



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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TECHNICAL STAFF REPORT

*Petition Accepted on March 31, 2015
Planning Board Meeting of June 18, 2015
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-156 – Atapco Howard Square I Business Trust

Request: Zoning Regulation Amendment to amend Section 127.5.E, the Requirements for CAC Development, by revising Section 127.5.E.3.d. to clarify that the potential reduction in the commercial space requirement is determined per residential unit rather than per acre and to correct a referencing error, and by adding a new Section 127.5.E.3.e to establish provisions for a potential further reduction in the commercial space requirement, below the potential reduction allowed by Section 127.5.E.3.d., on a fee-in-lieu basis to a Howard County Economic Development Authority fund.

Department of Planning and Zoning Recommendation:

APPROVAL WITH REVISIONS

I. DESCRIPTION OF PROPOSAL

- **The Petitioner proposes amendments to the CAC District regulations in Section 127.5 of the Zoning Regulations. Each proposed amendment is generally described as follows:**

1. Section 127.5.E.3.d. of the CAC District regulations is a provision to allow a DPZ-approved reduction to the commercial space requirement for CAC developments that are principally residential, subject to certain criteria.

As originally proposed by DPZ in the 2013 Comprehensive Zoning Plan (the “2013 CZP”), this reduction was to have been based on a per residential unit basis. However, for some unknown reason, in the final version of the 2013 Zoning Regulations this became “...may further reduce the commercial space requirement to 70 square feet per acre...”.

The Petitioner proposes to amend Section 127.5.E.3.d. to correct this error by changing the allowable reduction based on 70 square feet per residential unit. Section 127.5.E.3.d. also currently has a referencing error, referring to Section 127.5.E.3.b.(1) and (2), when it really should be referring to Section 127.5.E.3.c.(1) and (2), and the Petitioner proposes to revise this as well.

I. DESCRIPTION OF PROPOSAL

2. Currently, CAC developments that are principally residential are required to also provide commercial space at a baseline rate of 300 square feet of commercial space for each residential dwelling unit. Section 127.5.E.3.c. authorizes DPZ to reduce this rate for any CAC development to 100 square feet of commercial space for each dwelling unit, subject to the criteria in Section 127.5.E.3.c.(1) and (2). As noted above, Section 127.5.E.3.d. authorizes DPZ to reduce this rate further, to 70 square feet of commercial space for each dwelling unit, but only for CAC developments that have 800 or greater dwelling units.

The Petitioner proposes to establish a new Section 127.5.E.3.e. that would, for CAC developments that have 800 or greater dwelling units, add another provision for a commercial space rate reduction to 25 square feet of commercial space for each dwelling unit. This is proposed to be allowed if a fee of \$50 for each square foot "...of commercial space is paid into a fund administered by the Howard County Economic Development Authority."

- **Please refer to the attached Exhibit A – Petitioner’s Proposed Text for the text of the proposed amendments.**

II. EXISTING REGULATIONS

- **The CAC District regulations have had a long history of Zoning Regulation Amendment cases. Since the CAC District was established in the 2004 Comprehensive Zoning Plan, and prior to the 2013 CZP, nine Zoning Regulation Amendment cases had revisions to the CAC District regulations. These have included many endeavors to adjust and augment the original CAC requirements to better meet the practical realities of CAC developments in the US 1 Corridor.**

The most significant of these were ZRA 98, ZRA 104, and ZRA 106, which collectively included adjustments to the requirements for maximum building height, setbacks, amenity areas, residential density, and the requirements for both residential and non-residential development. In addition, adjustments to the CAC District regulations were also included in the 2005 Continuation to the 2004 Comprehensive Zoning Plan.

- **By the time the planning started for what eventually became the 2013 CZP, one clear impracticality of the CAC District regulations was acknowledged by DPZ; for principally residential CAC developments, the minimum amount of commercial space that is required per dwelling unit (the “Commercial Space Requirement”) is too high for a development to be commercially viable, by a substantial margin.**

Accordingly, in the Zoning Regulations initially drafted by DPZ for the Comprehensive Zoning Plan, among other significant adjustments to the CAC District, the baseline Commercial Space Requirement was proposed to be reduced from 300 square feet to 100 square feet, with an additional provision allowing a DPZ-authorized reduction to 50 square feet, subject to certain criteria. However, these DPZ-proposed changes were not adopted.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendments

- As proposed by the Petitioner, the amendments would only be applicable to CAC developments with 800 or greater dwelling units. This means that the scope of the proposed amendments is low, with only two CAC developments of that size; Howard Square and Bluestream.

B. Agency Comments

- The following agencies had no comments on the proposal:
 1. Department of Recreation & Parks
 2. Bureau of Environmental Health
 3. Department of Fire and Rescue Services
 4. Department of Inspections, Licenses and Permits

IV. EVALUATIONS AND CONCLUSIONS

A. Relation to the General Plan

- PlanHOWARD 2030 Policy 5.4 states in part “Enhance the Route 1 Corridor revitalization strategy to recognize the distinct character and market potential of diverse corridor segments, and the potential at various intersections, crossings, and nodes...”. The proposed amendment is in harmony with the Implementation Action for Zoning Review, which states “Evaluate the efficacy of existing Route 1 zoning districts (CE, CAC, TOD); consider more flexibility, especially regarding commercial uses.”
- With its proposal to create a fund administered by the Howard County Economic Development Authority to promote commercial development, ZRA-156 is in harmony with Policy 5.5 to “Proactively consider innovative tools to enhance the Route 1 Corridor’s competitiveness, attract and retain businesses, and maximize redevelopment opportunities.”

The associated Implementation Action is Economic Growth, which states “Focus incentives on opportunity sites within the Route 1 Corridor and on key industry market sectors with strong growth potential in Howard County.”

B. Relation to the Zoning Regulations

- ZRA-156 is in general harmony with the Legislative Intent of the Zoning Regulations to “...protect the character, the social and economic stability of all parts of the County; to guide the orderly growth and development of the County, and to protect and conserve the value of land and structures appropriate to the various land use classes established by the General Plan for Howard County...”.

IV. EVALUATIONS AND CONCLUSIONS

C. Other Issues

- **As noted above concerning the proposed amendments to the CAC District in the 2013 CZP process, DPZ has long recognized that the current baseline Commercial Space Requirement of 300 square feet is excessive and in need of reduction. On a broader national basis, it is now generally acknowledged by many that for mixed-use developments, imposing a set minimum commercial space requirement with the intent to create significant levels of commercial floor area in such a development often does not lead to the achievement of this goal.**

This important issue was recently addressed last month in an article in Urbanland, the magazine of the Urban Land Institute. There are many factors which can affect the viability of commercial/retail space in mixed-use developments, such as the visibility and accessibility of the development location and the overall market need in that particular area. Mandating high commercial space requirements for mixed-use developments that do not have such positive factors supporting the viability of the commercial development often only leads to empty storefronts that cannot be leased. Empty storefronts have a negative effect on the overall image of a neighborhood.

- **This Urban Land Institute article mentions another important factor that can detract from the viability of new commercial space in mixed-use projects; the overall level of existing commercial space.**

The article reports that in the United States, the amount of existing commercial floor area per person is more than 11 times the existing commercial floor area per person in Europe. It is very difficult, and often impossible, for mixed-use developments with less than perfect visibility and accessibility to compete with this level of existing commercial space.

- **Therefore, DPZ supports the basic premise of the Petitioner's proposal; to allow certain CAC developments to "opt out" of actually constructing a set level of commercial space by paying a fee-in-lieu to a fund which promotes commercial developments and uses in other locations where they are more likely to be viable.**

However, the issue of how it is often impractical to make the full commercial space component of a CAC District "work" is not limited to the large developments, and in fact, the large developments have an advantage due to scale over small developments that makes it more likely that at least some commercial uses can be viable within the development.

- **On this basis, consideration should also be given to how appropriate the fee-in-lieu rate may be relative to the size and location of a particular CAC development.**

The fee level of \$50 as proposed by the Petitioner is considered to be too low for the large CAC developments mentioned by the Petitioner, and it is recommended that it be increased. There should be a provision, however, to reduce the fee level for CAC developments which have much less potential for successful commercial development, primarily due to poor visibility and accessibility.

IV. EVALUATIONS AND CONCLUSIONS

- **In the attached Exhibit B, revisions to ZRA-156 are recommended to provide more specific details regarding the calculation of the fee, to increase the basic fee level above the level proposed by the Petitioner, and also to include a provision allowing a reduction in the fee level for CAC developments where viable commercial space is more problematic.**

V. RECOMMENDATION *APPROVAL WITH REVISIONS*

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-156 as noted above, be APPROVED, with the text as stated in the attached Exhibit B – DPZ Recommended Revisions.



Marsha S. McLaughlin, Director 6/3/15
Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

Exhibit A – Petitioner’s Proposed Text

(CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted):

E. Requirements for CAC Development

3. Requirements for Residential Uses

- c. For every dwelling unit that is developed, 300 square feet of commercial space must be developed on the site. The Director of the Department of Planning and Zoning may, however, reduce the commercial space requirement to 100 square feet per residential unit under the following conditions:
 - (1) The site is constrained in terms of size, shape, environmental factors, access, or proximity to existing vicinal commercial development in a manner that limits commercial development potential; or
 - (2) The proposed design includes recreational, public, or non-profit uses on the first floor that benefit and are accessible to the general public.
- d. Based on documented hardship, the Planning Director may further reduce the commercial space requirement to 70 square feet per [[acre]] RESIDENTIAL UNIT for parcels that have 800 units or more, provided the criteria listed in [[b]] C (1) and (2) are used in the evaluation.
- E. FOR PARCELS THAT HAVE 800 UNITS OR MORE, A FURTHER REDUCTION IN THE COMMERCIAL SPACE REQUIREMENT MAY BE PERMITTED TO NOT LESS THAN 25 SQUARE FEET PER RESIDENTIAL UNIT PROVIDED THAT A FEE OF FIFTY DOLLARS PER SQUARE FEET [sic] OF COMMERCIAL SPACE IS PAID INTO A FUND ADMINISTERED BY THE HOWARD COUNTY ECONOMIC DEVELOPMENT AUTHORITY PURSUANT TO TITLE 26 OF THE HOWARD COUNTY CODE.
- [[e.]] F. The phasing of residential and commercial construction and open space amenity areas should be roughly proportional. No more than 50% of the residential units shall be constructed prior to commencing a roughly proportional amount of commercial construction and open space amenity areas. For developments of 800 units or more, no more than 60% of the residential units shall be constructed prior to commencing the construction of the non-residential portions of the development.
- [[f.]] G. Moderate Income Housing
 - (1) At least 15% of the dwelling units shall be Moderate Income Housing Units, except that
 - (2) At least 25% of the dwelling units shall be Moderate Income Housing Units if the CAC Development requires closing of a mobile home park existing on the property when CAC rezoning occurs.

Exhibit B – DPZ’s Recommended Revisions

E. Requirements for CAC Development

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- c. For every dwelling unit that is developed, ~~[[300]]~~ 70 square feet of commercial space must be developed on the site. ~~[[The Director of the Department of Planning and Zoning may, however, reduce the commercial space requirement to 100 square feet per residential unit under the following conditions:~~
- (1) The site is constrained in terms of size, shape, environmental factors, access, or proximity to existing vicinal commercial development in a manner that limits commercial development potential; or
 - (2) The proposed design includes recreational, public, or non-profit uses on the first floor that benefit and are accessible to the general public.~~]]~~

- ~~[[d. Based on documented hardship, the Planning Director may further reduce the commercial space requirement to 70 square feet per acre for parcels that have 800 units or more, provided the criteria listed in b (1) and (2) are used in the evaluation.]]~~

- D. THE DEPARTMENT OF PLANNING AND ZONING MAY PERMIT A REDUCTION IN THE COMMERCIAL SPACE REQUIREMENT TO NOT LESS THAN 25 SQUARE FEET PER DWELLING UNIT PROVIDED THAT A FEE OF 100 DOLLARS, OR AS SPECIFIED IN THE FEE SCHEDULE, FOR EACH SQUARE FOOT OF THE TOTAL REDUCTION IN COMMERCIAL SPACE BELOW THE BASELINE 70 SQUARE FEET PER DWELLING UNIT AMOUNT IS PAID INTO A FUND ADMINISTERED BY THE HOWARD COUNTY ECONOMIC DEVELOPMENT AUTHORITY TO PROMOTE COMMERCIAL DEVELOPMENT IN APPROPRIATE LOCATIONS OF THE US 1 CORRIDOR, AS ALLOWED UNDER SECTION 26.104(B)(14) OF THE HOWARD COUNTY CODE.

HOWEVER, FOR CAC DEVELOPMENTS WITH NO FRONTAGE ON US 1, OR WITH LIMITED FRONTAGE ON US 1, THIS FEE MAY BE REDUCED TO 25 DOLLARS, OR AS SPECIFIED IN THE FEE SCHEDULE, FOR EACH SQUARE FOOT OF THE TOTAL REDUCTION IN COMMERCIAL SPACE BELOW THE BASELINE 70 SQUARE FEET PER DWELLING UNIT.

- e. The phasing of residential and commercial construction and open space amenity areas should be roughly proportional. No more than 50% of the residential units shall be constructed prior to commencing a roughly proportional amount of commercial construction and open space amenity areas. For developments of 800 units or more, no more than 60% of the residential units shall be constructed prior to commencing the construction of the non-residential portions of the development.
- f. Moderate Income Housing
- (1) At least 15% of the dwelling units shall be Moderate Income Housing Units, except that

- (2) At least 25% of the dwelling units shall be Moderate Income Housing Units if the CAC Development requires closing of a mobile home park existing on the property when CAC rezoning occurs.