$21,933,788 |
| Percentage of Surplus Leftover | 75% | 62% | 71% |

Source: Hayat Brown, 2023; Montgomery Planning, 2023.

BENCHMARKING CASE STUDIES

PURPOSE

Planning staff and the project consultant Hayat Brown researched and compared regional and national case studies of similar programs to Montgomery County's Incentive Zoning policy to perform a comparative review. The consultant team worked with Montgomery Planning to identify appropriate case study subjects with each municipality providing valuable insights and potential ideas for this update.

METHODOLOGY

Six case studies were selected, of which three focused on national municipalities – Austin, Texas; Detroit, Michigan; and Seattle, Washington; along with three regional municipalities – Arlington, Virginia; Fairfax, Virginia; and Washington, D.C. These case studies were selected for:

- Identifying nationally successful programs implemented in comparable municipalities beyond the region and highlighting specific elements from such programs that Montgomery Planning could consider as a part of this update.
- Understanding how regional peer jurisdictions employ programs to incentivize the delivery of specific public benefits by offering additional density, height, regulatory and financial incentives.

The following pages provide a brief description of each program analyzed, highlighting the unique aspects making it a valuable case study. Following these descriptions, staff has summarized the key takeaways from the overall benchmarking exercise. The detailed case studies can be found in Attachment E.

NATIONAL MUNICIPALITIES

Austin, TX

Austin's Downtown Density Bonus Program (DDBP) was analyzed as it is an incentive-based policy established in 2014 to promote a vibrant, dense, and pedestrian-friendly downtown area while also encouraging the development of affordable housing and other community benefits. Similar to Montgomery County, this program allows developers to achieve greater height and density in exchange for providing a high-quality building and streetscape as well as community benefits. The DDBP applies to certain areas within the city, as established by its zoning ordinance which also stipulates maximum FAR and heights that applicants can achieve through the program. Participation in the program is optional and allows developers to capitalize on the growing demand for housing while helping the city meet its policy goals. If an applicant opts into the program, in addition to

providing affordable housing that unlocks incrementally more density, there are ‘gatekeeper requirements’ that all projects in the DDBP process must abide by. These include providing a streetscape that meets Austin’s Great Streets Program requirements, committing to achieving a minimum two-star rating under Austin Energy’s Green Building (AEGB) program, and being compliant with Austin’s Urban Design guidelines.

Detroit, MI

The consultant team evaluated Detroit’s Community Benefits Ordinance (CBO) given its unique focus on community involvement within the negotiation process for public benefits. The CBO was enacted in 2016 and further amended in 2021. It aims at fostering equitable development and community engagement. The Detroit CBO establishes requirements for developers seeking approvals for major projects, including the provision of Community Benefits Agreements (CBAs) negotiated with neighborhood representatives. The CBO outlines a transparent process including public meetings with the Neighborhood Advisory Council (NAC) and the developer during the development of the CBA and annual public meetings for a specified period post-CBA execution. Additionally, the CBO provides for compliance monitoring and enforcement which is overseen by the city’s Civil Rights, Inclusion, and Opportunity Department (CRIO).

Seattle, WA

Seattle, Washington has maintained an incentive zoning program since the 1980s. The goal of the program is to help the city achieve certain public policy objectives in exchange for additional density. The program was originally implemented in the central business district (CBD) and has been expanded to include additional areas of the city. Developers may provide public amenities across five categories: affordable housing, childcare, open space amenities, transferable development potential and rights or regional development credits in exchange for extra floor area. Developers may deliver affordable housing, childcare, and open space amenities on-site or off-site (performance option) or have the option to make contributions to city departments instead of providing public amenities (payment option). In exchange, developers get extra floor area or height beyond the base amount allowed for their building by the Land Use Code up to a maximum FAR or height. The ability to deliver amenities one-site or off-site under the performance option or to exercise the payment option provides developers with flexibility.

LOCAL JURISDICTIONS

Arlington County, VA

While Arlington County does not have a comprehensive countywide Incentive Zoning Program, it does utilize a set of programs designed to encourage the provision of particular public benefits. Arlington County’s Green Building Density Incentive Program (also known as the Green Building Incentive Policy) is a voluntary program that encourages developers to build high-performance green buildings to reduce energy consumption and greenhouse gas emissions to help achieve Arlington’s long-term

carbon emissions goals. The program is voluntary and uses the US Green Building Council's LEED (Leadership in Energy and Environmental Design) building rating system to set development standards. Developers are eligible for additional density if they meet a minimum LEED Gold standard (or EarthCraft for multifamily) as well as other prerequisites. The Arlington County Board [updated Arlington's Green Building Incentive Policy](#) on December 12, 2020, increasing the minimum standard to LEED Gold and adding prerequisites related to equity, diversity, and inclusion programs.

Fairfax County, VA

Fairfax County does not utilize a countywide incentive zoning program since it primarily uses the proffer system to negotiate for public benefits, with developer's offering community benefits in exchange for zoning approval. However, to induce private development, the county does utilize its Economic Incentive Program (EIP) to encourage economic development in specific areas. This program was selected because in contrast to the other programs, it provides direct economic incentives to encourage development.

Fairfax County adopted the EIP on September 15, 2020. It provides an economic incentive for the private sector to purchase, assemble, revitalize, and redevelop property for economic development purposes. To be eligible for this program, the development proposal should be situated within one of six designated Economic Incentive Areas within the county. Other eligibility requirements include:

- Projects must be commercial, industrial, and/or multi-family residential.
- The application must include a new consolidation of at least two contiguous parcels, with different owners and a combined minimum of two acres.
- The proposal must align with the consolidation and use recommendations of the County's Comprehensive Plan and comply with all applicable laws and policies regarding affordable housing provision and preservation.

Financial incentives available to developers include a reduction in site plan fees or partial real estate tax abatements. Regulatory incentives include expedited zoning application scheduling, concurrent processing of a comprehensive plan amendment and associated zoning application, concurrent processing of a site plan and a zoning application, inclusion in the Land Development Services (LDS) project management program, and a lower project value to qualify for the LDS modified processing program.

Washington, DC

The Green Area Ratio program in the District of Columbia is another example of a regulation that supports a specific benefit. The Green Area Ratio program is independent of the development review process in D.C. whereby applicants negotiate a package of public benefits with the city. The Green Area Ratio (GAR) is a zoning regulation that integrates landscape elements into parcel site design to promote sustainable and aesthetically pleasing development. GAR sets minimum lot-coverage

standards for landscape and site design features to promote greater livability, ecological function, green space accessibility and climate adaptation in the urban environment.

GAR promotes sustainable practices in large projects to ensure that new development embodies principles of environmentally friendly urban living with benefits that help reduce stormwater runoff, improve air quality, and mitigate heat island effect.

KEY FINDINGS

The case studies profiled municipalities across the country with programs that attempt to incentivize or compel developers to provide public benefits. The programs represent a variety of approaches and illustrate a set of best practices and techniques. The following are key takeaways from this benchmarking exercise that could be leveraged by Montgomery Planning as the county's Public Benefits Point System is reevaluated.

Montgomery County's menu of public benefits is larger and more complex as compared to other jurisdictions researched in this study.

Montgomery County's program, with a menu of 36 different public benefits across seven categories, is the largest of all jurisdictions reviewed. In comparison, Austin and Seattle, the municipalities with the most similar benefit menus provided between five and 11 options, respectively. Both jurisdictions ensure developers meet minimum thresholds related to other public goods by instituting "gatekeeper requirements". For example, Austin's DDBP gatekeeper requirements include providing a streetscape that meets Austin's Great Streets Program requirements, committing to achieving a minimum two-star rating under Austin Energy's Green Building (AEGB) program, and being compliant with Austin's Urban Design guidelines. Such basic performance thresholds enable the Incentive Zoning Programs to remain lean and focused on key policy goals.

Successful incentive zoning programs directly align and prioritize specific public benefits to achieve key policy goals.

Austin and Seattle both include a menu of public benefits, but the provision of affordable housing is a clear priority within the group of public benefits that can be considered for achieving additional density. Under Austin's DBBP, at least 50 percent of the bonus must be achieved by providing affordable housing units or by paying a development bonus fee into the Affordable Housing Trust Fund. In addition to affordable housing, developers may provide additional benefits such as daycare services, cultural uses, live music uses, historic preservation, sustainability features, and publicly accessible space.

Similarly, for projects seeking incentive density in Seattle within zones with height limits of 85 feet or less, all extra floor area must be achieved through providing affordable housing and childcare. For zones with height limits greater than 85 feet, residential floor area must be achieved by providing 60 percent affordable housing and 40 percent other benefits; for nonresidential floor area, 75 percent of

bonus area must be achieved by providing affordable housing and 25 percent through other benefits. The provision of offsite amenities is similarly prioritized as well. Seattle's program goes a step further and allows developers more density per square foot of affordable housing, provided such units target a lower Annual Median Income (AMI) of 50 percent.

Benefits with clear formulas and a sliding scale of approvable additional density are easier to implement and maintain proportionality and feasibility between the cost to provide benefits and value of incentive density.

Most jurisdictions reviewed relied on formulas for calculating the appropriate amount/payment for public benefits as a percentage or a ratio of additional density requested. For example, Austin DDBP approves one square foot of bonus area for each square foot of on-site affordable housing and two square feet of bonus area for each one square foot of daycare service space. Similarly, developers in Seattle can receive bonus density as a ratio of square footage provided as an on-site open space amenity. A Neighborhood Open Space is eligible for a ratio of 7:1 while a Green Street Setback can be approved for bonus density with a ratio of 5:1. Washington DC's Green Area Ratio program also utilizes a simple scoresheet to calculate the total area of landscape elements needed to attain the specified score.

By utilizing simple formulas on a sliding scale, these incentive zoning programs outline clear guidelines for program participation and include objective approval criteria. Clarity and objectivity reduce risk for developers pursuing density bonuses and encourage participation in these voluntary programs. Montgomery County's menu currently includes a mix of formulaic and discretionary evaluation criteria.

Participation in incentive zoning programs is typically voluntary, requiring meaningful incentives to encourage the delivery of public benefits.

Of the six municipalities profiled, four of the programs were voluntary, similar to Montgomery County, and two were mandatory for projects meeting certain criteria. Mandating specific minimum development requirements is a common zoning tool, however it is not frequently used in density bonus programs and does not represent a best practice for incentivizing community benefits. Instead, successful programs provided incentives that meaningfully enhanced the financial feasibility of projects to offset the costs to provide public benefits. Notably, density or height alone were not sufficient to influence development decisions except in markets with the most aggressive demand for development. Successful programs combined additional height and density with financial incentives like fee waivers and regulatory incentives like expedited review and approvals to proactively influence the delivery of specific public benefits.

Ongoing monitoring, regularly scheduled updates, and the ability to easily change standards is key to continued success for incentive zoning programs.

Austin and Arlington are both required to review and update their incentive zoning programs at regular intervals, typically every three to five years, to ensure that the programs continue to effectively meet their goals. Similarly, in Seattle, payment-in-lieu of affordable housing rates are adjusted annually based on the Consumer Price Index (CPI), which helps to ensure that the payments remain in line with market metrics. A key feature of Detroit's CBO is ensuring ongoing compliance with negotiated agreements. The ordinance provides for a detailed compliance monitoring process and outlines enforcement mechanisms to ensure that the City receives the agreed upon benefits in a timely manner.

Community input is effective only when strategically included within the review process for incentive zoning applications.

Detroit's CBO program involved the highest level of community involvement in the negotiations for the delivery of public benefits. The city convenes a nine-member Neighborhood Advisory Council (NAC) consisting of impact area residents selected by the Planning Department, the neighborhood, and local elected officials. The NAC is charged with negotiating with the developer on behalf of the community and establishing community benefits in a public format.

Due to its project specific nature, each benefits package under the CBO is unique, and several are tailored to reduce the perceived negative impacts of a project rather than advancing specific policy goals. The city considers the inclusion of community input as critical to promoting transparency, engagement, and equity in the development process. However, the program's critics feel that the NACs are not extracting enough from developers due to the relatively short negotiation timeframe and the fact that NAC members are not always well equipped to negotiate with developers.

Montgomery Planning currently engages the community during the master planning process to solicit input regarding desired public benefits. During regulatory review, developers are required to hold pre-application meetings with community members, and community members are invited to provide testimony during the planning board approval process. While there seem to be opportunities for community input throughout the process, data has shown that public benefits prioritized during the master planning process have not been delivered frequently with development in incentive zones.

REGIONAL REGULATORY REVIEW

PURPOSE

As part of the Incentive Zoning Update study, it is important to understand how peer jurisdictions in the region regulate high-density development associated with the delivery of public benefits. Montgomery County is part of a regional economy, and it competes with other local jurisdictions for attracting growth. Development policies can have a significant effect on which jurisdictions capture such growth. Differences in regulatory policies can affect development timelines, and impact overall

development costs. In addition, different jurisdictions offer varying levels and types of incentives or subsidies to promote growth. Updates to the Montgomery County’s incentive zoning policy must consider this regional context so we can ensure our updated regulatory processes remain relevant and competitive.

Planning staff compared Montgomery Planning’s optional method development review process and public benefits point system with similar programs in the City of Alexandria, Arlington County, Fairfax County, and Washington, DC. As part of the same regional economy, these jurisdictions share similar demographics and market conditions. Nonetheless, the development context ranges significantly amongst these jurisdictions. Arlington County, the City of Alexandria, and D.C., are denser and more urban, due primarily to their small geographic size compared to Montgomery and Fairfax County, which are more suburban and similar to each other in land area and population.

Planning staff evaluated each jurisdiction individually and highlighted overall themes and observations. Detailed analysis can be found in the full report under Attachment F. The section for each jurisdiction in the report contains the following elements:

- The **Development Review Process**: a baseline understanding of the local governance structure, what is considered by-right development vs an optional method, and an explanation of the stages of review.
- The **Menu of Public Benefits**: an outline of the formal programs, as well as general expectations related to public amenities that developments should deliver.
- The **Evaluation of Public Benefit Proposals**: a description of how jurisdictions negotiate or obtain public benefits.
- **Project Examples**: demonstrating the implementation of various public benefits.
- **Key Takeaways**: an evaluation of their processes in the context of Montgomery County’s current system.

METHODOLOGY

This comparative analysis reviewed zoning ordinances, online materials, and past and current development project documents. Additionally, planning staff interviewed key personnel in regulatory review positions in these jurisdictions to gain an on-the-ground perspective of implementing these planning policies through development review.

Table 11 summarizes key points of comparison across the jurisdictions.

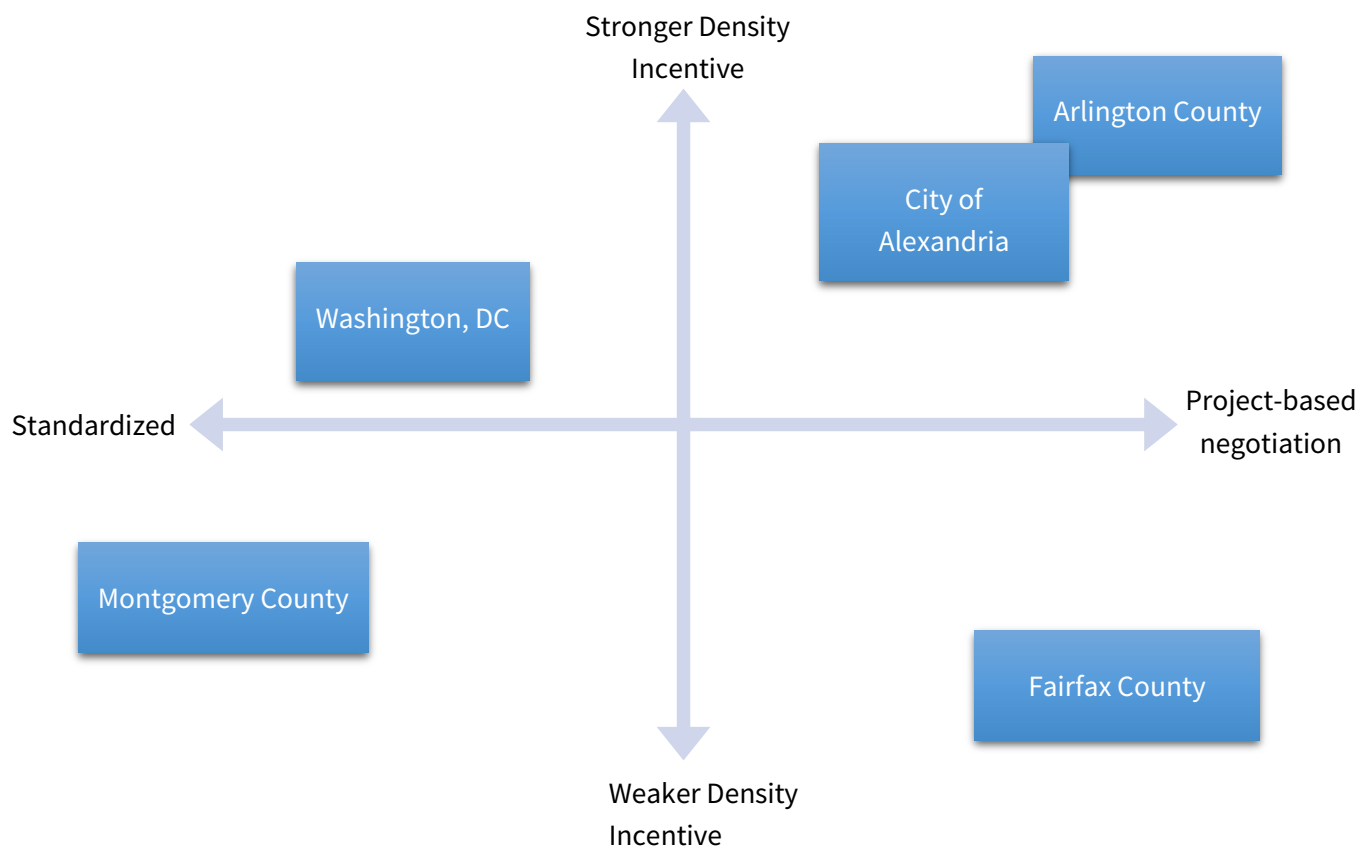
Table 11: Comparison of Approach to Public Benefits by Jurisdiction

| | Montgomery | DC | Arlington | Alexandria | Fairfax |
|--------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------|----------------------------------------|----------------------------------------------------------------------|---------------------------------------|
| Is density mapped prior to dev. review? | Yes | No | No | No | No |
| What system is used for obtaining public benefits? | Points system & incentive density | Planned Unit Developments (PUDs) | Community benefits package negotiation | Project-based negotiation; Zoning ordinance sections 7-700 and 6-900 | Proffers |
| Is there a jurisdiction-wide public benefits menu? | Yes | Yes | No | No | No |
| Where are the public benefits listed? | Zoning Ordinance & Incentive Density Implementation Guidelines | Zoning Ordinance – PUD Public Benefits | Sector Plan | Zoning Ordinance | District Plan |
| How many public benefits are there? | 36 | 24 | 10 (in Rosslyn Sector Plan) | 2 formal; ~12 avg. total per project | ~35 (as proffers for a large project) |
| Are public benefits directly incentivized with formulaic density? | Yes (all) | Yes (all) | No | Yes (just housing and arts anchor) | No |
| Are the public benefits directly aligned with policies & planning goals? | No | Yes | Yes | Yes | Yes |
| FAR of TOD case studies | 3.2 (Pike & Rose) | 5.0 | 9.62 | 3.0 | 0.9 |
| Who finally approves public benefits? | Planning Board | Zoning Commission | County Board | City Council | Board of Supervisors |

Source: Montgomery Planning, 2023.

Planning staff also evaluated each program for its relative “strength” to incentivize and demand specific public benefits for additional density and whether the negotiation process for public benefits is standardized or occurs on a project-by-project basis. Figure 7 illustrates this qualitative comparison. Jurisdictions towards the top of the chart have stronger mechanisms in place that regulatory staff can rely on to demand specific public benefits while those towards the bottom provide fewer direct tools to negotiate for public benefits in a quantitative manner during regulatory review. Jurisdictions to the left have a standardized approach for evaluating public benefits while those to the right engage in individual project-based negotiations.

Figure 7: Jurisdictions by Value of Incentive and Public Benefits Negotiating Process



Source: Montgomery Planning, 2023.

Notes on Figure 7:

- Montgomery County’s public benefits system has a standardized menu-based approach, but since the underlying zoning is typically mapped before a project is proposed, there is less incentive for applicants to offer significant public benefits for the “already zoned density”.

- Washington, DC’s system is standardized, though less formulaic and not points based. Having rezoning at the time of application is a strong incentive for receiving significant public benefits in exchange for density. However, DC’s building height restrictions limit the total incentive density potential.
- Arlington County has a project-based negotiation that compares the monetary value of additional density with the cost to provide specific public benefits. Even though the FAR maximums are very high, the market is so strong that developers seek to maximize the available density by providing additional public benefits. The combination of a financial evaluation and generally strong real estate market enables regulatory staff to effectively define and negotiate for significant public benefits.
- The City of Alexandria is largely project-based but also has two provisions for formulaic public benefits. Similar to Arlington County, the market incentive for density is strong enough to support the delivery of substantial public benefits.
- Fairfax County follows a proffer system that is unique to each project but does offer incentive density for providing affordable and workforce housing. Given the range of market conditions across the county, this incentive has been utilized to varying degrees.

KEY TAKEAWAYS

The range of public benefits, the rubric for negotiating or reviewing public benefits, and even the definition of public benefits, is different in each jurisdiction. It is therefore difficult to draw conclusions regarding the success of development review policies in peer jurisdictions in comparison to Montgomery County. Despite the challenges of a conducting a one-to-one comparison, this research did highlight some similarities and key elements of Montgomery County’s current policy that are noticeably different than practices followed by its regional peers.

Most jurisdictions within the region use multi-step regulatory review to negotiate for public benefits in exchange for incentive density.

This analysis reveals that approval of high-density development in each of these jurisdictions does typically involve an exchange for public benefits. Each jurisdiction follows a multi-step process. There are two main methods for obtaining public benefits in exchange for higher density development: a fixed district/county-wide menu-based approach and a project-specific negotiation process.

Montgomery County’s menu is the largest in the region, with strict requirements for compliance.

While there are similarities in the types of benefits jurisdictions hope to receive, Montgomery County is unique in the comprehensiveness of its public benefit menu. Montgomery County has by far the largest number of discrete public benefits (36) projects can include, across seven categories. The menu is codified in the zoning ordinance. Therefore, while the wide range of public benefits offers flexibility, complying with the standards and definitions of the public benefits can be limiting. By contrast, Arlington and Fairfax Counties, the City of Alexandria, and Washington, D.C., have few standardized public benefits to include in a project, thereby providing flexibility in the package of

public benefits a project includes. However, this approach can lead to inconsistent packages of public benefits from project to project. It also creates difficulty in analyzing the success of the policy in terms of delivering public benefits and achieving policy goals.

Montgomery County is unique in applying zoning with incentive density to parcels in advance of negotiations about public benefits.

One of the key differences between Montgomery County and the other jurisdiction reviewed in this report is the timing and need for rezoning. In Montgomery County, the maximum FAR under the standard method of development at 0.5 or 1.0 FAR can be too low for a feasible development, but technically development may proceed. On large sites, standard method, by-right density may be sufficient for an applicant to develop a project. Even when an optional method of development is needed for a feasible project, the additional density has already been zoned to the subject property. This is not the case in peer jurisdictions, where, in most cases, the underlying zoning cannot support any meaningful redevelopment, incentivizing applicants to negotiate for the right to develop to higher densities, often by seeking a rezoning. Even in Alexandria, where some sites can have by-right density of over 4.0 FAR and already zoned for mixed-use development, given its small and highly urban context, those densities are significantly lower than market potential. Unlike Alexandria and Arlington, market and development contexts vary significantly in Montgomery County, and higher densities are not valuable everywhere.

Regional peer jurisdictions tie the scope of public benefits more directly to the size of the proposed development as measured in terms of FAR.

Since Alexandria and the other peer jurisdictions typically require a rezoning for significantly increased density, the negotiation for public benefits is tied to the amount of density an applicant is requesting. Montgomery County incentive zones, on the other hand, generally require the same number of public benefit points on a site regardless of the size of the proposed development. (Some variation exists based on the parcel size itself and number of fronting streets.) For example, a CR-zoned site would require the same public benefits whether the maximum FAR is 2.0 or 8.0. Tying the delivery of public benefits to the additional density being utilized likely helps optimize the public benefit package. It is not clear whether Montgomery County's public benefit requirements are too onerous or too generous from an exchange perspective, especially since optimizing public benefits relative to the intensity of development within a given zone is not a feature of the current system.

Incentive zoning regulations are most effective when sensitive to local market conditions.

Benchmarking jurisdictions in the region against one another in terms of successful receiving significant public benefits is challenging, particularly given the lack of data. However, Alexandria and Arlington allow for higher densities than Montgomery County incentive zones, likely reflecting their small, urbanized nature and correspondingly stronger market for high-density development. To the extent the developments in those jurisdictions are large and valuable, the jurisdiction has leverage over granting the bonus density, which these jurisdictions analyze in financial terms. It is unclear

what balance exists between the financial analysis and the package of public benefits as the details of the negotiations are not typically public.

Factors like geography, market, land values, and transit greatly impact the framework that will be effective in supporting development in exchange for impactful public benefits. This makes it challenging to have a singular, complex program for a large and diverse county like Montgomery. Fairfax County is most like Montgomery County in terms of wide-ranging market contexts. Fairfax County does not have standardized public benefit requirements and in certain places, simply incentivizes redevelopment, requiring no public benefits for approval. Regardless of the success of delivering public benefits, this nuanced approach to high density development based on location is an interesting contrast to Montgomery County. Similarly, Washington, D.C., has a wide range of public benefits, but provides a greater flexibility in how many public benefits are included in a project, meaning there is no one set of requirements for all development through the city.

Regional jurisdictions use additional tools beyond master plans to ensure the delivery of public benefits that reflect community preferences.

The Virginia jurisdictions reviewed all rely on master plans as well as development district plans to help guide the choice of public benefits. Together, these master plans and development district plans are an effective way to codify the specific needs of an area, which can be amenities, streetscape improvement, and infrastructure projects. This also establishes a connection between the community's aspirations and the development process. Recent sector plans in Montgomery County have taken a more proactive role in prioritizing specific public benefits based on input received through the master planning process but the mechanism to actually deliver these sought-after benefits through development review could be further strengthened.

COMMUNITY OUTREACH AND ENGAGEMENT AND ENGAGEMENT

Equitable and impactful community engagement is central to Montgomery Planning's work. Accordingly, the planning team has been using a multi-pronged approach to engage stakeholders. In addition to the data analysis, the project team sought input from the following internal and external stakeholders to gain a fuller understanding of the issues to be considered and the potential impacts of proposed changes.

- An internal working group of staff from various divisions provided insights to the project team regarding the strengths and weaknesses of the current system as experienced during the master planning process, as well share obstacles faced during implementation of the current policy through regulatory review. The internal working group also acted as a fact checking body for the project team's analysis and assumptions and identified potential opportunities for enhancements for all deliverables.
- A technical working group representing frequent users and monitors of the current point system including real estate and design professionals, county agency and government

representatives, land use attorneys and policy experts etc. periodically shared lessons learned from utilizing the current policy, related the experience of working under similar programs in peer jurisdictions, and highlighted the greatest needs this update should address.

- One-on-one meetings with various interest groups with a stake in specific aspects of the current point system, including public agencies, non-profits, advocacy groups, and business representatives etc. helped staff gain a deeper understanding of the various considerations to be accounted for while drafting recommendations.
- In-person and virtual public meetings with stakeholders have provided opportunities to question, comment, and share ideas about the current policy and potential updates. Planning staff will host open houses to share the findings from our analysis work as well as present the draft recommendations for updates in the coming months.

Through the planning process, planning staff continues to listen to, and integrate the interests of stakeholders. The input will be considered along with the findings of our data analysis and the technical expertise of staff and consultant when formulating recommendations. Due consideration will be given to ensure that proposed recommendations do not negatively impact disadvantaged or marginalized groups.

PROJECT SCHEDULE

Planning staff presented the scope of work to the Planning Board in spring 2023. Since then, staff has worked alongside a consultant and undertaken a robust analysis of the current policy, a summary of which has been provided in this staff report. After receiving guidance from the planning board during the scheduled briefing, Staff will develop preliminary recommendations in winter 2023 and aim to present them to the Planning Board in early 2024. The Planning Board will direct staff towards a finalized set of recommendations, which staff will present to the County Council following the Planning Board’s review.

| | |
|---------------------------|-----------------------------------------------------------|
| August – October 2022: | Pre-planning |
| October–March 2022: | Preliminary data collection |
| April - November– 2023: | Existing conditions analysis & stakeholder outreach |
| December 2023-April 2024: | Drafting preliminary recommendations & continued outreach |
| May - September 2024: | Planning board review |
| October - December 2024: | Council briefings and review |

STAY CONNECTED

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ATTACHMENTS

Attachment A: Summary of Development, Public Benefits Received and Master Plan Priorities

Attachment B: Costing of Public Benefits

Attachment C: Cost Analysis of MPDUs for Public Benefit Points

Attachment D: Development Scenarios Prototypes

Attachment E: Benchmarking Case Studies

Attachment F: Regional Regulatory Review