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From: NAIOP - Maryland

Date: September 5, 2024

Subject: Proposed MXD Revisions

On behalf of NAIOP, Maryland, we are grateful for the opportunity to preview a draft of the proposed revisions to the existing Mixed-use Zone Districts (the “Draft MXD Bill”) in advance of introduction to the Council. We have reviewed the proposed draft bill with our members, including a professional planner and two land use attorneys, and respectfully request the opportunity to meet with you prior to introduction to discuss our feedback and address several issues of primary concern. In particular, the following issues may have significant unintentional and unpredictable consequences for the MXD zones:

1. The need for MXD zone purpose sections to differentiate the character of development intended for each MXD zone and to inform potential locations for those zones;
2. The need for design and bulk regulations calibrated to the purpose and location of each MXD zone; and
3. Use table changes, which disallow uses in zones where those uses are currently permitted.
4. The need for changes in adequacy of public facility requirements, which are inconsistent with the goals and provisions of the new MXD zones;
5. Grandfathering language changes to ensure that existing mixed-use developments are undisturbed, while encouraging adoption of the new standards.

Comments on design and bulk regulations below have been provided by Cecily Bedwell of Design Collective, a professional certified planner, to help ensure appropriate outcomes and implementation.¹ On these design and bulk related concerns, we acknowledge upfront, in transitioning from a zoning approach which is use-based (or “Euclidean”), to an approach which focuses primarily on form, as in the Draft MXD Bill, presents challenges. The proposed draft MXD Bill language seems to take a hybrid approach, neither moving fully away from a use-based approach nor fully embracing a form-based approach.

¹ The comments provided herein are a best attempt to help avoid conflicts, unintended consequences, or unforeseen constraints, based on 28+ years of MXD planning experience. Should you have any questions on the comments, you are welcome to contact Cecily Bedwell directly at cbedwell@designcollective.com (Comments provided are independent of Design Collective, the firm.)

With such a hybrid approach, it is understandable that some conflicts may occur. The below comments recognize the good intent to create vibrant mixed-use places in the proposed Draft MXD Bill but highlight some unintended consequences, created by requirement conflicts, which may unduly limit design and/or desired uses, and thereby make redevelopment infeasible.

Anne Arundel County is not alone in facing this challenge and, in fact, Plan2040 identifies important guiding principles for doing so. Policy BE7.1 of Plan2040 is to “provide clear regulatory standards with flexibility to support high-quality design and incentives scaled to promote mixed-use development and redevelopment...” Our comments here reflect this need for scale and promotion of mixed-use development, drawing from the challenges and successes of surrounding jurisdictions and the needs of our members operating facilities within existing MXD zones.

Purposes for Individual Zones

The Draft MXD Bill is missing an overall statement of intent to note important planning principles, such as transitioning from more rural (Village and Suburban) to more Urban zones, and from surrounding context to areas of new or redevelopment. Typically, we would see a change in requirements (beyond just permitted uses) as one moves from a more rural to urban, or from primary pedestrian streets to secondary or tertiary streets. The requirements of proposed § 17-7-604 apply to all locations, and there are some requirements that should be carefully calibrated to varying locations, conditions, uses, etc. We encourage the development of purpose statements for each individual zone, as well as guidance on appropriate mapping criteria for future application of mixed-use zones.

Other Codes, well known in Planning and Zoning practice, offer instructive uses of similar “purpose statements.” For example, the intent of this draft bill, to establish mixed-use zones from Village to Urban (more rural to more urban) is akin to the intent embodied in the “SmartCode” (see <https://transect.org/codes.html>) and many other “transect-based” zoning codes. The SmartCode highlights the principle of changing the character of development from a more rural to more urban character, stating,

“One of the principles of Transect-based planning is that certain forms and elements belong in certain environments. For example, an apartment building belongs in a more urban setting, a ranch house in a more rural setting. Some types of thoroughfares are urban in character, and some are rural. A deep suburban setback destroys the spatial enclosure of an urban street; it is out of context.”

Early in the SmartCode, brief descriptions of each Transect Zone and its purpose are provided (see inset text below - to note, generally, the SmartCode’s T-3 to T-5 zones correlate to this bill’s Village-Urban zones.).

SmartCode Transect Zones example:

“The Transect, as a framework, identifies a range of habitats [or zoning categories] from the most natural to the most urban...

- T-1 Natural Zone consists of lands approximating or reverting to a wilderness condition, including lands unsuitable for settlement due to topography, hydrology or vegetation.
- T-2 Rural Zone consists of sparsely settled lands in open or cultivated state. These include woodland, agricultural land, grassland, and irrigable desert. Typical buildings are farmhouses, agricultural buildings, cabins, and villas.
- T-3 Sub-Urban Zone consists of low-density residential areas, adjacent to higher zones that some mixed-use. Home occupations and outbuildings are allowed. Planting is naturalistic and setbacks are relatively deep. Blocks may be large and the roads irregular to accommodate natural conditions.
- T-4 General Urban Zone consists of a mixed-use but primarily residential urban fabric. It may have a wide range of building types: single, sideyard, and rowhouses. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized blocks.
- T-5 Urban Center Zone consists of higher density mixed-use buildings that accommodate retail, offices, rowhouses and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting and buildings set close to the sidewalks.
- T-6 Urban Core Zone consists of the highest density and height, with the greatest variety of uses, and civic buildings of regional importance. It may have larger blocks; streets have steady street tree planting and buildings set close to the wide sidewalks. Typically, only large towns and cities have an Urban Core Zone.”

Including similar purpose statements (or defining characteristics) for each proposed zone of this bill would help to clarify the intent and the requirements.

Bulk Regulations (§ 18-8-303)

Successful mixed-use developments are predicated on a significant level of residential density. Vibrant commercial and “third places” are dependent on consistent foot traffic, which in turn means residential units or “rooftops.” The densities proposed in the Draft MXD Bill are not consistent with the development of integrated, mixed-use developments in our region.

Similarly, open area, recreation area, and public activity areas must allow for site design that can accomplish the needed densities and structure sizes. Those percentages should be calibrated for the different MXD zones. As drafted, the open area and recreation area requirements appear to increase or remain the same throughout the draft MXD zones, which would be prohibitive of mixed-used designs, as illustrated below. Finally, setbacks and maximum site areas should also be calibrated by proposed zones to allow for compact and incremental development and redevelopment.

- Consistent with the removal of maximum residential density in Parole Town Center, MXD-S and MXD-U, the most urban of the MXD zones, should have no maximum net density. The densities listed are generally very low for MXD. 7 du/ac is a Townhouse density, and 44 du/ac is roughly a 3-story walk-up apartment building density, which is extremely low for the most urban MXD zone. While a Townhouse density may be the intent for a village-scaled MXD, the remaining densities should be increased by double or triple. See “**Figure 1**” density illustrations, below - note parking types.
- For all but very large sites, where the allowed density can be concentrated into one or more buildings (leaving the remaining site with no or very low density residential), the proposed densities are too low, not market feasible, and do not correlate to the proposed building heights (which are reasonable, from roughly 3 to 14 stories). Reconsider aligning density to the desired MXD development. Also consider that Prince George’s County, by passage of CB-015-2024, just increased densities to 20 min.-150 max. du/ac in the Local Transit-Oriented Core (LTO-c) zone and to 10 min.-90 max. du/ac in the Neighborhood Activity Center (NAC) zone.
- As noted in the OPZ Summary Memo, 168’ equates to roughly 14 stories. Whereas, even to achieve a 5- to 6-story mixed-use multi-family wrap apartment building, 80 to 120+ du/ac is required. Take for example the Metropolitan, a mixed-use building in Downtown Columbia MD, a recent Design Collective project – see “**Figure 2**” images below. The Metropolitan is a 5- to 6-story mixed-use multi-family wrap apartment building, with approximately 380 du and 14,000 sf of Retail space. As can be seen in the images, a 2-bay structured parking garage is included and wrapped by units, along with courtyards on the opposite side and a linear open space (approx. 0.75 ac) with sculptures, play elements, rain gardens, seating etc. The site is approx. 4.2 acres², equating to ~90 du/ac. If the goal is to achieve viable and vibrant mixed-use projects, even to a mid-rise height (such as in the Metropolitan example), the densities must be increased and based on a gross site area. Otherwise, projects will either be largely surface-parked and/or limited to largely 3-story buildings.

FIGURE 1:



² While it is understood that the minimum site acreage in the proposed draft is 5 and 10 acres, the following example can be interpolated relative to the density.



40 – 50 DU/AC
SURFACE + GARAGE



60 – 80 DU/AC
GARAGE PARKING

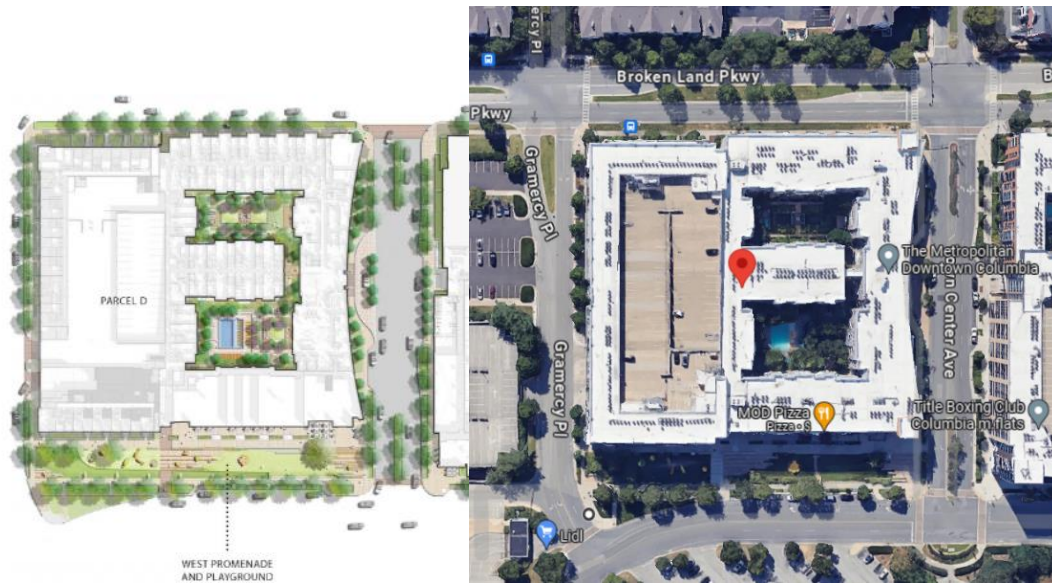


80 – 100 DU/AC
GARAGE PARKING



100 – 120 DU/AC
GARAGE PARKING

FIGURE 2:





- Generally, residential density should be based on gross site area, not net. This is consistent with the County's approach under the Housing Attainability Act (the "HHA"), Bill 72-24, introduced at the Council meeting on September 3, 2024.
- As drafted, the proposed minimum open area percentages would seem reversed from best practice for MXD zoning. We would expect and recommend higher percentages of Open Space in Village and Suburban areas and lower percentages in Urban areas. In light of the HHA requirement for 20% open area, generally, we would recommend 15% for MXD-V and MXD-G, while MXD-N, MXD-S, and MXD-U should be 10%. Recreational area requirements are proposed as 500 SF per residential unit. That requirement should be changed to mirror the proposal of the HHA, where recreational area is set at approximately half the percentage of the required open area requirement. As drafted, the 500 SF per unit requirement would demand 190,000 SF of Recreation area or 4.3 acres in the case of the 380-unit Metropolitan example (described immediately above). That requirement would be larger than the Metropolitan's entire site of 4.2 acres, making any such project impossible! (And, recall that the Metropolitan is mid-rise, not high-rise, and has structured parking.)
- For similar reasons as relate to open area and recreational area requirements, minimum public activity area of useable nonresidential gross floor area should be calibrated across the proposed MXD zones, rather than set at a uniform 10%.
- As drafted, the maximum front setback is 20' across all MXD zones or 45' if located on a principal arterial road. As with other bulk regulations described here, those setbacks should be calibrated by MXD zone with a more urban form prescribed for the MXD-S and MXD-U zones.
- Finally, minimum site areas should not increase for MXD districts which are more urban in character. It is precisely in development of an urban character where infill sites are most important and desirable for new development or redevelopment.

Design Standards (§ 17-7-604)

- Subsection 3 requires walkways designed to accommodate bicycles “as well as” pedestrians; this is not best practice if intended literally for each walkway or right-of-way (“ROW”). Generally, pedestrian zones/circulation routes should be separated from bicycle zones/circulation routes, unless specifically designed as a shared-use facility such as a Shared-Use Path (SUP) where there is room to accommodate both types of users. Not all ROWs can or should accommodate SUP design. Where a given ROW is not designed as an SUP, cyclists should not ride on pedestrian sidewalks, as this creates conflicts and potential for crashes. In pedestrian zones, cyclists should walk their bikes. Additionally, language relating to appropriate grade separations and crossings should be augmented with “where feasible” or “where practicable on site.” “Grade differences” should be deleted as it is not a design feature but a design constraint.
- We support the inclusion of indoor activity areas in required public activity areas, however, “public activity area” is defined as “a plaza, square, village green, pocket park, courtyard, or similar area of a noncommercial nature that serves as a place for the public to gather...” We believe this definition needs to be augmented after “noncommercial nature” to add “indoors or outdoors” to avoid confusion and provide for consistent application to indoor spaces as well as outdoor areas.
- Pedestrian paths and sidewalks should be allowed in open areas. There is already a limit of 10% impervious surfaces to mitigate excess paving, and one must use a path of some kind to reach an outdoor recreation or activity space. We support limiting vehicular circulation in these areas except for emergency access.
- Subsection 6 should be revised to permit, but not require, individual residential walk-up/stoop entries or similar shop entries. These should be encouraged to help activate the streetscape, although they are not appropriate in every setting. A more flexible approach will allow development to be appropriately tailored to the setting, use proposed, and proximity to community amenities. We note that “building entrance” is not a defined term in the Code, and practically may include all of the above, plus service doors, garage doors, residential unit doors, etc.
- Subsection 7 requires that a minimum of 60% of the street-facing façade between two feet and eight feet in height be comprised of clear windows that allow views of indoor space or product display areas. It is not clear whether this is for commercial spaces only, or also applies to residential lobby/amenity spaces. This percentage of fenestration does not work well for residential units nor light industrial, flex/office, or even all commercial uses. Where applied, fenestration requirements should be set appropriately to their context. Consider calibrating this requirement to certain streets or uses; it should not be applied to all streets, and all uses in all MXD zones.
- Subsection 8 requires that off-street parking shall be located to the rear of the principal building to the extent practical, calibrated to location, condition, use, etc. (i.e., it should not be applied along all streets, in all areas/zones, for all uses). For example, in MXD-U, the aim should be no new surface parking lots along public streets (but screened parking garages may be OK); whereas a single bay of surface parking fronting a street may be needed and even desired in MXD-N or MXD-S to allow Retail to thrive. Location, condition, and use are all important.

- Subsection 10 should be reworded: “Structured Parking facades that are highly visible from [primary]³ public streets and open spaces shall be designed to be compatible with the architectural character of adjacent buildings and shall be screened with walls, metal or vegetated screens, and/or landscaping.” At a minimum, “ground-level” should be inserted before “street frontage” in the last sentence.

Parking Regulations

- Parking program requirements of 18-16-302 should not require a discretionary approval; mixed-use projects are currently eligible to submit a parking program, which does not require a reduction in parking, shared parking agreement, or needs study.

Use Tables

The Draft MXD Bill makes a number of changes to the existing use tables but does not provide a redline version. We believe the approach of simply replacing the use tables currently existing in the Code with a new table, without showing the individual changes in allowed uses or changes to the definition of certain uses will make implementation very difficult, particularly for existing mixed-use projects. Moreover, the development community and the public at large may not be aware of the breadth of changes proposed. To that end, for discussion purposes, we have included as an exhibit to this memorandum a spreadsheet showing a redline of the changes proposed. We believe that for ease in implementation, at a minimum, the Legislative Summary prepared at the time of introduction of the bill should include a similar redlined table of uses. Setting that issue aside, however, there are substantive changes to the use table that we believe require further collaboration. Specifically:

- The proposed draft attempts to consolidate specialty retail uses into a single category, with a description in the use table of what uses qualify as “retail specialty stores or shops.” We would encourage broadening this category to include other retail uses.
- For ease in implementation and consistency across zones where retail uses are permitted, we believe a definition of “Retail store” should be added to § 18-1-101. Regardless of the location of this definition, it should include a list of examples that are not limiting. For example:

“Retail Specialty Store or Shop” means a store or shop for retail sales of items **and includes, but is not limited to**, stores for retail sale of antiques, art supplies, books, candies, cards, clocks, clothing, electronics, fabrics, flowers, gifts, housewares, jewelry, luggage, musical instruments, office supplies, pets, photographic supplies, sewing machines, sporting goods, stamps and coins, stationary, tobacco, toys, video tapes, wallpapers and paints, window coverings, and works of art.”

- Like the consolidation of uses under the umbrella of retail sales, it may also make sense to add an inclusive, but not limiting, definition of service retail uses, to include beauty salons, nail salons, shoe repair, and the like.

³ This term is not used in Anne Arundel County but could be helpful in differentiating between streets that are primary, public-facing or place-making, as opposed to secondary or service roads within a development.

- Optical goods and Veterinary Hospital should be restored to office uses. Bill 11-23 reclassified these uses within the MXD zones. Veterinary Clinic/Animal hospitals are already treated as office uses for purposes of development impact fees and, by definition, are limited to only such retail use “to the extent necessary to support the practice of veterinary medicine.” See § 18-8-101(9). These veterinary clinic/ animal hospital uses also function more like medical offices, which are classified as “office uses” for purposes of MXD zones categorization. “Optical Goods” in the Draft MXD Bill appears to refer to “Optician and optometrical establishment” in the current Code; these uses are also treated as office for purposes of computing development impact fees because they function more like medical offices, which are classified as office for purposes of MXD zones categorization. The Council amended Article 18 in Bill 11-23 to reflect this treatment, and the Draft MXD Bill should retain this categorization.
- W1 uses currently available in the MXD zones by virtue of § 18-8-302(c) should remain available in mixed-use developments. The following uses allowed in MXD under this provision that are eliminated under the Draft MXD Bill include automobile and truck rental establishments, grocery stores with no more than 25,000 square feet, wholesale bakeries, cabinetry and special lumber mill working and sales, data storage centers, fabrication and assembly uses, laboratories, manufacturing, printing and publishing establishments, rental establishments, small cell systems, communications systems sales and services (manufacturing and wholesale), conference centers, and sign shops in MXD-N.
- Additionally, the Draft MXD Bill undoes the reclassification as “industrial” certain uses allowed in MXD zones that are currently available in MXD because the land is located in an Airport Noise Zone, remediated for environmental requirements under federal or State law, or is reclaimed under an approved final reclamation plan under State or federal law (or is adjacent thereto). Bill 11-23 reclassified these uses from retail to industrial to reflect that these uses are only allowed in MXD by virtue of their industrial nature. These uses should remain in the industrial category. Examples include automobile and truck parts, supply stores, and tire stores; automobile gasoline stations in the MXD-N zones. For a full list of these reclassified uses, please see attached redlined use table. Reclassification of these uses into the retail category has a significant impact on the development impact fees charged for these uses, which have only been allowed because they are industrial in nature and located on certain environmentally-impacted, historically industrial properties.
- Consistency in permitted uses across zones is important and difficult to implement without, as noted above, a stated purpose and differentiation across the MXD zones.

Practical Impacts on the APF Approval Process and Grandfathered Projects

We note that in the legislative summary provided, OPZ states that grandfathering language has been included “such that any existing mixed-use properties subject to an active or pending development or permit application may continue through the development process under the current code requirements. Conversely, those projects may choose to withdraw their applications and submit new applications that would be governed by the new mixed-use code requirements,” yet many of the existing MXD projects listed in the legislative summary are complete or nearly complete, and are subject to draw-down charts governing the mix of uses that were created as a result of the development’s adequacy of public facilities (“APF”) approval, not the combination of uses required by the Zoning Code.

Removing the percentage/combination of uses requirement in Article 18 is a critical step forward in creating more successful mixed-use development but does not address limitations imposed by APF requirements. Adequacy of public facilities is still determined based on a narrow analysis involving a strict combination of uses proposed at the outset of the development process. Successful mixed-use development is dependent on the ability to make changes to tenancies over time without having to submit to the onerous Site Development Plan process. We feel strongly that the determination of APF for mixed-use projects should be made based on traffic demand and water/sewer usage factors that incorporate all permitted uses in an MXD zone and hope to collaborate with OPZ to develop a system that works for both the developer and the regulator.

Existing mixed-use developments are required to comply with the strict percentage combination of uses in § 18-8-302. We support the removal of these percentages in Article 18, however, it is not simply the combination of uses allowed by the zoning code that dictates the makeup of a mixed-use development; it is the adequacy of public facilities review and “drawdown chart” approving the mix of uses based on certain assumptions about the traffic generation and water and sewer demand of the development. We welcome the opportunity to discuss with OPZ the adoption of mixed-use development factors for retail-, industrial-, office-, and residential-oriented mixed-use that will simplify the APF approval process and eliminate the need for Site Development review when a change in tenant makeup is proposed. As tenant permits are exempt from SDP, this should not be an issue for existing buildings, but for mixed-use developments still in the process of construction or in early phases of development, changes in use (or reclassification of uses from industrial to retail, as has been proposed) can impact the APF approval and require SDP.

Finally, the grandfathering language proposed would exempt an existing development from the design guidelines proposed in the Draft MXD Bill but require the continuation of either or both these percentage combination of uses and the “drawdown chart” approved in the final development plan. We believe that additional work is necessary to address existing mixed-use developments, to allow the preservation of existing APF approvals or a transition of existing APF approvals to a “mixed-use factor,” and to allow existing developments to transition to new MXD regulations without losing currently-approved uses or suffering other practical impacts, such as the potential increased development fees associated with mercantile/retail uses. We ask that the Development Division be included in future conversations regarding this proposal and specifically the grandfathering provisions to allow for a discussion of real-world examples of how the Draft MXD Bill would impact existing developments.

Next Steps

Thank you for considering these comments. We would appreciate a meeting with you at your earliest convenience to discuss this feedback and collaborate on potential changes prior to introduction of the bill. Please let us know when you are available to do so.