

Mixed-Use Zoning Tools in Prince George's County – A Discussion Paper

Prince George's County Planning Department

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Executive Summary

During more than four years of official work on the new Zoning Ordinance and Subdivision Regulations, and for almost a decade before, the utility and effectiveness of the County's current mixed-use zoning tools have been the topic of much discussion. Recent County Council and building industry comments on the proposed regulations question whether some of these zoning tools should continue to be used. This discussion paper builds on and consolidates prior Planning Department staff responses. The role of the Planning Department is to provide its best professional planning judgment to decision makers (the County Council and the Planning Board) in order to assist them in making informed decisions. This discussion paper represents staff's final recommendations regarding the current array of mixed-use zones.

Background

In early evaluations of the current Zoning Ordinance, staff identified 30 separate zoning tools (Mixed-Use, Comprehensive Design, and design-oriented Overlay zones) that the County has enacted over many decades to facilitate mixed-use development and implement policy plans. The County's current mixed-use floating and overlay zones—the Mixed Use-Transportation Oriented (M-X-T), Mixed Use-Infill (M-U-I), Mixed Use Community (M-X-C), Mixed-Use Town Center (M-U-TC), Development District Overlay (DDO), and Transit District Overlay (TDO)—constitute much of the County's efforts over the last several decades to create zoning tools that achieve key economic development and placemaking goals.

Staff have noted that there have been few significant comments or desires regarding the Comprehensive Design Zones (CDZ) following clarification by staff regarding expanded proposed grandfathering, transition provisions, and the addition of a new Legacy Comprehensive Design Zone (LCD Zone) in the upcoming Comprehensive Review Draft that will allow the Council to easily rezone current CDZ properties into a new base zone. Additionally, the M-X-C zone is used in a single location in the County—the Fairwood community in Bowie. Therefore, this discussion paper will focus on the M-X-T, M-U-I, M-U-TC, DDO, and TDO zones.

While the County has attempted to use 30 different zoning tools over the years, our County Sectional Map Amendments (SMAs), going as far back as 2006, have proven that the County does not have an effective mixed-use zone for implementing policy guidance such as that provided by master plans, sector plans, and the 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035). Both the Bowie and Vicinity SMA and Henson Creek-South Potomac SMA include language to this effect. Both master plans recommend mixed-use development while the concurrent SMAs do not apply mixed-use zones on those recommended properties because no effective zones existed at the time. Subsequent sector plans for the Takoma/Langley Crossroads and Central Branch Avenue areas do not include concurrent (or subsequent) SMAs because the plans recognize that the zoning tools needed for implementation do not exist.

Some of the key goals of the Zoning Ordinance and Subdivision Regulations rewrite have been to provide a set of effective zones that will yield high-quality, economically resilient mixed-use, transit-oriented development; implement County policy goals; encourage developer investment in the County; improve the economic development viability of older areas of the County; and streamline procedures that may inhibit mixed-use development. The zoning tools proposed by Clarion Associates—consisting of more flexible Euclidean zones such as the proposed Residential, Multifamily (RMF-) and Commercial, General and Office (CGO) zones, new Transit-Oriented/Activity Center base and Planned Development zones, and the Mixed-Use Planned Development (MU-PD) Zone—provide a very effective set of zones that staff believe will finally give Prince George’s County the toolset we need to realize our vision and compete more successfully within the region.

While most stakeholders seem to agree that the proposed zones offer a good starting place and will be beneficial in their final forms (as determined by the County Council when they enact the new Zoning Ordinance), there has been discussion over the last year, intensifying since January 2017, that some of the current zones should be considered in addition to the proposed zones. Staff will touch on each of these zones in turn.

The Design-Oriented Overlay Zones

In addition to policy-oriented overlay zones, such as the Chesapeake Bay Critical Area Overlay Zone or the Aviation Policy Areas Overlay Zone, which are used to achieve specific County policy objectives (environmental preservation and water quality improvement, and protecting the public health, safety, and welfare on lands surrounding general aviation airports, respectively), Prince George’s County includes three design-oriented overlay zones that are intended to improve the design quality of designated locations in the County. One of these, the Architectural Conservation Overlay (ACO) Zone, has not been applied in the County; the one project underway to consider establishing the ACO Zone in Mount Rainier will be superseded by the application of the proposed Mount Rainier Neighborhood Conservation Overlay (NCO) Zone contained in the new Zoning Ordinance. Therefore, the ACO Zone is not recommended to carry forward and is not further discussed in this paper.

The other two design-oriented overlay zones are the Transit District Overlay (TDO) Zone and the Development District Overlay (DDO) Zone. These zones pose tremendous challenges and directly inhibit the ability of the County to successfully compete within the greater Washington, D.C. metropolitan region. Their current legislated framework results in unfortunate, unavoidable situations that will only continue to compound the longer these outdated tools are applied. It is the professional opinion of the Planning Department that these zones are no longer effective, workable, or desirable for Prince George’s County, and that retaining either of these zones in the new Zoning Ordinance would be the single most detrimental action the County Council could take in its deliberations and approval of the new Zoning Ordinance.

For reasons discussed below, staff spends a majority its time and effort on zoning and entitlement interpretation issues directly caused by the DDO and TDO zones. Staff believes more time is spent working through problems pertaining to the DDO and TDO zones than the rest of the Zoning Ordinance and Subdivision Regulations combined. Staff believe that any development successes the County has realized in areas covered by a DDO or TDO have occurred despite of, rather than because of, the overlay zones. The DDO and TDO zones directly contradict the principles of certainty, streamlining, understandability, and consolidation that underpin the entire Zoning Ordinance rewrite.

In the summary of this discussion paper, it is stated that the role of the Planning Department is to provide decision makers with the best professional planning judgment, and staff believes that this has been on display throughout the rewrite and in many conversations with the County Council. The fate of the DDO and TDO zones, specifically their deletion from the Zoning Ordinance, is the single issue, of many hundreds of topics discussed over the last four years, that the Planning Department feels most strongly about.

Why Replace the DDO and TDO?

Replacing these zones is the single most important action that can be taken to ensure countywide consistency of regulatory approaches. Each of the 18 current DDO and TDO areas in the County is unique—too much so, in fact. Some view uniqueness as a positive for these zones, in that they have traditionally catered to the specific context of the community in which they are applied. However, this is only part of the overall equation.

The DDO and TDO are not unique in the sense that they are planning for distinctly different outcomes. The vision, goals, policies, and strategies for these areas are very similar, but each of these 18 regulatory approaches take very different paths, in terms of specific design standards, to get at similar desired outcomes. Each of these 18 regulatory approaches include hundreds of design standards that are only slightly different from the rest, but nearly all of them aim at the same targets, such as high-quality building forms, quality landscaping to enhance streetscapes and create open spaces where people want to gather, and quality pedestrian-scaled lighting and signage. Similar to the M-X-T and M-U-I zones, a successful development project or real estate product in one DDO or TDO may not even be allowed in another because of the subtle variations in the variety of design requirements.

Maintaining 18 unique miniature zoning ordinances, in addition to the 4 represented by the M-U-TC Development Plans and the primary Zoning Ordinance itself, is unsustainable, a significant disincentive to investment in Prince George's County, and creates enormous confusion throughout the entitlement and development processes. This is not just the view of staff; the DDO and TDO zones are often cited by the developer community as a disincentive to investment in Prince George's County due to the rigidity and volume of the development standards compounded by the uncertainty involved with the discretionary review inherent in these tools.

Further, the number of DDO and TDO zones, in conjunction with the County's design-focused floating zones (e.g., the M-X-T and M-U-I) creates a situation where nobody—including staff, decision makers, the public, property owners and other stakeholders, and the real estate industry—can keep up with which regulations are applicable in which area of the County. As one example of this confusion, along and within one mile on either side of the densely populated and fast-growing US 1 corridor between College Park and Mount Rainier, there are four separate DDOs, two separate TDOs, and three different M-U-TC Town Center Development Plans—all with their own, slightly different, standards and procedures. The lack of consistency between the processes, guidelines, and standards for these zones creates confusion and cost for applicants, and potentially drives away interested developers from the very part of the County where our market is strongest and most primed for reinvestment.

Additionally, relationships of the design overlay zones with underlying zones, or even other types of overlay zones, can sometimes get very complicated. For example, the DDO is a design overlay zone with a regulatory focus on design and use controls. The M-U-TC Zone is a design-focused floating zone with

guidelines and standards controlled by the accompanying Town Center Development Plan. There are three locations within the County where these two zones overlap. This creates the necessity to look in multiple locations for the regulations and processes applicable to a property. Similarly, some locations near the Anacostia River are in both a DDO and the Chesapeake Bay Critical Area Overlay Zone, while locations in Forestville and Camp Springs are in both a DDO and the Military Installation Overlay Zone area. Multiple overlays, in addition to the requirements of base zones, cause confusion, delay, and inconsistent interpretations of applicability.

In terms of process, approval for new development within a DDO or TDO zone typically requires, at a minimum, a detailed site plan with an extensive statement of justification addressing each of the several-hundred standards within the overlay zone. If the property is also within an M-X-T zone, a conceptual site plan is often required as well. The site plan requirements within overlay zones are costly, time-consuming, and require planning staff and the Planning Board to make dozens of subjective decisions and interpretations. Due in large part to the perceived need to develop unique standards for each design overlay zone, these standards have often been inconsistently applied or incorrectly interpreted in the past, and precedents are established that erase the original intent of the standard. Additionally, some overlay zones lack precision or comprehensive thought regarding their exemptions from site plan review, which means that in some cases, new single-family homes on single-lot infill sites require a detailed site plan—a substantial burden to the homeowner.

Compounding the problems of multiple design overlay zones, each of which is unique, is the fact that there are real legal issues that often result from the contents and philosophy used to develop each design overlay zone document. Several design overlay zones do not contain tables of uses to clearly establish which uses are permitted or prohibited in the community. This is one of the most fundamental aspects of zoning, and the lack of consistency regarding use tables opens the County to legal challenges.

Design overlay zones are often overly specific regarding their regulatory development standards. In many situations, a significant number of the several-hundred standards that may apply to a specific property simply cannot be met by development that can be supported in the location with the current market situation. This puts the County in the position of approving the application with numerous amendments to the development standard (which degrades community confidence in the process), or denying the application until the market evolves and losing economic development opportunities in the short term. This unenviable choice often falls on the elected and appointed decision makers.

The tendency within the County over the last 20 or so years has eschewed countywide consistency of zoning regulations for unique, one-off comprehensive plans and associated design overlay zones, each unique to a particular place and time. Design practices and philosophies evolve over time, sometimes very rapidly. Formalizing the practices that are current in any given year leads to situations where a design-oriented overlay zone approved in 2004 regulates development for applications in 2016 that strive for a very different outcome fostered by the evolution of real estate development, urban design techniques, and architectural trends and materials. It would take a new comprehensive plan and associated design overlay zone to adapt the standards to the times, a process that typically takes two to three years, whereas a centralized location for design standards, such as in the Zoning Ordinance itself, readily lends itself to rapid change and evolution to accommodate emerging design best practices.

These and other factors combine to form a situation in which fully half of the entitlement applications in a DDO or TDO occur in just three locations: the Central US 1 Corridor in College Park, the Gateway Arts District, and the Prince George's Plaza Metro area. The other 15 DDO and TDO locations constitute the

other half. This is indicative of market desirability playing a major role in what gets built where; when the market conditions are strong, developers are more willing to take a chance with the stringency and uncertainty inherent in the overlay zones. Even the best design overlay zone, with the best intentions of achieving County policy goals and advancing Plan 2035, is at best a coin toss as to whether it will help raise the bar for quality. Market, far more than the contents of the DDO or TDO, plays a much stronger role in what happens on the ground than anything else.

The Alternative

Rather than approach the County on a piecemeal basis and establish what amounts to miniature zoning ordinances in numerous locations, it is better by far to standardize a higher-level of design quality across the County. The proposed zones, combined with new countywide design standards, will fully address the same elements of placemaking that have long been the focus of the DDO and TDO zones, yet do so in the streamlined, consistent manner which is so essential to the success of the new Zoning Ordinance.

DDOs and TDOs emphasize high-quality building forms, quality landscaping to enhance streetscapes, open spaces where people want to gather, and quality pedestrian-scaled lighting and signage. These same elements are central to the new Zoning Ordinance, particularly the proposed Transit-Oriented/Activity Center base zones and planned development zones envisioned to replace the DDO and TDO zones.

Eliminating the DDO and TDO in favor of these new zones provides Prince George's County with the market-competitive zoning techniques it needs to emerge as the place where developers want to be; where residents want to work, shop, and live; and where the tax base is diverse and strong. The County has an opportunity to simultaneously correct its biggest zoning disincentive to investment, ensure higher-quality development, and provide the certainty and streamlining essential to attracting development. The County must take full advantage of this opportunity. The time of the DDO and TDO is past. It is time for the County to move into the 21st Century with new zones, standards, and procedures that will be more understandable, more effective, and more efficient.

There are no staff recommendations as to improving either the DDO or TDO zone should the County Council wish to retain either zone. Staff believe both zones are, effectively, unfixable.

The M-X-T Zone

The most commonly cited current mixed-use zone over the last year is the M-X-T Zone. The developer community appreciates the flexibility of this zone, and members of the County Council have expressed their support for limited use of the M-X-T Zone, but have indicated a desire for "better procedures for the use thereof." These same comments apply to the M-U-I Zone discussed below.

Staff believe neither the M-X-T Zone nor the M-U-I Zone is effective for the reasons outlined in this paper, and to make them effective, to meet the County Council's desire for better procedures, they would need to be amended to such a degree that they would no longer be the M-X-T or M-U-I Zones.

Purpose

Even the very foundation of these zones will need to be rebuilt, starting with the purpose of the zones. As implied by its name, the M-X-T Zone is intended to be oriented to transportation. The first purpose statement for this zone reads:

“To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens.”

There are no additional locational criteria associated with the M-X-T Zone. There is no guidance as to what, exactly, constitutes a major intersection or major transit stop. As a result, the zone can be, and has been, placed in locations that make little sense to overall County goals, undercutting the prioritization of targeted growth locations espoused by Plan 2035. This fosters development based on a zone with unknown standards and outcomes at locations often miles away from any targeted growth center. This is inappropriate and contrary to the County’s policy guidance.

Additionally, the high-density development achievable in the M-X-T Zone, often at locations miles from Metro or Purple Line stations or bus transit hubs, contributes to traffic congestion and other public facilities impacts in areas that may not have the infrastructure to support the density yielded. This issue would be mitigated to a large degree by the proposed Subdivision Regulations, which would subject more development to preliminary plan of subdivision review and the accompanying certificate of adequacy process, but today’s regulations exempt numerous properties from adequacy testing.

There are nine other purpose statements for the M-X-T Zone. Most of them have good intentions; encouraging infill and mixed-use development at appropriate locations, implementing plan guidance, facilitating transit use, and leveraging existing transportation infrastructure. However, in practice, this zone simply does not live up to the high ideals envisioned by the purposes of the zone.

A final point on the purpose statements is that there is something of a dichotomy present; about half of the purpose statements are focused on market response and taking advantage of market forces as they arise, while the other half emphasize targeted growth and transit-oriented, mixed-use development. There is nothing inherently wrong with a market response orientation; in fact, this is one of the goals of the Zoning Rewrite itself. However, this establishes a situation where the zone is used at least as often to rezone a suburban location for an immediate market need as it is to prime an urban, Metro-served location for high-density development. In many ways, the M-X-T Zone is a zone in search of an identity. The purpose statements would have to be reworked to make the zone more effective.

Uses

One of the most substantial problems with the M-X-T Zone in practice is its embedded requirement for all development in the zone (subject to limited exemptions) to provide a mix of two out of three uses (residential, retail or hotel, or office). This required mix of uses has no parameters and is often effectively waived. In some applications, such as the Wynfield Park Apartments in College Park, the leasing office for a residential apartment building effectively serves as the second, nonresidential use (in this example, a 927 square-foot retail use was also proposed, but has never been occupied). This required mix of uses has proven wholly ineffective in achieving the mix of uses for which the zone was created.

To make the M-X-T Zone more effective, this mixed-use requirement must be revisited, or at minimum clarified with the addition of a required percentage or other measurable factor for ensuring mixed-use development is provided with each application. One of the recent proposals for the new Zoning Ordinance in response to County Council comments is a draft approach to provide a minimum mix of uses for each site or to allow such a requirement to be waived upon demonstration of a mix within a set

distance of the site. Such an approach should be incorporated for the M-X-T Zone to be an effective mixed-use zone.

Alternatively, the County Council may wish to eliminate any required mixing of uses for the M-X-T Zone in favor of letting the market decide.

Regulations and Design Standards

Perhaps the biggest reason why the developer community wishes to retain the M-X-T Zone is the flexibility the zone offers. The design regulations, with the notable exception of townhouses and development in the seldom-used Mixed-Use Planned Community use, are very sparse and provide little guidance. While most development in the M-X-T Zone is subject to Zoning Ordinance regulations on parking, signage, and landscaping, most design regulations pertaining to the location, size, and design of the buildings are whatever are approved through the detailed site plan.

This means there is very little consistency and no way to ensure design quality between similar projects. The regulations for townhouse development are confusing and outdated, and often require variances by the applicant. There are some positives to the flexibility offered by the M-X-T Zone. For example, lot regulations are flexible except for townhouses, and parking is more flexible in this zone than in most of the County's zones and are not directly wedded to suburban parking requirements. In general, however, it would be preferable for the public and the developer community to have clearly defined design regulations.

There are two sets of unique design regulations that apply to only two specific uses within the M-X-T Zone that staff do not believe are necessary in a carried-forward version should the County Council decide to retain the zone. These pertain to the Mixed-Use Planned Community and the Regional Urban Community uses.

Additionally, the density regulations associated with the M-X-T Zone are archaic and must be replaced for the zone to be effective. The zone features a relatively low maximum floor area ratio (FAR) cap of 0.4, with an optional method of development to increase the density. This optional method of development is ineffective. A developer can increase the starting maximum FAR of 0.4 to 1.4 simply by adding a residential component of 20 or more dwellings. The maximum FAR, 8.0, is a figure believed to be unreachable. The relatively significant increase for a residential component leads to the M-X-T Zone becoming largely a residential zone.

For the M-X-T Zone to be effective, with better procedures for the use thereof, staff strongly believe that consistent development regulations must be established for the zone and that the practice of allowing the approved site plan to set the (unique) development regulations for each M-X-T project must end. At minimum, appropriate, and consistent, building form and massing, setback, height, parking, and streetscape standards would need to be established. Should the County Council ultimately choose to carry the M-X-T Zone forward, staff recommend all development in this zone be subject to all of the development regulations of proposed Division 6: Development Standards of the new Zoning Ordinance.

Process

Under the current Zoning Ordinance, most development in the M-X-T Zone is subject to the approval of both a Conceptual Site Plan and a Detailed Site Plan. The new Zoning Ordinance would not include Conceptual Site Plans; therefore, the new ordinance would streamline all development in the M-X-T

Zone should the County Council decide to retain the zone. Staff notes this same streamlining applies across the board in the new Zoning Ordinance, so any development proposed within the potential set of zones that would replace current M-X-T properties would follow the same rules as if the property remained in a new/carried-forward M-X-T Zone. There would be no net difference here.

The findings of approval for the M-X-T Zone in the current Zoning Ordinance are not materially different from any other findings for approval for site plans. These findings should be reevaluated if the zone is retained.

More importantly when it comes to process, the proposed grandfathering and transition provisions that will be included in the upcoming Comprehensive Review Draft directly address many of the procedural concerns that have been raised by the developer community. The most common procedural comments pertain to multi-phase projects and projects with a pending application. These projects would be grandfathered and allowed to proceed under the regulations of the current Zoning Ordinance so long as the detailed site plan validity period has not expired.

This expanded set of grandfathering and transition provisions allows properties in the M-X-T Zone to continue with their existing development entitlements, and should resolve most procedural concerns. Should the County Council concur with these new provisions, any need to retain the M-X-T Zone because the site is a multiphase project is eliminated, since the future phases will be permitted to proceed under the initial approvals and Zoning Ordinance.

Better Procedures for the Use of the M-X-T Zone

Should the County Council wish to retain the M-X-T Zone, the changes staff recommend to help make it more effective are:

1. Update the purpose statements.
2. Clarify the locational criteria for where the zone would be permitted, clearly tying permitted density to transportation capacity and the availability of fixed-guideway transit; prohibit use of the zone in lower-density, suburban locations.
3. Provide clear guidance regarding the required mix of uses for development or eliminate any required mix in favor of letting the market decide.
4. Establish consistent development regulations that would provide a baseline level of design quality for all development in the zone. Make the zone subject to the development standards that will apply to all other zones.
5. Eliminate or fully modernize the optional method of development so that any potential amenities that may be provided in exchange for increased density are appropriate to 21st Century, urban development.
6. Revisit and revise, as necessary, the findings of approval for development in the zone.
7. Eliminate the current design regulations associated with development for the Mixed-Use Planned Community and Regional Urban Community uses. These are not uses—if it walks like a zone and quacks like a zone, it should be a zone. Neither use is carried forward to the new Zoning Ordinance.
8. Replace the current design regulations associated with townhouse development.

It is staff's professional opinion that the M-X-T Zone has run its course in Prince George's County and should not be retained. Staff notes the changes we deem necessary to this zone to increase its effectiveness radically reshape the very essence of the zone to the point that perhaps the only thing that

remains is the name. It is our belief the zoning toolset proposed by Clarion Associates, specifically the Transit-Oriented/Activity Center zones, provide the flexible uses, higher densities, and proximity to transit benefits of the M-X-T Zone that are favored by the development community, while also providing clear locational criteria and design standards that provide the public with a better idea of the type of development that is likely to be built.

The M-U-I Zone

As with the M-X-T Zone, the builder community appreciates the flexibility of the M-U-I Zone, and support has been expressed to consider the retention of the M-U-I Zone by members of the County Council and municipalities, such as the City of College Park, that have had positive experiences with the zone.

Planning staff wants to be very clear—the M-U-I Zone has replaced the M-X-T Zone as the closest thing to an effective mixed-use zone in the County. We have tended to recommend the M-U-I Zone to the District Council—despite the overlay zone requirement—over the M-X-T Zone in most recent sectional map amendments as a preferable and more effective zone. This is not to say that planning staff believe M-U-I is effective. It is simply marginally more effective than M-X-T. This also means that the M-U-I Zone overreaches its initial intent to literally be an infill (the “I” in M-U-I) zone.

Much like the M-X-T Zone, the level of change needed for the M-U-I Zone to meet the County Council’s threshold of better procedures for the use thereof and make it more effective to achieve County policies are such that the fundamental nature of the zone would be reshaped.

Purpose

The purposes of the M-U-I Zone are heavily predicated on its originally intended role as an infill development tool—specifically, to facilitate redevelopment of already-developed land or vacant properties located in substantially developed areas. Since 2002, when the zone was created, it has been applied much more broadly due to its flexibility and relative effectiveness compared to the M-X-T Zone. It has moved away from an infill role to more of a transit-oriented development approach, and as such, any potential consideration to retaining the M-U-I Zone should be predicated on comprehensively updating the zone’s purposes to reflect the role it now plays in the County.

Uses

While the M-U-I Zone has numerous procedural challenges associated with it, none have quite the same potential for legal challenge as how the zone deals with permitted uses. The uses in the M-U-I Zone are controlled by extraordinarily confusing text provisions found in Sec. 27-546.18(a). Staff cannot be sure anyone truly understands what uses are permitted in this zone. The failure to incorporate a clear use table for this zone is a substantial issue of interpretation and property rights. Further, requirements to include use tables in the design overlay zones, the fact that nearly all M-U-I property in the County is in a design overlay zone, and the lack of a consistent use table for the M-U-I Zone means we are essentially remaking the zone every time it is used in a Sectional Map Amendment (SMA). The M-U-I use table, distilled from the text direction of Sec. 27-546.18(a), is literally maintained by a single staff person in the Planning Department and provided upon need when the M-U-I Zone is envisioned in a new/ongoing SMA. This is sub-optimal, a major potential source for legal error, and provides little clarity or transparency. Should the County Council wish to retain the M-U-I Zone in a modified form in the new Zoning Ordinance, a clear use table must be created for the zone and codified in the ordinance.

Regulations and Design Standards

Simultaneously one of the biggest benefits and most significant drawbacks of the M-U-I Zone is the issue of density. The current Zoning Ordinance establishes a base density cap of 48 dwelling units per acre unless a mix of uses is provided, at which time the approved site plan sets the density cap. There is no nonresidential density cap.

The key issue regarding the M-U-I Zone's density is that there is no guidance as to the level of mixed-use development that must be provided in an application to increase the residential density cap. This leads to approved development, and operational development in the County today, that provide 1,000 square feet or less of commercial space to yield greatly increased residential density—sometimes in excess of 100 dwelling units per acre. This trade-off is one that fosters abuse of the zone because there are no density controls. Whatever is approved in the detailed site plan becomes the control. This also means no community expectation of density is possible.

As a point of fact, the M-U-I Zone is significantly misclassified in the current Zoning Ordinance's zoning order of intensity. Today, the M-U-I Zone is 2 steps above the Commercial Shopping Center (C-S-C) Zone, right about the middle of the intensity list, and 17 steps below the M-X-T Zone. Only two unused Urban Center and Corridor Node (UC-) zones and the Residential Planned Community (R-P-C) Zone are considered more intense. In reality, the M-U-I Zone has no effective density cap, while the M-X-T Zone is limited to a maximum density of 8.0 FAR. This makes the M-U-I Zone the most intense zone in Prince George's County. This fact would need to be recognized should the zone be retained.

The M-U-I Zone may only be applied concurrent with the application of a DDOZ or TDOZ unless the land is owned by a municipality or the Redevelopment Authority. The inherent complexity of the DDOZ and TDOZ engenders an additional layer of confusion that discourages new investors from working in the County.

Perhaps the sole benefit is that these design overlay zones set a base level of design quality for nearly all M-U-I property in the County (there are a handful of properties owned by the Redevelopment Authority that are zoned M-U-I and located outside of an overlay zone). This is an improvement over the M-X-T Zone. However, the need for the design overlay zone is a substantial drawback. This is a major disincentive to development, and the most significant limitation to the zone from the development review and approval standpoint.

Furthermore, the base level of quality for M-U-I-zoned property consists of different standards for every location/overlay zone. The design elements (e.g., building heights, setbacks, pedestrian connectivity) are essentially the same, but the specific regulations are different, often minimally, such as a 30 percent parking reduction in one place and 25 in another, or a one-story of height difference in the maximum height allowed. No two M-U-I locations are exactly the same, which means a successful real estate product in one location may not even be permitted in another.

As with the M-X-T Zone, staff strongly recommend that any consideration of retaining the M-U-I Zone in some form in the new Zoning Ordinance be directly linked to the understanding that all development in this zone should be subject to the standardized development regulations of the new code.

Process

Contributing to the problems of the M-U-I Zone is the ability for applicants to request amendments from the design overlay zone standards. This ability is associated with the design overlay zones, but since the

M-U-I Zone typically requires a DDOZ or TDOZ, it is more prevalent overall with M-U-I development than with other zones.

Amendment requests are common—very nearly ubiquitous. There have been few developments in the history of the M-U-I Zone that did not seek amendments from the design standards. The ability to amend the design overlay zones in each development application undermines certainty of standards and outcomes. There are no community expectations of quality because the standards can be dramatically revised or rendered inapplicable by applicant request and decision-maker concurrence.

On the positive side, unlike with the M-X-T Zone, the M-U-I Zone typically only requires a detailed site plan; conceptual site plans are not required. This makes the M-U-I Zone more streamlined than the M-X-T Zone in the current code, and the M-U-I Zone would not have a significantly different entitlement process, in most situations, should the zone be adapted into the proposed Zoning Ordinance.

Better Procedures for the Use of the M-U-I Zone

Should the County Council wish to retain the M-U-I Zone, the changes staff recommend to help make it more effective are:

1. Sever the M-U-I Zone from any requirement with, or relationship to, the design overlay zones.
2. Update the purpose statements.
3. Create and codify a use table.
4. Provide clear guidance regarding the required mix of nonresidential uses that would allow development proposals to exceed the base 48 dwelling unit per acre maximum residential density.
5. Establish consistent development regulations that would provide a baseline level of design quality for all development in the zone.
6. Rename the zone, since the term infill is a misnomer for how the zone is, and would be expected to be, used.

It is staff's professional opinion that the M-U-I Zone has also run its course in Prince George's County and should not be retained. As with the M-X-T Zone, staff notes that the changes deemed necessary to this zone to increase its effectiveness radically reshape the very essence of the zone. Similar to the M-X-T Zone, the proposed Transit-Oriented/Activity Center zones are well-positioned to provide the flexibility of the M-U-I Zone through the variety of permitted uses that the developer community desires, while also providing transparent design standards that will increase public certainty of what may be built.

Updating the M-X-T and M-U-I Zones

To reinforce the conclusions reached above, the key point regarding the M-X-T and M-U-I zones must be emphasized: to make them effective, they would both have to be rebuilt from the ground up. The broad and effective set of flexible Euclidean zones that would allow for increased mixed-use development and the Transit-Oriented/Activity Center base zones and planned development zones proposed by Clarion Associates will achieve all the policy outcomes of carried-forward M-X-T and M-U-I zones.

Further, the new zones are already fully embedded in a streamlined and simpler Zoning Ordinance that ensures higher-quality development, establishes consistent standards, eliminates procedural hurdles,

and broadens municipal, resident, and decision-maker participation in the development process, understanding of the zones, and expectations of potential outcomes.

Staff sees no compelling benefits to carrying forward and adapting either of these current zones. Should there be remaining elements of either zone that the County Council may wish to preserve, and which are not already included in the proposed Zoning Ordinance, it would be more effective to identify those elements and adapt them into the new code rather than carry forward ineffective zones.

The M-U-TC Zone

The Mixed-Use Town Center (M-U-TC) Zone is a unique zone that warrants separate discussion. There are four approved M-U-TC development plans in Prince George's County, covering historically commercial portions of the Town of Riverdale Park, the Town of Brentwood, the City of Mount Rainier, and the unincorporated Suitland community (subsequent to its initial approval, the Riverdale Park M-U-TC was expanded to include the previously undeveloped Cafritz Property). There are 393.91 acres of M-U-TC zoned properties accounting for 0.14 percent of the County's total acreage. However, the importance of the M-U-TC Zone to the affected communities is much greater than these numbers suggest. Two of these communities – the Town of Riverdale Park and the City of Mount Rainier – have submitted written position statements requesting the retention of the M-U-TC Zone in the new Zoning Ordinance.

While discussion about the M-U-TC Zone has been somewhat muted in 2017, this zone has been a source of much debate since before the initiation of the Zoning Rewrite. Staff has worked extensively with the Town of Riverdale Park and City of Mount Rainier regarding their respective desires for the M-U-TC Zone, have coordinated with the Town of Brentwood, and have met with the Suitland M-U-TC Design Review Committee.

Staff is unaware of any position taken by the Town of Brentwood on their M-U-TC Zone at this time. In our discussion with the Suitland M-U-TC Design Review Committee, a majority of the committee members present expressed their openness to considering the deletion of the M-U-TC Zone from the Zoning Ordinance and exploring the alternative zoning tools contained in the proposed ordinance.

After the receipt of the City of Mount Rainier's letter, staff engaged in several meetings with representatives of the City Council and the city's Design Review Committee to explore alternatives to the M-U-TC Zone. These meetings culminated in the proposal, which will be contained in the Comprehensive Review Draft of the new Zoning Ordinance, to expand the applicability of the proposed Neighborhood Activity Center (NAC) base and planned development zones to allow their use in Mount Rainier. The members of the City Council and Design Review Committee working with staff on this collaborative effort expressed their willingness to consider the NAC Zone, in combination with the regulations and procedures of the new Zoning Ordinance, as a valid replacement for the Mount Rainier M-U-TC Zone.

To staff's knowledge, the only community that still expressly supports the retention of the M-U-TC Zone in the new Zoning Ordinance, and is not yet on board with any of the several alternatives that would be available in the new zoning toolbox, is the Town of Riverdale Park. Additionally, the three County Council Members who represent communities with a current M-U-TC Design Review Committee and Town Center Development Plan have expressed concerns about the potential deletion of this zone. This

part of the discussion paper draws largely on the rationale offered by Clarion Associates for why the M-U-TC Zone should not continue, and covers the alternatives that are available, such as the NAC Zone.

Replacing the M-U-TC Zone

The M-U-TC Zone is not carried forward in the proposed Zoning Ordinance. It is being replaced by other zoning tools that Clarion Associates and staff believe will more efficiently and effectively achieve the County's desired outcomes for promoting reinvestment and redevelopment of older commercial areas and provide for a mix of uses, complemented by walkable urbanism, to establish safe and vibrant communities. With that said, it is important to recognize several key points about the M-U-TC Zone that informs its relationship to the rewrite and how the zone should be treated moving forward.

First, the M-U-TC Zone has played an important role in achieving development outcomes in the County. Second, there are a number of existing site plans and permits approved under the four current M-U-TC-zoned areas, and they need to be recognized and carried forward as part of the rewrite. Because of these and other reasons, concerns have been raised by members of the public about deleting the M-U-TC Zone from the rewritten Zoning Ordinance.

Clarion Associates recommends deletion of the M-U-TC Zone in favor of a combination of potential replacement zones drawn from traditional base zones, Transit-Oriented/Activity Center base zones, consideration of the MU-PD Planned Development Zone for future development applications, and the potential application of the Neighborhood Conservation Overlay (NCO) Zone. Each of these potential alternatives would be supplemented by strengthened development regulations contained in the zoning ordinance. How will this work in practice?

After drafting the Zoning Ordinance text, the County will prepare a revised zone map to align the zone map with the new zone structure in the ordinance. The ordinance's effective date and approval of the new zone map will occur concurrently. Of relevance to the M-U-TC Zone, the following will be carried out:

- The transitional provisions (Division 27-1: General Provisions) of the Zoning Ordinance text will recognize the validity of all permits and development projects that have been approved under the M-U-TC Zone. These development permits will be honored, and can proceed as approved.
- New base zones (discussed below, depending on the location) and the Neighborhood Conservation Overlay (NCO) Zone will provide options to replace the M-U-TC Zone. In addition, the Transit-Oriented/Activity Center Planned Development zones and the Mixed-Use Planned Development (MU-PD) Zone will be available for landowners/applicants to use in appropriate locations in the future. More specifically:
 - Lands within the designated Regional Transit Districts or Local Centers on the Growth Policy Map of the Plan Prince George's 2035 Approved General Plan (Plan Prince George's 2035) (the Riverdale Park and Suitland M-U-TC areas) would either be (1) classified in one of the Transit-Oriented/Activity Center base zones (NAC, TAC, LTO, RTO-L, RTO-H), depending on their specific location and the current development context, or (2) could, in very limited instances, be classified in one of the other base zones that is consistent with the desired context of the area, such as the Commercial, General and Office (CGO) Zone or the Residential, Multifamily (RMF-) zones, each of which allow for some mixing of uses by right. Additionally, and depending on the interest of individual

neighborhoods, these areas may be classified under the new Neighborhood Conservation Overlay (NCO) Zone in the future.¹

Landowners/applicants would also have the option to request approval of one of the Transit-Oriented/Activity Center Planned Development zones (NAC-PD, TAC-PD, LTO-PD, and RTO-PD), *after the initial Countywide Map Amendment is approved*, depending on the location of the land. The PD would be reviewed by the Planning Board and approved by the County Council as a PD rezoning. As is discussed in the Annotated Outline of the Evaluation and Recommendations Report (ERR, p. VI-25) and the footnotes to the Transit-Oriented/Activity Center Planned Development zones in the Module 1 draft (pp. 27-3-125 to 27-3-152), the Planned Development zones are designed to simplify regulatory processes and provide more flexibility in exchange for innovative, higher-quality development, open and civic spaces, amenities, and public benefits.²

- Lands in the M-U-TC Zone along the US 1 Corridor and which are not already a designated Regional Transit District or Local Center on the Growth Policy Map of *Plan Prince George's 2035 (the Mount Rainier and Brentwood M-U-TC areas)* would be eligible to be classified in one of the Transit-Oriented/Activity Center base zones (in this part of US 1, the NAC and LTO zones would be available) pursuant to staff direction to Clarion Associates. The entirety of the Innovation Corridor as well as that portion of US 1 south of the Innovation Corridor to the Washington, D.C. line feature a unique combination of existing development characteristics, market dynamics, and ongoing/planned development activity that effectively elevate US 1 to the same status as a Plan 2035-designated center.

Also pursuant to staff direction, landowners/applicants would have the same option to request approval of one of the eligible Transit-Oriented/Activity Center Planned Development zones (NAC-PD and LTO-PD) or the MU-PD Zone in the future. The MU-PD Zone would not be initially placed on the zone map during the Countywide Map Amendment, but could be requested by a landowner/applicant in the future. The MU-PD provides a flexible development option when landowners/developers propose innovative, higher-density, mixed-use development in appropriate locations. It must be requested by the landowner/applicant and then is subject to recommendation by the Planning Board and approval by the County Council.

¹ As is discussed in the Evaluation and Recommendations Report (pp. IV 4-5), the primary purpose of the NCO Zone is to ensure the desired character of a neighborhood is protected. As currently drafted, the NCO Zone can be adopted by the County Council as a new zone after a neighborhood plan is prepared that identifies the development context and desired character for the zone, along with a set of special development standards to ensure they protect character. Usually these standards address such issues as: building height; setbacks; roof pitch; garage location and setbacks; front porches; driveway access; street trees; and landscaping. In most instances only a handful of character-defining features are regulated. Detailed architectural design standards are not included. Once a NCO Zone with its special standards is adopted, development in the zone is subject to standard development approval procedures (since tailored and objective development standards to maintain character are in place). Two initial NCO Zones have been proposed in the Comprehensive Review Draft of the Zoning Ordinance for Greenbelt and Mount Rainier.

² The Planned Development zones are envisioned to be one of the zoning tools that replace all the current floating zones (including the M-U-TC Zone, the Comprehensive Design zones, the Mixed Use – Transportation Oriented (M-X-T) Zone, and the Mixed-Use, Infill (M-U-I) Zone). Planned Development zones are proposed to be established for residential development (R-PD), for the Transit-Oriented/Activity Centers (NAC-PD, TAC-PD, LTO-PD, and RTO-PD), and for two other specific situations (the MU-PD and the IE-PD).

As with Riverdale Park and Suitland, the CGO and RMF- zones could also be applied to replace the Mount Rainier or Brentwood M-U-TC properties should the Council wish to move in this direction.

The Transit-Oriented/Activity Center base zones, which will support walkable, transit-friendly, and mixed-use urbanism, will replace portions of the M-U-TC Zones in a clear and efficient way. Where municipalities and neighborhoods are interested, the NCO Zone could be used to tailor zone regulations to protect desired neighborhood character and redevelopment. In other instances where the development context or Plan 2035 policy recommendations warrant, other base zones such as the Commercial, General and Office (CGO) Zone or the Residential, Multifamily (RMF-) zones might be applied because they are a more appropriate fit than the center base zones.

The proposed MU-PD and Transit-Oriented/Activity Center Planned Development zones, which will also be available in appropriate locations as development options, have both similarities and differences with the M-U-TC Zone.

- Unlike the M-U-TC Zone, they:
 - Require the landowner/applicant initiate the request for the zone and submit a plan for development (called a PD Basic Plan) which is approved as part of the rezoning;³
 - Provide more flexibility in terms of the uses and development standards that can be considered and approved;⁴
 - Allow the applicant to propose maximum densities/intensities, and dimensional standards;
 - Establish minimum density/intensity and floor area ratio (FAR) standards to ensure there is a minimum density/intensity of development to support mixed-use development and walkable urbanism; and
 - Provide the applicant flexibility to modify development standards, if innovative design, high-quality development, and community benefits are demonstrated at appropriate levels.⁵

- Like the M-U-TC Zone, they:
 - Require a plan for development (a PD Basic Plan) as part of the approval of the zone;
 - Have similar design standards and guidelines established for each M-U-TC Zone;
 - Are reviewed by the Planning Board with a recommendation, and decided by the County Council following final review; and

³ The M-U-TC also requires a plan for development -- the Town Center Development Plan. However, it is not proposed by an applicant, but is the result of Planning Department work program projects to develop and apply the M-U-TC Zone to a specific part of the County, usually at the request of a municipality or a County Council member. The Town Center Development Plan is not intended to be site-specific and is not envisioned to be applicable solely to one project. They are supposed to be infill development plans to guide reinvestment of older, substantially developed communities.

⁴ Even though they also include specific standards that ensure the key elements of walkable urbanism are part of the development.

⁵ Standards that are not allowed to be modified include the minimum amount of open space required for each lot, the environmental and noise control standards, and to some degree the neighborhood compatibility requirements which are applied to the perimeter of the zone to ensure compatibility with surrounding development and existing residential neighborhoods.

- They are subject to conditions of approval from the County Council as part of its approval of the zone.

One final difference with what is being proposed in the Zoning Ordinance and Subdivision Regulations Rewrite with respect to the M-U-TC Zone is that the current practice of using a design review committee to review and provide input on many of the development approvals (e.g., Special Permits, Special Exceptions, Detailed Site Plans, and other proposals) in the M-U-TC Zone is not included in any of the new base zones or the proposed planned development zones. Clarion Associates recommend this for several reasons.

First, is that subsequent reviews, after the zone has been established, can be properly handled by the Planning Board or staff, and adding an additional layer of review (as through a design review committee) can significantly dampen landowner/developer interest in developing in the zone because of the time it takes to gain approvals, and the increased uncertainty of the process. Second is that experience teaches that these types of committees can sometimes take on a life of their own, adding additional review standards or procedures⁶ (even though they are not included in the regulations, and which may be different for each application), further complicating development review in these zones.

Instead of continued use of the M-U-TC design review committees, the proposed Zoning Ordinance establishes objective standards about uses and development form in the base zones (in which the community has input through the rewrite process), followed by review of subsequent development approvals and permits by either the Planning Board or staff. This would not preclude municipalities from commenting on proposed development applications.

Other Options

In the areas where the County wants to support infill development and reinvestment, walkable urbanism, and mixed-use development aimed at fostering safe and vibrant communities, Clarion Associates believe the best approach is to develop clear, objective development and form standards (that include the community's input and values), and once those standards are established, create efficient review procedures that provide landowners/developers, and the community and municipalities, reasonably certain outcomes.

Of course, there are options that can be included within this approach that might be relevant to the current M-U-TC Zone. For example, if the County Council wants to provide for an option to use a design review committee as with the current M-U-TC Zone, that could be done; however, Clarion Associates would caution that care be taken not to dampen investor/developer interest by creating too much uncertainty and long review times.

Staff concurs with Clarion's advice on this point, and goes one step further in advocating that, should the County Council retain either the M-U-TC Zone and/or the design review committees, the composition and specific role of the committees be codified in the Zoning Ordinance and their operating procedures, including how meetings should be run, be included in the Applications Manual. Aside from the challenges with design review committees in general noted by Clarion Associates, staff has

⁶ This has certainly been the case with some of the County's M-U-TC design review committees with respect to the site plan review process, which over the last decade has become a much more time consuming and detailed process than what was originally intended.

experienced significant procedural challenges with these committees, in large part because each one is unique in composition and approach. This contributes to delay, confusion, and uncertainty.

If included by the County Council, the role of the design review committee needs to be targeted and its scope in review and advice clearly set out. For example, the design review committee might be advisory in the review of Detailed Major Site Plans for larger projects in some of the Transit-Oriented/Activity Center base zones, or the County Council might be authorized in the new Zoning Ordinance to establish a design review committee for either a Transit-Oriented/Activity Center Planned Development or an MU-PD Zone in areas that are today zoned M-U-TC. However, the design review committee would only be established where it is needed.⁷

Finally, should the Council wish to retain the M-U-TC Zone, the current Special Permit process should be eliminated in favor of the standardized procedures included in the proposed Zoning Ordinance, and the primary amendment process to allow an existing M-U-TC Town Center Development Plan to be expanded and additional property be rezoned to the M-U-TC Zone should be eliminated. These processes are very complicated for developers/property owners, staff, residents, and municipalities to understand and apply, foster confusion, discourage investment, and adding properties to existing M-U-TC Town Center Development Plans without a more comprehensive evaluation of the existing plan and M-U-TC area may result in conflicting language (different applicability statements or very different design standards, for example) and other unintended consequences.

⁷ That way, some flexibility is provided to the elected officials to use a design review committee as part of the review process only where such a committee is needed. Such a provision will also allow the elected officials, where the advisory committee is needed, to tailor their review responsibilities to the specific development issues, as these might be different from place to place.