

Montgomery Planning

INCENTIVE ZONING UPDATE:


WORK SESSION #1



INCENTIVE ZONING UPDATE

IMPROVING THE PUBLIC BENEFITS POINT SYSTEM FOR CR AND EMPLOYMENT ZONES

Draft Recommendations for the Incentive Zoning Update Study

	Robert Kronenberg, Deputy Planning Director robert.kronenberg@montgomeryplanning.org , 301-495-2187
	Atul Sharma, Assistant to the Deputy Director atul.sharma@montgomeryplanning.org , 301-495-4658
	Grace Bogdan, Planner III, Downcounty Planning Division grace.bogdan@montgomeryplanning.org , 301-495-4533
	Luwei Wang, Planner, Director's Office luwei.wang@montgomeryplanning.org , 301-495-1336

PLAN INFORMATION

Lead Planner/Staff Contact:

Atul Sharma, Project Manager

Incentive Zoning Update:

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Planning Division:

Director's Office

Planning Board Information

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SUMMARY

Staff will present the proposed overall approach for requiring public benefits, structure of the proposed update to the system, and introduce the four overall public benefit categories along with recommendations for applying the updated system to each of the four applicable zones. At this session, Staff requests the planning board provide input relative to this overall approach. In subsequent working sessions, Planning Staff will dive deeper into the details of the public benefits proposed and next steps related to review of the recommended changes by the County Council and implementation.

ATTACHMENTS

Attachment A – Summary of Analysis Planning Board Staff Report from December 2023

Attachment B – Agricultural Preservation Advisory Board Letter of Support

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EXECUTIVE SUMMARY

OVERVIEW AND CONTEXT

Montgomery County is undertaking a review of its public benefits point system (point system) for Commercial-Residential and Employment Zones. The point system currently applies to four zones: the Commercial Residential (CR); Commercial Residential Town (CRT); Life Science Center (LSC); and Employment Office (EOF) zones. A central goal for creating these zones was to promote infill development throughout the commercial areas of the county that would deliver a mix of uses and public benefits commensurate with an appropriate range of densities. The point system was designed to evaluate these public benefits and provide greater transparency regarding what developers were being asked to provide as a condition of approval. 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.

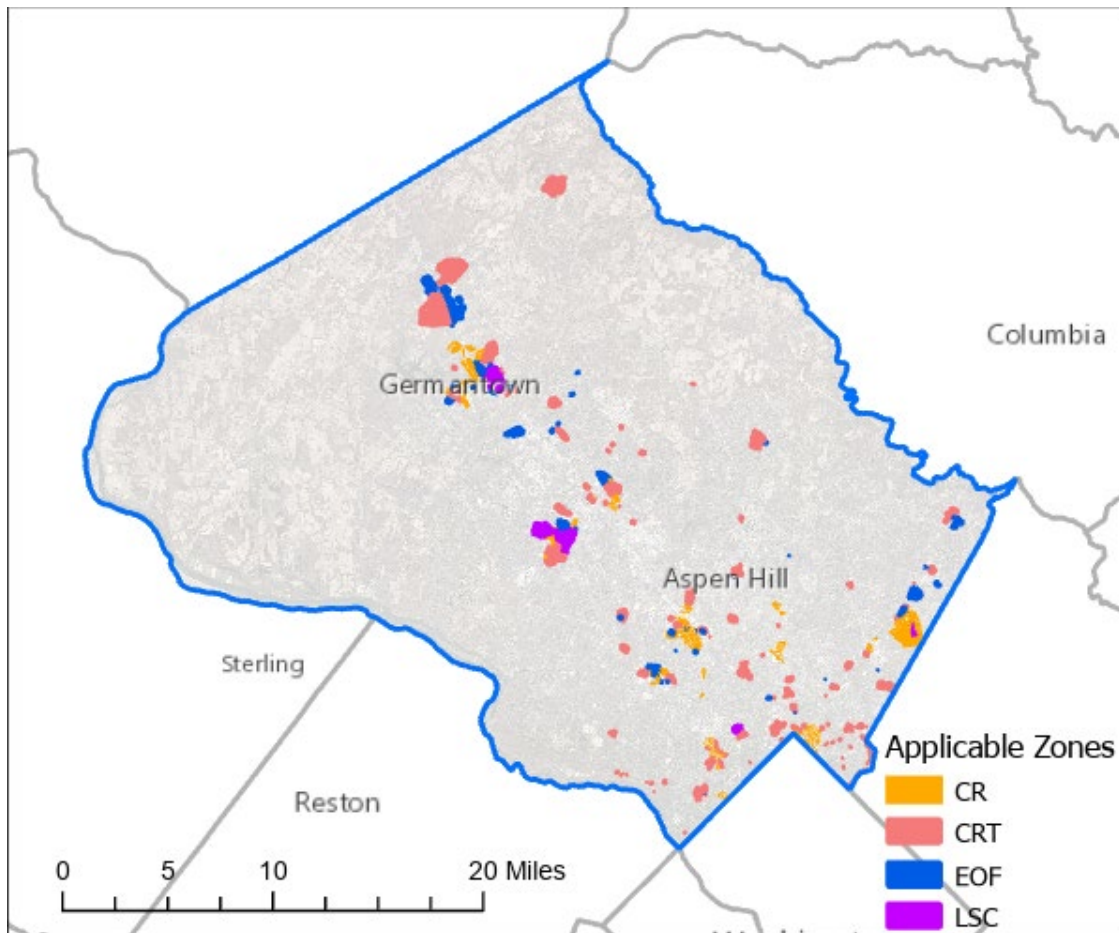


Figure 1 - The optional method of development is applicable to the Commercial Residential (CR), Commercial Residential Town (CRT), Life Science Center (LSC), and Employment Office (EOF) zones.

Currently, the public benefits are selected from a menu intended to focus on features such as site and building design, community amenities, housing, transportation, and environmental sustainability. Since the policy's inception in 2010, Montgomery Planning has implemented this policy as delineated in Section [59.4.5](#) of the Zoning Ordinance and further elaborated in the [Incentive Density Implementation Guidelines \('CR Guidelines'\)](#). The CR 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 establishes a key role master and sector plans play in prioritizing which public benefits are considered during the optional method of development approval process.

Since its inception in 2010, the policy has been incrementally adjusted but has not benefitted from a comprehensive review. An update is therefore 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. This will also ensure the policy continues to support high density development in the strategically located CR and Employment Zones.

SUMMARY OF PROJECT GOALS

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 Board in December of 2023 and have been summarized below:

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

SUMMARY OF ANALYSIS AND APPROACH

Staff spent significant effort analyzing the performance of the existing Point System, undertook a qualitative assessment of the existing CR Guidelines, evaluated financial feasibility impacts of the current public benefits, benchmarked the policy through case studies, and compared it to regulatory review of incentive policies in peer jurisdictions in the region and beyond. These findings were presented to the Planning Board in December of 2023, and the staff report is included as Attachment A. The major takeaways from this analysis are summarized below:

- There has been 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, 1 in the EOF zone, and no projects in the LSC zone.
- Montgomery County has the largest menu of discrete, defined public benefits compared to all regional and national jurisdictions reviewed in this study.
- Despite the vast menu, optional method projects have repeatedly delivered a handful of public benefits regardless of the underlying zone or market conditions.
- Master plans have prioritized specific public benefits but have not always been effective at ensuring their delivery.
- Considerations of cost and feasibility were not a key determinant in the creation of the current system. 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.
- 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.
- A stronger alignment between public benefits and updated county policy goals as outlined in documents such as Thrive Montgomery 2050 and the Climate Action Plan is needed.

These major takeaways from the analysis, stakeholder input, and guidance received from the Planning Board informed Staff's approach while drafting recommendations. The draft recommendations aim to update the policy, grounded in four key principles:

SIMPLE

- Simplify the policy and align it with key County priorities.
- Tailor a meaningful approach for regulating public benefits for each zone.
- Make the optional method process simpler and as ‘by-right’ as possible where feasible.

PROPORTIONAL

- Create an FAR based method of exchange between public benefits and incentive density.
- Ensure public benefits scale with the intensity of development and are proportional.

CLEAR

- Establish clear Code Requisites for all projects pursuing Site Plan for Standard or Optional Methods of development.
- Eliminate complex formulas or complicated review & compliance procedures.

FLEXIBLE

- Provide master and sector plans with greater flexibility and leverage to ensure public benefits identified during the planning process are delivered through optional method of development.
- Incentivize needed benefits, even if they are regulatory requirements, and allow ‘double dipping’ where it makes practical sense.
- Maintain a (simplified) menu-based approach.

SUMMARY OF KEY RECOMMENDATIONS

The following represent key recommendations proposed by Staff to update this policy. Each of these will be covered in more detail within this staff report and through upcoming working sessions with the planning board.

- Streamline the menu of public benefits and align it with county policy priorities by organizing public benefits under four categories:
 - o Housing For All
 - o Environmental Resilience
 - o Infrastructure for Compact Growth
 - o Complete Community Amenities

- Under the four new categories, consolidate the number of public benefits from thirty-six to thirteen, with tiered options for participation in each benefit.
- Shift from an indirect, point-based calculation for evaluating public benefits to a more direct and proportional, FAR based approach.
- Apply the policy strategically across the four zones:
 - o Remove the optional method of development requirement from EOF zoned properties. Enable projects to build up to the mapped FAR under Standard Method with a Site Plan requirement above 0.5 FAR.
 - o Regulate the delivery of public benefits in LSC zoned properties through the Great Seneca Life Sciences (GSLs) Overlay Zone. Remove the optional method of development requirement for LSC zoned properties outside the GSLs Overlay Zone but continue to require a Site Plan application above 0.5 FAR.
 - o Lower the optional method threshold in the CRT zone from greater than 1 FAR to greater than 0.5 FAR to align with CR zone.
- Require all optional method projects to purchase BLTs or TDRs and allow the Agricultural Land Preservation Fund (ALPF) to buy and sell both BLTs and TDRs on behalf of development applicants and farmland owners.

STRUCTURE OF WORKSESSIONS

Due to the comprehensive nature of the project and recommendations, Staff will be holding four work sessions with the Planning Board over the course of June and July. The intent of the work sessions is to share the draft recommendations in a thoughtful and digestible way that allows for the sessions to build on each other; narrowing from the overall structure to specific details. The work session topics are proposed as follows:

Work Session #1 (June 06, 2024):

Staff will present the overall approach, structure of the updated system, and introduce the four overall public benefit categories along with recommendations for applying the updated system to each of the four zones. At this session, Staff requests the Planning Board provide input relative to this overall approach.

Work Session #2 (June 13, 2024):

Staff will present the thirteen public benefits proposed under the four overall categories and also explain the proposed tiered structure for each public benefit. Staff will provide an overview of the financial feasibility analysis and development prototypes that were created to test the proposed public benefit recommendations. At this session, Staff requests the Planning Board provide input on the various public benefits, tiers of participations and payment-in-lieu options.

Work Session #3 (June 20, 2024):

Staff will present the proposed approach to prepare the recommendations for review by the County Council and next steps related to drafting a Zoning Text Amendment (ZTA), updating the Implementation Guidelines, and rolling out the new version of the policy. At this session, Staff requests the Planning Board approve the draft recommendations as amended, unless some outstanding items need to be addressed.

Work Session #4 (July 25, 2024):

This will be an optional session to tie up any loose ends and gain the Planning Board’s approval to transmit the recommendations as amended to the County Council.

HOW IS THIS POLICY USED IN DEVELOPMENT REVIEW?

DEVELOPMENT REVIEW BASICS

As a result of the Zoning Ordinance update of 2014, the standard and optional methods of development were applied to four zones: Employment Office (EOF), Life Sciences (LSC), Commercial Residential (CR), and Commercial Residential Town (CRT). Development in these zones is based on Floor Area Ratio.

WHAT IS FLOOR AREA RATIO?

Floor Area Ratio, commonly referred to as FAR, is a calculation that takes the proposed square footage of development and divides it by the square footage of the land proposed for development. In practice, FAR is used as a zoning tool to set a maximum square footage possible on the land and through other requirements like maximum lot coverage and permitted height, a development can be delivered in a variety of building arrangements.

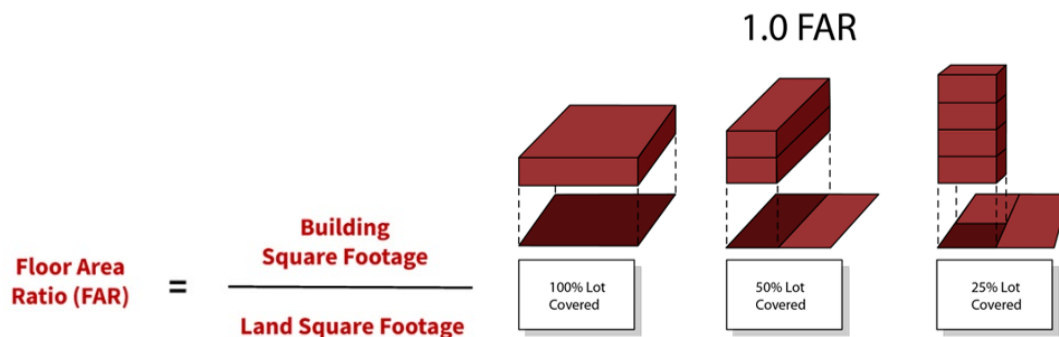


Figure 2 – How FAR is determined and applied in different development scenarios.

DEVELOPMENT OPTIONS

Any given development within these four zones may be allowed under the standard method (typically limited to 0.5 or 1 FAR, zone dependent) or an optional method above that threshold which requires the provision of public benefits.

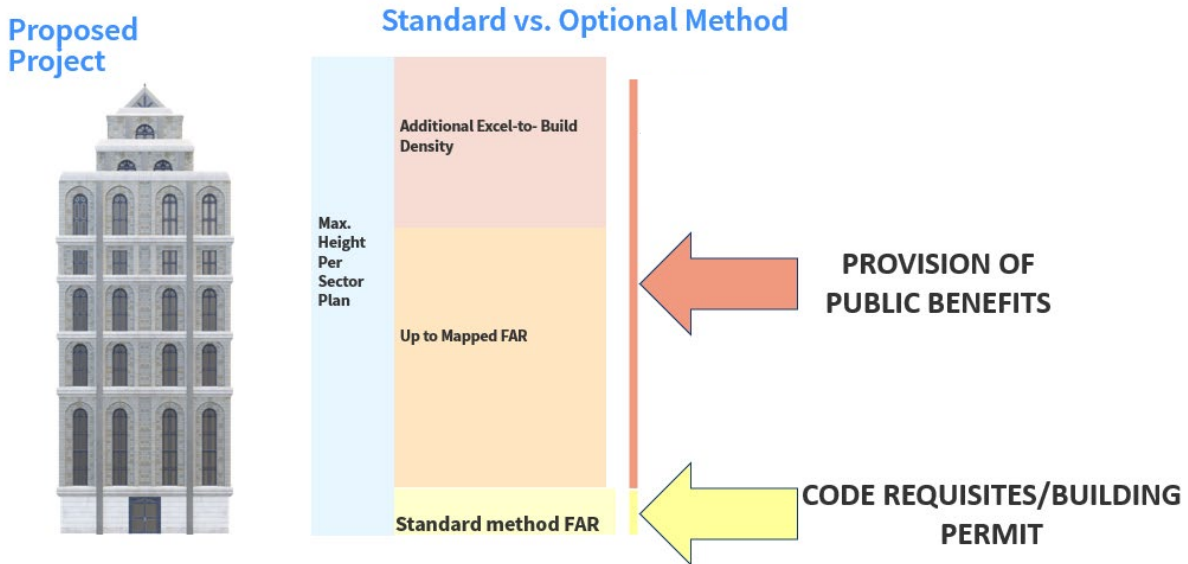
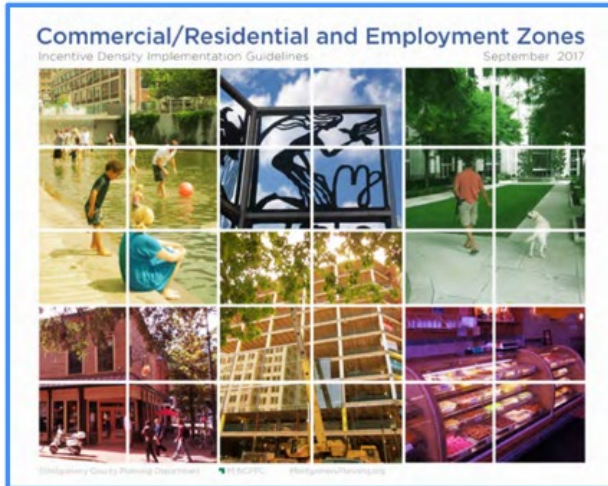


Figure 3 –Development scenarios for Standard and Optional Method within the four incentive zones

Standard method of development can potentially move forward to the Department of Permitting Services for building permit without any review by the Planning Department or Planning Board, however there are several nuances in the zoning ordinance based on proximity to residential zones, height, and overlay zones that may require standard method of development receive a site plan approval from the Planning Board.

Optional method of development applies when a project proposes density above the standard method (typically greater than 0.5 or 1 FAR, zone dependent). Optional method projects require a Sketch Plan and Site Plan approval from the Planning Board and provision of public benefits based on the CR Guideline categories and points.



Zone	Tract Size or Max Total FAR	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

Figure 4- Existing Implementation Guidelines and the Public Benefits Calculation Table

Additional Excel-to-Build Density is a newer approach that has been employed by the 2017 *Bethesda Downtown Sector Plan*, where a project may exceed the optional method mapped FAR by providing a benefit beyond the typical public benefits. In Bethesda’s case, this is administered through the Bethesda Overlay Zone and the additional public benefit is a Park Impact Payment. Excel-to-Build Density is likely to be utilized by more master and sector plans in the future.

WHAT ARE CODE REQUISITES?

For projects that require site plan review, whether it is for standard method or optional method of development, there is a significant amount of technical review and findings that must be made to the Planning Board to recommend approval of a project. Staff refers to these criteria as “Code Requisites”, enumerated in the list below. These requisites ensure that the project is meeting all the base requirements relative to the County’s environmental regulations, historic preservation law, transportation, safety, and development standards as well as master and sector plan recommendations. These requirements have grown over time as codes have been updated and expectations for development in the County have increased.

- Chapter 22 (Forest Conservation Law)
- Growth and Infrastructure Policy (GIP)
- Local Area Transportation Review (LATR)
- Historic Preservation
- Chapter 25A (MPDU LAW)
- Agency Approval (SWM/FDA/DOT/DPS/DHCA)
- Complete Streets Guide/ROW dedication
- Sector Plan conformance

- Streetscape standards
- Through block connections
- Open space/parks
- Design guidelines and/or Design Advisory Panel
- Green cover/tree canopy/environmental enhancements

APPLYING THE UPDATED POLICY TO THE FOUR ZONES

ZONE BY ZONE RECOMMENDATIONS

One of the key takeaways of the analysis phase is that while the optional method of development is allowed in four zones (EOF, LCS, CR and CRT), there has been uneven development activity across the four zones. Development chiefly occurs in only two of the zones, CR and CRT. This is not surprising since the point system was initially created for the CR zone within the *2010 White Flint Sector Plan* and later expanded to include other zones across the County. The EOF and LSC zones also cater to a specific type of development with unique considerations relative to investment and financial feasibility. Given these variations, Staff is recommending that this updated system of public benefits be applied in a more strategic manner for each zone.

EMPLOYMENT OFFICE ZONE (EOF)

Properties within the EOF zone are typically developed with older Class B or C office buildings or light-industrial warehouse type facilities within the mid and upper areas of the County. While critical to the county’s tax base, these assets have struggled in the current market conditions and consequentially properties have aged with little reinvestment. A deeper review of these properties and zoning reveals that over 80% of the properties within the EOF Zone are not zoned at a sufficient FAR that would allow for Optional Method Development (Optional Method above 1 FAR). Only one optional method project has been approved in the EOF zone since 2010, and that property has since been rezoned to CR. Additionally, this zone is no longer being applied by Staff during the creation of new master or sector plans.



Figure 5 - Typical properties within the EOF Zone

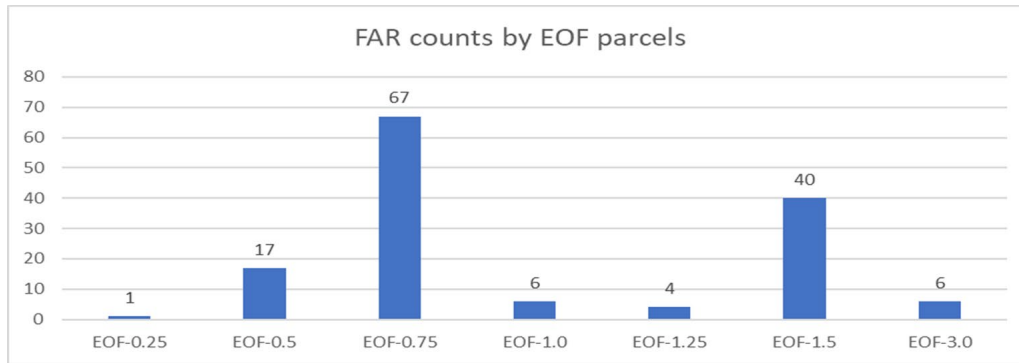


Figure 6 - Chart showing the distribution of Mapped FAR across the various EOF parcels in the County

EOF Recommendations:

Based on the extremely limited use of the Optional Method of development and the financial feasibility considerations relative to the typical building types found in this zone, Staff recommends the following:

- 1) Remove EOF from zones that require the Optional Method of Development.
- 2) Allow existing EOF properties to develop up to the full mapped FAR through the Standard Method of Development.
- 3) Require a Site Plan for development above 0.5 FAR to ensure Code Requisites are still being met.

LIFE SCIENCES (LSC)

Properties with LSC zoning are predominantly located within the Midcounty Planning Area, specifically within the boundary of the *2010 Great Seneca Science Corridor Master Plan*. Only three other LSC zoned properties exist outside of the *2010 Great Seneca Science Corridor Master Plan* boundary, and each of these properties is either already built out or has a zoning capacity or conditions of approval that would preclude its ability to develop under the Optional Method. The Midcounty Planning Team is currently undertaking an update to the *2010 Great Seneca Science Corridor Master Plan* and proposing an overlay zone that would require specific public benefits that are critical to the success of this life science hub. The Incentive Zoning Update team has collaborated closely with Midcounty Planning Team to ensure that the public benefits required by the overlay zone generally align with recommendations to update the overall menu of public benefits.



Figure 7 - Typical properties within the LSC Zone

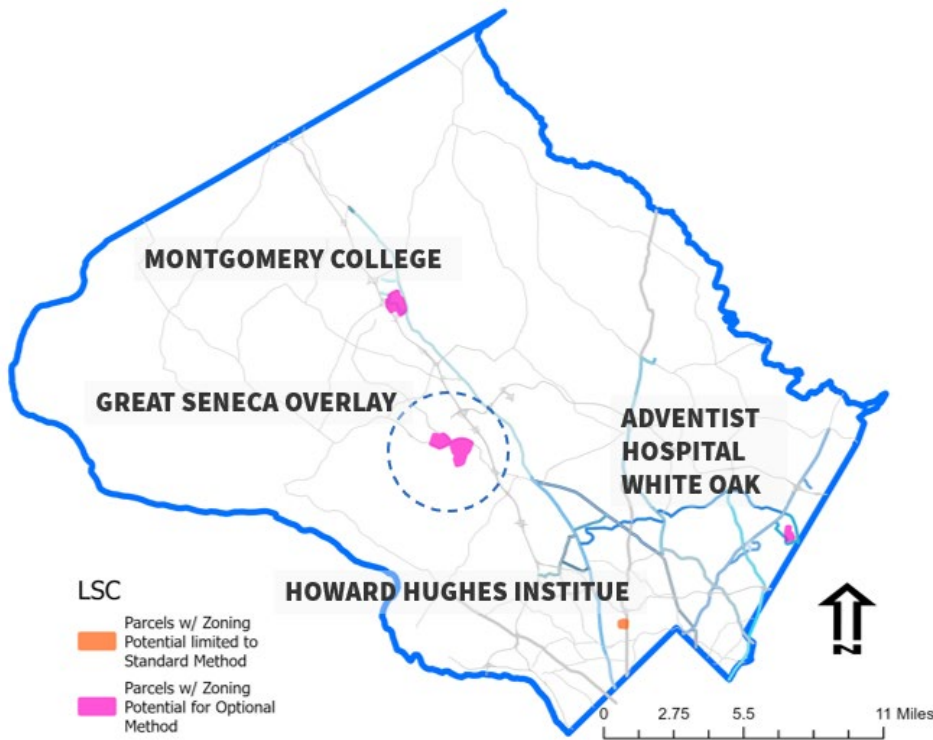


Figure 8 - Map showing the distribution of LSC zoned parcels across the county. Only three LSC properties are not covered by the boundary of the proposed GSLS Overlay Zone

LSC Recommendations:

Given the geographic concentration of LSC zoned properties within the Great Seneca Plan area, the proposal for an overlay zone and the unlikely application of this zone to additional parts of the county, Staff recommends the following:

- 1) Regulate Optional Method Development and delivery of public benefits for LSC properties through the GSLS Overlay Zone.
- 2) Exempt remaining (three) LSC properties from providing public benefits under the Optional Method of Development.
- 3) Require a Site Plan for development above 0.5 FAR to ensure Code Requisites are still being met.

COMMERCIAL RESIDENTIAL (CR) & COMMERCIAL RESIDENTIAL TOWNHOUSE (CRT)

The CR & CRT zones are intended to facilitate mixed use infill development near transit. Of the two, the CR zone is intended to support the highest densities. Parcels within this zone range in FAR from 0.5 to 8.0 with most properties zoned with sufficient FAR to pursue the Optional Method of development (development greater than 0.5 FAR). The CR Zone has garnered the largest number of development approvals through the Optional Method process and the zone is consistently applied to properties through the master and sector planning processes.



Figure 9 - Development in the CR zone has a wide range of intensity and uses

The CRT zone is intended to be a less intense version of the CR zone in terms of density and permitted uses. However, development and zoning data shows that this zone has been applied to a larger range

of FAR (0.25-4.75 FAR) than perhaps originally intended. We have seen some significant projects built with this type of zoning. A key difference between the CR and CRT zones is the threshold for Optional Method of development. In the CR zone, projects greater than 0.5 FAR must pursue the Optional Method and provide public benefits while in the CRT zone, the threshold is set at greater than 1.0 FAR. This is an important distinction since almost 60% of parcels within the CRT zone are currently zoned lower than 1.0 FAR and presently could be developed using the Standard Method of development. Many large properties have CRT zoning and significant projects can be built below the 1.0 FAR threshold, without the provision of any public benefits. We anticipate this zone will continue to be used by master and sector plans, particularly along growth corridors in the county. It is appropriate to expect CRT projects building to densities above 0.5 FAR to provide public benefits, similar to the CR zoned properties.

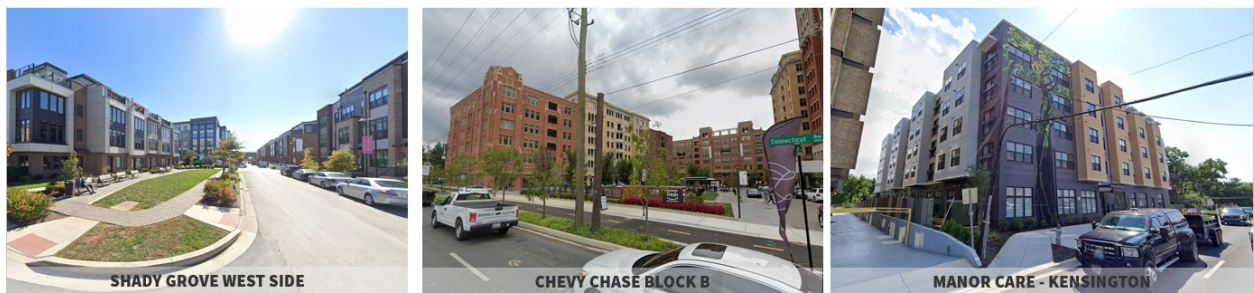


Figure 10 - The CRT zone has seen a mix of mid to high density development

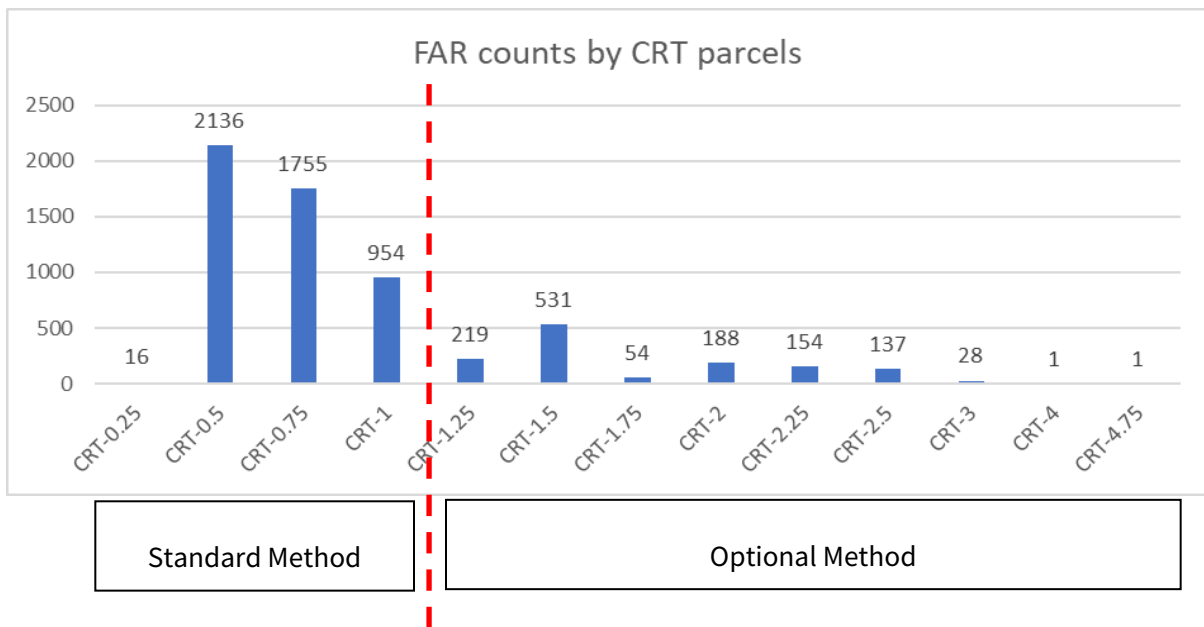


Figure 11 - Chart showing the distribution of Mapped FAR across the various CRT parcels in the county. A majority of CRT parcels have a mapped FAR that can be fully built under the Standard Method.

CR & CRT Recommendations:

Given the similar characteristics and expected continued application of both these zones to additional properties across the county near transit, Staff recommends the following for both CR and CRT zones:

- 1) Establish a standardized Optional Method threshold set at greater than 0.5 FAR for both CR and CRT zones.
- 2) Continue to use a density framework that includes standard method FAR, incentive density up to the mapped FAR per parcel, and additional Excel-To-Build density, established per master and sector plans.
- 3) Approve Incentive Density in FAR increments in exchange for scalable public benefits, enabling applicants to earn the right to build up to the mapped FAR or utilize Excel-To-Build density once the mapped FAR has been fully utilized.
- 4) Continue to use a menu-based approach but grant masterplans the flexibility to modify the menu of public benefits.
- 5) Prescribe maximum heights during master planning with room for some additional Excel-To-Build density where appropriate.

RECOMMENDATIONS RELATED TO BLTS AND TDRS IN THE CR AND LSC OVERLAY ZONE

The current point system incentivizes the preservation of agricultural land through two programs: Building Lot Termination (BLTs) and Transferable Development Rights (TDRs). The Optional Method of development requires the purchase of BLTs in the CR and LSC zones in exchange for public benefit points. In the CR zone, an applicant must purchase BLT easements, or make payments to the Agricultural Land Preservation Fund (ALPF), in an amount equal to 7.5 percent of the incentive density floor area. In the LSC zone, that requirement is for an amount equal to 50 percent of the incentive density floor area, with stipulations.

TDRs are also included as an optional public benefit on the menu but are not a mandatory requirement for any zone. It is therefore not surprising that while many projects have purchased BLTs, not a single Optional Method project has included the purchase of TDRs as a public benefit. Essentially, BLTs and TDRs currently “compete” with each other on the public benefit menu even though they are intended to achieve the same goal of preserving farmland in the county.

Staff worked collaboratively with the Office of Agriculture to propose recommendations to restructure the requirement for the BLTs and TDRs in the CR and GSLS Overlay Zone. Staff recommends removing BLTs and TDRs from the public benefit menu and instead making it a code requisite for Optional Method of Development in CR and GSLS Overlay Zone. To provide flexibility and stimulate demand equally for both programs, Staff recommends that projects be allowed to purchase either BLTs or an equivalent dollar amount of TDRs. Under this setup, all CR and GSLS zoned properties would qualify

as receiving areas for the purchase of BLTs and TDRs. Projects may purchase one or a combination of BLTs and TDRs as described below:

IN THE CR AND GSLS OVERLAY ZONE:

- a. An applicant must purchase BLT easements, or make payments to the Agricultural Land Preservation Fund (ALPF), in an amount equal to 7.5 percent of the incentive density floor area under the following parameters:
 - i. One BLT must be purchased, or equivalent payment made for every 31,500 square feet of gross floor area comprising the 7.5 percent incentive density floor area.
 - ii. A private BLT easement must be purchased in whole units.
 - iii. BLT payments must be made to the ALPF, based on the amount established by Executive Regulations under Chapter 2B; if a fraction of a BLT easement is needed, a payment based on the gross square footage of incentive density must be made for at least the fraction of the BLT easement.
- b. Alternatively, applicants may purchase an equivalent dollar amount of TDRs directly from a farmland owner or make payments to the ALPF. The ALPF may purchase TDRs from farmland owners and sell whole TDRs to an applicant at the same cost as the purchase price paid by the ALPF. Partial TDRs must be rounded up to the next whole TDR. TDRs purchased will provide bonus density to the optional method project under the following parameters:
 1. Each TDR purchased qualifies for 4,400 sf of additional bonus density.
 2. TDR bonus density may be used towards any permitted use within the zone applicable to the optional method project.

These recommendations will equally stimulate demand for both preservation programs and simplify the process for applicants to purchase TDRs and receive the additional density bonus which could be used to build more housing or job creating commercial uses near transit. These recommendations have been reviewed by the Office of Agriculture and the Agricultural Preservation Advisory Board has provided Staff with a letter of support for these recommended updates to the policy. (Attachment B)

PROPOSED STRUCTURE OF THE UPDATED PUBLIC BENEFITS MENU

PROPOSED PUBLIC BENEFIT CATEGORIES FOR THE CR AND CRT ZONES

The structure of the new system has been simplified and aligned with the county’s key policy priorities. The existing system has seven categories for public benefits, organized generally under planning themes such as mixed use development, transportation etc. Staff is proposing to consolidate the categories to four topics that better align with the county’s key policy priorities and also represent critical local needs highlighted through master and sector plans:

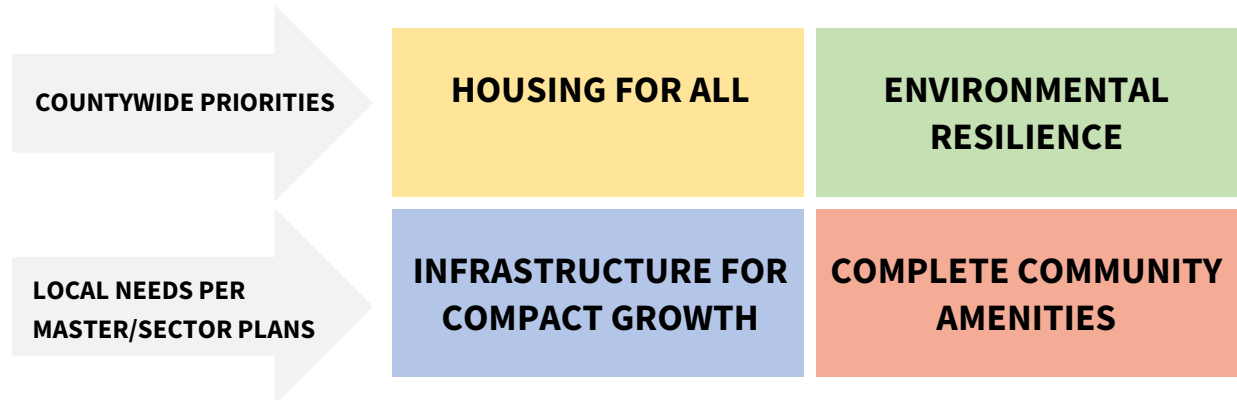


Figure 12 – Proposed four categories that align with Countywide priorities and local needs per Master and Sector Plans

Most importantly, these four categories reflect key elements needed to implement the vision outlined in Thrive Montgomery 2050 and the County’s Climate Action Plan. Thrive calls for focusing future growth along our transit corridors in a compact footprint and ensuring existing and new neighborhoods enjoy the benefits of Complete Communities with access to daily needs within a 15-minute walk or a 5-minute bike ride. The Climate Action Plan has set an ambitious target to eliminate greenhouse gas emissions by 2035. The four proposed categories will strongly align the public benefits with countywide goals and ensure that all new Optional Method development moves the needle on achieving these critical outcomes. Staff also considered the proposed categories and benefits from an equity lens. For example, the provision of affordable housing and larger family sized units in high income areas with amenities and transit will provide access to these resources to a broader swath of the county’s population. Similarly, the delivery of sustainable buildings, parks and green site design features will increase green cover and improve air quality within our Equity Focus Areas, and the mixing of uses in walkable settings will encourage physical activity, improve public health, and build social capital.

PROPOSED PUBLIC BENEFITS FOR THE CR AND CRT ZONES

Each category will continue to have a list of focused public benefits. Currently there are thirty-six public benefits in the menu and Staff is proposing to reduce that to thirteen distinct public benefits under the four main policy categories as follows:

HOUSING FOR ALL	ENVIRONMENTAL RESILIENCE
MPDUs Family sized units Deeper levels of affordability	Energy Green Buildings Sustainable Site Design
INFRASTRUCTURE FOR COMPACT GROWTH	COMPLETE COMMUNITIES
Offsite Improvements Public Facility Street Grid and Trail Extensions	Art and Placemaking Neighborhood Services & Mixed Use Great Public Realm Design Excellence

Figure 13 - Chart showing the distribution of proposed public benefits within the four categories

It must be noted that while Staff is proposing a shorter list of public benefits, each benefit has been outlined in a “Four-Tier Structure”, providing even greater flexibility for applicants to deliver public benefits through a range of options. Payment-in-lieu alternatives have also been included where appropriate for added flexibility. In subsequent planning board working sessions, Staff will explain each public benefit in detail for the Planning Board’s consideration and receive feedback.

CALCULATION OF PUBLIC BENEFITS FOR THE CR AND CRT ZONES

Currently, the system calculates the public benefit points required based on tract size or square footage proposed. While there is a prescriptive range of required points, in practice, projects typically are required to provide the maximum public benefit points (100 points for the CR zone and 50 points for the CRT zone). This requirement does not consider whether a project proposes a low or a high FAR. Essentially, the requirement for public benefits does not scale effectively with the intensity of development and it sometimes results in asking too much of smaller projects and not enough from larger projects.

Staff is proposing to modernize the calculation of public benefits in alignment with regional and national best practices, based on FAR. As a project increases the proposed FAR, it will need to provide greater public benefits commensurate with the scale of development. The delivery of each public benefit will earn the applicant the right to build up to a certain amount of mapped FAR. Under each public benefit, there will be four tiers of participation. The lower tiers are assigned a lower FAR and therefore require a project to deliver a less intense public benefit. Higher tiers unlock greater amounts of FAR but also require more intensive public benefits. Each public benefit includes a Tier 4, referred to as a “Top Tier”. If a Project delivers this level of an extraordinary public benefit, understanding this involves considerable cost, no other public benefits will be required of the Project. This is very similar to the current provision in the CR Guidelines that state if a project delivers 20% MPDUs, no other public benefits are required. This approach has been graphically depicted as follows and in subsequent working sessions, Staff will share details for the various tiers for each public benefit.

PUBLIC BENEFIT CATEGORY	
PUBLIC BENEFIT	
TIER 1 0.25 FAR	Small scale public benefit incorporated into the project.
TIER 2 1.0 FAR	Medium scale public benefit incorporated into the project.
TIER 3 1.5 FAR	Substantial public benefit incorporated into the project.
TIER 4/TOP TIER Up to mapped FAR	An extraordinary public benefit incorporated into the project. No payment in lieu options. NO OTHER PUBLIC BENEFITS REQUIRED

Figure 14 – Table showing structure of proposed tiered evaluation system for each public benefit. As the intensity of the public increases, projects earn the right to build a greater portion of their mapped FAR or additional Excel-To-Build density as permitted by the applicable master or sector plan.

CONCEPTUAL IMPLEMENTATION OF OPTIONAL METHOD FOR CR AND CRT ZONES

Under the proposed system, projects in the CR and CRT zones will be required to provide public benefits when building above the standard method threshold of 0.5 FAR. The amount of public benefits required will depend upon how much of the mapped FAR beyond 0.5 FAR a project is seeking to be approved by

the Planning Board. If the applicable sector plan offers additional Excel-To-Build Density, a project may request additional FAR, once the mapped FAR has been fully utilized. Public benefits must be provided for the Excel-To-Build density as well. Essentially, projects will need to provide public benefits to earn the right to build beyond the 0.5 Standard Method FAR.

Staff has proposed one exception to this requirement to account for small parcels in downtown locations which may have a very high mapped FAR, given the combination of their proximity to transit, small parcel size, and a tall, mapped height. For example, several parcels in downtown Bethesda, Silver Spring, and Wheaton have a mapped FAR in the 5.0-8.0 range and are only 5,000-40,000 square feet in size. For such parcels to utilize the Optional Method of development and fully utilize the mapped FAR, requiring public benefits beyond 0.5 FAR may impact feasibility. Staff is therefore recommending that for properties with a mapped FAR of greater than 4.0 and a site size of less than 1-acre, public benefits must be provided to earn the right to build above 2.0 FAR, instead of 0.5 FAR. All other requirements for the Optional Method of development would still be effective beyond the 0.5 FAR threshold.

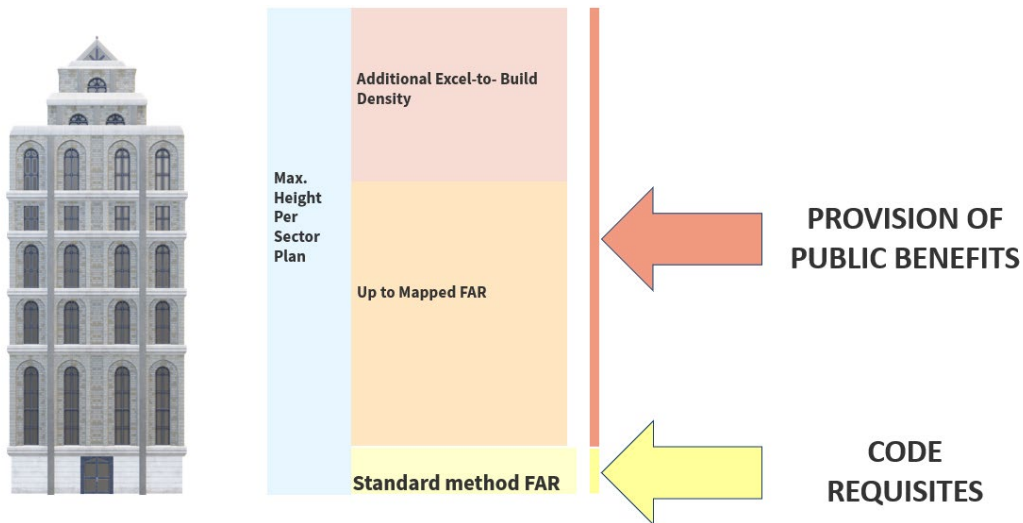


Figure 15 - Diagram showing how Optional Method projects will be required to provide public benefits to earn the right to build beyond the 0.5 Standard Method FAR.

Projects will have the option to choose from the menu of public benefits. However, a project must provide at least one public benefit from Housing For All or Environmental Resilience Categories and provide at least one public benefit from Infrastructure for Compact Growth or Complete Community Amenities Categories. This is an important requirement to ensure that every project delivers benefits that align with our countywide priorities, but also provides local infrastructure and amenities identified through the applicable master or sector plan. However, if a project provides an extraordinary, Tier 4 public benefit in any category, it will be exempt from providing any other public benefit.

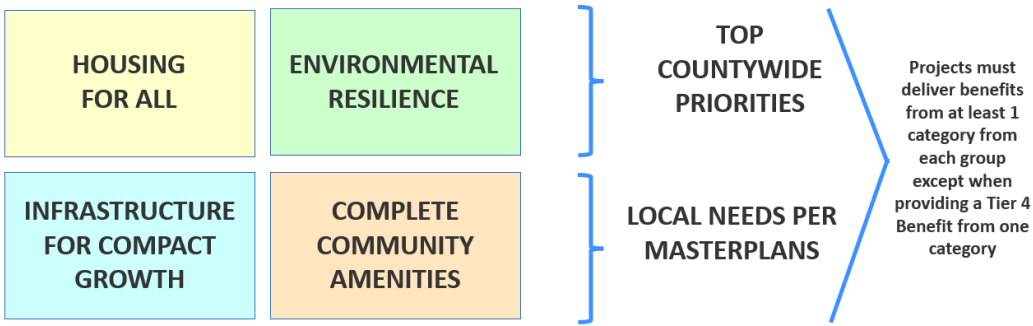


Figure 16 – Four categories showing how both Countywide priorities and Sector Plan needs will be delivered.

For each of the 13 benefits, there will be four tiers of participation available and providing each tier will earn the right to build a certain amount of FAR. Projects will be able to propose various combinations of benefits at different tiers to earn the right to build up to the total FAR being requested for approval. This approach will provide flexibility and maintain a sense of proportionality between the incentive density being requested and public benefits being provided.

HOUSING FOR ALL	ENVIRONMENTAL RESILIENCE
MPDUs Family sized units Deeper levels of affordability	Energy Green Buildings Sustainable Site Design
INFRASTRUCTURE FOR COMPACT GROWTH	COMPLETE COMMUNITIES
Offsite Improvements Public Facility Street Grid and Trail Extensions	Art and Placemaking Neighborhood Services & Mixed Use Great Public Realm Design Excellence

Figure 17 - Chart showing the distribution of proposed public benefits within the four categories.

PROJECT EXAMPLE:

Let’s assume a project is zoned CR 3.0 C3.0 R3.0 H250 and wants to build up to its maximum mapped FAR of 3.0. The Project will be required to provide public benefits that earn the right to build at least 2.5 FAR (3 FAR minus 0.5 (standard method)). This could be achieved in a variety of scenarios:

Scenario 1: A “Mixed Bag Approach” would allow the project to provide several lower tier benefits from all four categories. A project must provide at least one public benefit from Housing For All or Environmental Resilience Categories and provide at least one public benefit from Infrastructure for Compact Growth or Complete Community Amenities Categories.

Scenario 2: A “Limited Categories Approach” would allow the project to perhaps focus on only two categories and provide substantial public benefits that fall in the Tier2-Tier3 range. A project must provide at least one public benefit from Housing For All or Environmental Resilience Categories and provide at least one public benefit from Infrastructure for Compact Growth or Complete Community Amenities Categories.

Scenario 3: A “Top Tier Approach” would allow the project to provide an extraordinary Tier 4 public benefit from just one category and be exempt from providing any other benefits.

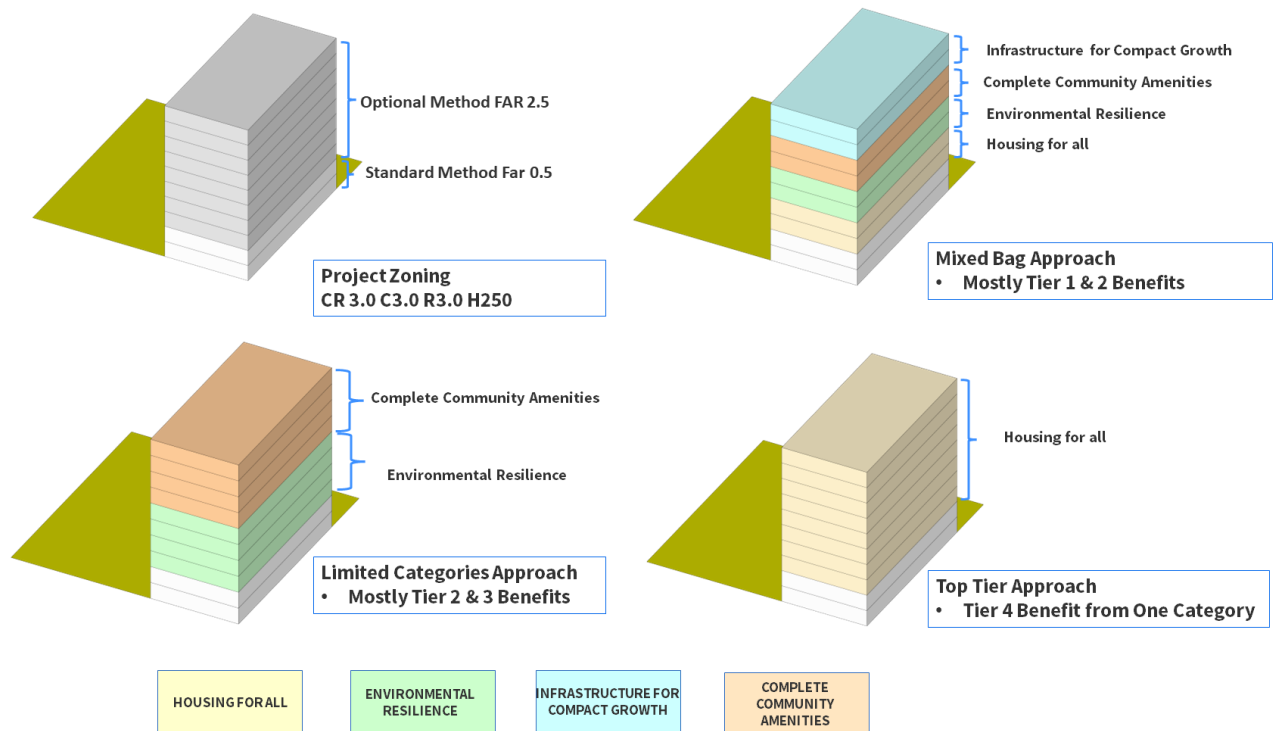


Figure 17 - Diagram showing how Optional Method projects could provide public benefits in a variety of ways to earn the right to build beyond the 0.5 Standard Method FAR.

Each of these would be an acceptable approach for providing public benefits, based on the menu as finalized by the applicable master or sector plan. These potential scenarios are graphically depicted on the previous page. Staff worked with our real estate consultant to conduct feasibility analysis for the various combinations of public benefits that could be provided per the recommendations and will share more details with the planning board in subsequent working sessions.

ENGAGEMENT AND COORDINATION

Equitable and impactful community engagement is central to Montgomery Planning's work. Accordingly, the planning team used a multi-pronged approach to engage stakeholders and community members. In addition to the data analysis, the project team relied upon 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, and shared 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 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. 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.
- Virtual open houses invited the public into the planning process and provided opportunities to question, comment, and share ideas about the current policy and potential updates.
- Interagency coordination with partners at the Department of Permitting Services, Department of Transportation, Department of Housing and Community Affairs, Department of Environmental Protection, Office of Agriculture, Montgomery Parks, and the Arts and Humanities Council helped refine specific recommendations to make them better aligned with other county laws and ensure the proposed public benefits are easily implementable.

NEXT STEPS

At the next working session, Staff will present the proposed public benefits in greater detail and provide an overview of the various prototypes we developed to test the delivery and financial feasibility of utilizing the proposed benefits within Optional Method developments in various settings across the county.