



October 20, 2011

## TECHNICAL STAFF REPORT

*Petition Accepted on September 22, 2011  
Planning Board Meeting of November 3, 2011  
County Council Hearing to be scheduled*

**Case No./Petitioner:** ZRA-137 – Courtney Watson, Councilperson

**Requests:** Zoning Regulation Amendment to amend Section 103.A.152, the definition for “Preservation Parcel, Neighborhood”, and to amend various subsections in Section 107, the R-ED District; Section 108, the R-20 District; Section 109, the R-12 District; and Section 128.L in the Supplementary Zoning District Regulations, all generally regarding the density exchange process for Neighborhood Preservation Parcels, in order to establish new provisions so that parcels that are the site of a community swimming pool may be sending parcels under this process and may become Neighborhood Preservation Parcels (collectively, the “Community Swimming Pool Amendments”).

Zoning Regulation Amendment to amend Section 107.D.4.d. in the R-ED District regulations to establish a reduced rear setback of 15 feet for lots that adjoin an open space lot, and to amend Section 128.A.1.d in the Supplementary Bulk Regulations so that such R-ED lots that adjoin an open space lot cannot use the permitted 10 foot encroachment allowed for porches and decks (collectively, the “R-ED Rear Setback Amendments”).

Department of Planning and Zoning Recommendation:

**APPROVAL, WITH REVISIONS**

### I. DESCRIPTION OF PROPOSAL

- **The Petitioner proposes a number of amendments to the Zoning Regulations. Each proposed amendment is generally described as follows:**
  1. To amend Section 103.A.152, the definition for Neighborhood Preservation Parcel, to establish that a Neighborhood Preservation Parcel may also be improved by a community swimming pool, and that any new structures on an improved parcel shall not be larger than 50 percent of the building footprint of the existing structure.
  2. To amend Section 107.D.4.d. of the R-ED District regulations to establish a reduced rear setback of 15 feet for lots adjoining open space lots.

**I. DESCRIPTION OF PROPOSAL**

3. To amend Section 107.G, Section 108.F, and Section 109.F of the R-ED, R-20, and R-12 District regulations, respectively, to establish that parcels with community swimming pools may also be sending parcels for density exchange under the Neighborhood Preservation Parcel procedures ("Community Swimming Pool Parcels").
4. To amend Section 128.A.1.d. of the Supplementary Bulk Regulations to establish that R-ED lots that adjoin open space lots are ineligible for the 10 foot permitted encroachments for porches and decks.
5. To amend Section 128.L. of the Density Exchange for Neighborhood Preservation Parcel requirements and procedures so that they apply to Community Swimming Pool Parcels as sending parcels, to allow the potential for other recreation uses on Community Swimming Pool Parcels, and to allow the retention of one development right on Community Swimming Pool Parcels for a potential future dwelling unit.

- **For the proposed text, please refer to Attachment A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted):**

- **As justification for the Community Swimming Pool Amendments, the Petitioner notes that the proposed amendments “...would be an additional tool to assist non-profit swim clubs allay the ever-increasing pressure to develop their property [thereby] creating additional unwanted infill development.”**

It is also stated that “...the protection of nonprofit swim clubs assists in promoting the welfare of the community by creating recreational opportunities and decreasing the opportunities for incompatible development.”

- **The Petitioner states that the Community Swimming Pool Amendments would be in harmony with several General Plan Policies, including Balanced and Phased Growth Policy 4.19 to “Improve management and delivery of recreational services”, and with Community Conservation and Enhancement Policy 5.7 to “Ensure infill development will be compatible with existing neighborhoods”.**

- **As justification for the R-ED Rear Setback Amendments, the Petitioner notes that the proposed amendments are “...to allow new R-ED developments facing new stormwater management requirements and other development requirements to remain consistent with the intent of R-ED regulations which encourage small residential lots with large open space areas.”**

The R-ED Rear Setback Amendments are said to be in harmony with Community Conservation and Enhancement Policy 5.6 to “Promote better design of new neighborhoods.”

## II. EXISTING REGULATIONS

- **The Neighborhood Preservation Parcel regulations related to the Community Swimming Pool Amendments were first established in ZRA 95, which became effective on September 9, 2008.**
- **The R-ED District rear setback requirement of 25 feet was first established with the 1993 Zoning Regulations.**

Prior to this, the rear setback requirement was 30 feet. Apparently, there was a proposal at that time to have a R-ED-2 District with a 25 foot rear setback and a R-ED-3 District retaining the 30 foot rear setback, but the Zoning Regulations were eventually approved with only the one R-ED District and the 25 foot rear setback.

- **Although the Supplementary Bulk Regulations have long allowed open and closed porches and deck to encroach into certain setback areas, Section 128.A.1.d in its current format was first established in the 2004 Zoning Regulations.**

## III. BACKGROUND INFORMATION

### A. Scope of Proposed Amendments

- **The Community Swimming Pool Amendments would be applicable to any parcel or lot in the R-ED, R-20 and R-12 Districts with a community swimming pool use as that term is defined in the Zoning Regulations, and also would be applicable to any such parcel or lot either existing or in the future.**
- **As proposed, the R-ED Rear Setback Amendments would be applicable to any lot in the R-ED District that adjoins an open space lot and, notably, would be applicable to both future lots and existing lots.**

### B. Agency Comments

- **To date, only one response was received to the request for comments from the various agencies. The Bureau of Environmental Health stated that it has no objections to the petition.**

If any substantive comments are received after the finalization of this Technical Staff Report, they will be forwarded to the Planning Board and the County Council.

#### IV. EVALUATIONS AND CONCLUSIONS

**A. Relation to the General Plan**

- **The Department of Planning and Zoning concurs with the Petitioner that the proposed ZRA-137 is in harmony with Balanced and Phased Growth Policy 4.19, Community Conservation and Enhancement Policy 5.7, and Community Conservation and Enhancement Policy 5.6.**

**B. Relation to the Zoning Regulations**

- **ZRA-137 is generally supportive of the Legislative Intent of the Zoning Regulations “To promote the most beneficial relationship between the use of land and structures...” , and “To provide open space that helps preserve natural, environmental, historic, architectural and other landscape resources of the County as well as providing adequate space for recreation”.**

**C. Evaluations of the Individual Amendments**

- **To facilitate the understanding of these evaluations, each individual amendment is restated, with the evaluation comment(s) for that amendment given below.**
- **To amend Section 103.A.152, the definition for Neighborhood Preservation Parcel, to establish that a Neighborhood Preservation Parcel may also be improved by a community swimming pool, and that any new structures on an improved parcel shall not be larger than 50 percent of the building footprint of the existing structure.**

This is a straightforward change, and the only minor recommended revision is that it should say "50 percent of the building footprint of the existing PRINCIPAL structure". Community swimming pool properties may have more than one structure, a typical facility has two; the pool and a bath house/office. For such a use, the pool structure is considered to be the principal structure.

It should be noted that limiting the community swimming pool to a maximum future increase of 50 percent could be somewhat limiting if a future expansion was considered, but the Department does not have a specific recommendation on this issue at this time.

- **To amend Section 107.D.4.d. of the R-ED District regulations to establish a reduced rear setback of 15 feet for lots adjoining open space lots.**

The proposed text for this amendment is such that it would also apply to R-ED lots that adjoin an open space lot only on the side and not on the rear, to R-ED lots that adjoin an open space lot only partially along the rear line, and also to existing R-ED lots that adjoin an open space lot on the sides and/or the rear that have 25 foot rear setbacks established on the plan approved by the Planning Board and recorded on the plat.

#### IV. EVALUATIONS AND CONCLUSIONS

It is recommended that this amendment be revised to make it apply to R-ED lots that only adjoin open space lots at least completely or substantially along the rear lot line, and to have it apply only to newly created lots.

- **To amend Section 107.G, Section 108.F, and Section 109.F of the R-ED, R-20, and R-12 District regulations, respectively, to establish that parcels with community swimming pools may also be sending parcels for density exchange under the Neighborhood Preservation Parcel procedures ("Community Swimming Pool Parcels").**

These amendments to these three sections are all proposed with the same new text as follows:

"A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development regulations AND COMMUNITY SWIMMING POOLS AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS may be...sending parcels for neighborhood preservation..."

It is recommended that this be revised as follows to have it allude to the parcel upon which the community swimming pool facility is located, and not to the community swimming pool facility specifically:

"A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development regulations [[AND]] OR PARCELS PRINCIPALLY USED FOR A COMMUNITY SWIMMING POOL[[S]], AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS, may be...sending parcels for neighborhood preservation...".

- **To amend Section 128.A.1.d. of the Supplementary Bulk Regulations to establish that R-ED lots that adjoin open space lots are ineligible for the 10 foot permitted encroachments for porches and decks.**

There are several issues with the proposed text for this amendment. First, as it is written, most of the comments to the proposed amendment to Section 107.D.4.d. (the second amendment) noted above also apply. In addition, it would not only prohibit R-ED lots that adjoin open space lots from using the 10 foot encroachment into a rear setback, it also would prohibit all the other allowable 10 foot encroachments; into the front setback, a setback from a project boundary, a setback from a different zoning district, or a required distance between buildings. Finally, as proposed, it would be applicable to all existing R-ED lots that adjoin open space lots, making some existing structures on those lots become noncomplying structures. It is recommended that this amendment be revised to address these issues.

**IV. EVALUATIONS AND CONCLUSIONS**

- **To amend Section 128.L. of the Density Exchange for Neighborhood Preservation Parcel requirements and procedures so that they apply to Community Swimming Pool Parcels as sending parcels, to allow the potential for other recreation uses on Community Swimming Pool Parcels, and to allow the retention of one development right on Community Swimming Pool Parcels for a potential future dwelling unit.**

The only recommended revision to this amendment is to the proposed text to allow the potential for other recreation uses on Community Swimming Pool Parcels. The proposed text is as follows:

“Only principal or accessory residential uses are permitted in accordance with the zoning regulations, EXCEPT THAT OTHER RECREATIONAL USES MAY BE PERMITTED ON PARCELS IMPROVED WITH A COMMUNITY SWIMMING POOL AS PERMITTED UNDER THE ZONING REGULATIONS.”

The principal issue is that “OTHER RECREATIONAL USES” could be interpreted to mean any recreation use, which could be interpreted to also allow commercial recreation uses. It would be prudent if it instead specified recreation uses that are accessory to the principal community swimming pool use. The recommended revision is as follows:

“Only principal or accessory residential uses, OR PRINCIPAL OR ACCESSORY COMMUNITY SWIMMING POOL USES, are permitted in accordance with the zoning regulations. [[, EXCEPT THAT OTHER RECREATIONAL USES MAY BE PERMITTED ON PARCELS IMPROVED WITH A COMMUNITY SWIMMING POOL AS PERMITTED UNDER THE ZONING REGULATIONS.]]”

**V. RECOMMENDATION                      APPROVAL, WITH REVISIONS**

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-137 as noted above, be APPROVED, with the recommended text in Attachment B.

 10/19/11  
Marsha S. McLaughlin, Director                      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.**

**ATTACHMENT A – PETITIONER’S PROPOSED TEXT**

**Section 103.A.152**

Preservation Parcel, Neighborhood: A residential infill parcel in the R-20, R-12, or R-ED zoning districts that existed on September 9, 2008 and is designated as a sending parcel on a revision plat or a final plat or easement. A Neighborhood Preservation Parcel shall be encumbered by a Neighborhood Preservation Parcel Easement, and is either improved with A COMMUNITY SWIMMING POOL AS DEFINED IN SECTION 103, OR an existing dwelling unit, or if unimproved, must be owned and maintained by a Homeowners Association or dedicated to the Howard County Department of Recreation and Parks. Any new structures placed on AN IMPROVED site shall not be larger than 50 percent of the building footprint of the STRUCTURE existing at the time the Neighborhood Preservation Easement is recorded, except as provided in Section 128.L.2.b.

**Section 107.D.4.d**

- d. From lot lines - structures and uses in all development projects except single-family attached:
  - (1) Principal structures
    - (a) Front .....20 feet
    - (b) Side.....7.5 feet
    - Except zero lot line dwellings .....0 feet
    - A minimum of 15 feet must be provided between structures
    - (c) Rear .....25 feet
    - EXCEPT LOTS ADJOINING OPEN SPACE .....15 feet
  - (2) Detached accessory garages or sheds
    - (a) Front .....20 feet
    - (b) Side.....0 feet
    - (c) Rear .....0 feet
  - (3) Other accessory structures
    - (a) Front .....20 feet
    - (b) Side.....7.5 feet
    - (c) Rear .....5 feet
  - (4) Uses (other than structures) in all development projects except single-family detached or attached.....20 feet

**Section 107.G.**

**G. Density Exchange For Neighborhood Preservation Parcels**

*[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]*

1. A parcel qualifying with the criteria for residential infill development as defined in Section 16.108 (b) of the Subdivision and Land Development Regulations AND COMMUNITY SWIMMING POOLS AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS may be ~~[[a]]~~ sending parcels for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

**Section 108.F.**

**F. Density Exchange For Neighborhood Preservation Parcels**

*[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]*

1. A parcel qualifying with the criteria for residential infill development as defined in Section 16.108 (b) of the Subdivision and Land Development Regulations AND COMMUNITY SWIMMING POOLS AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS may be ~~[[a]]~~ sending parcels for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

**Section 109.F.**

**F. Density Exchange For Neighborhood Preservation Parcels**

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**Section 128.A.1.d.**

**A. Supplementary Bulk Regulations**

The following supplementary regulations shall apply in addition to the requirements of the applicable zoning district.

1. Exceptions to Setback Requirements



Type of Building Feature Structure, or Land Use	Zoning District	Maximum Encroachment Into Setback
d. Open and enclosed porches and decks	All residential districts except NT	EXCEPT FOR R-ED LOTS ADJOINING OPEN SPACE, 10 feet into a front or rear setback, a setback from a project boundary, a setback from a different zoning district, or a required distance between buildings

**Section 128.L.**

**L. Density Exchange For Neighborhood Preservation Parcels**

1. In the R-ED, R-20, and R-12 districts, a parcel that qualifies under the criteria for neighborhood infill development as defined in Section 16.108.(b) of the Subdivision and Land Development Regulations and is eligible to be developed for additional residential lots, may be a sending parcel for neighborhood preservation within the same planning district.

With this neighborhood preservation density exchange option, in the R-ED and R-20 districts density may be exchanged from a Neighborhood Preservation Parcel sending parcel to an eligible receiving parcel based on a rate of 2 development rights per net acre, up to a maximum of 3 development rights per parcel. In the R-12 district density may be exchanged from a Neighborhood Preservation Parcel sending parcel to an eligible receiving parcel based on a rate of 3 development rights per net acre, up to a maximum of 3 development rights per parcel.

2. Neighborhood Preservation Parcel Easement Requirements
  - a. The easement shall cover the entire sending parcel or lot that complies with the definition of a Neighborhood Preservation Parcel in Section 103.
  - b. A Neighborhood Preservation Parcel Easement improved with an existing dwelling unit OR A COMMUNITY SWIMMING POOL shall not have any new structures placed on the site that are larger than 50 percent of the building footprint of the [[dwelling unit]] STRUCTURE existing at the time the neighborhood preservation easement is recorded. However, if the average footprint size of the nearest six dwellings is greater than the footprint of [[the]] AN existing building, the Director may approve a footprint that does not exceed this average.

- c. The easement shall be approved by the Department of Planning and Zoning and shall be recorded at the time of recordation of the final plat for the Neighborhood Preservation Parcel.
- d. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
  - (1) The location and size of all existing improvements on the parcel covered by the easement.
  - (2) A prohibition on future subdivision of the Neighborhood Preservation Parcel.
  - (3) A prohibition on future use or development of the parcel for uses incompatible with the neighborhood preservation parcel easement. Only principal or accessory residential uses are permitted in accordance with the zoning regulations, EXCEPT THAT OTHER RECREATIONAL USES MAY BE PERMITTED ON PARCELS IMPROVED WITH COMMUNITY SWIMMING POOLS AS PERMITTED UNDER THE ZONING REGULATIONS.
  - (4) The provisions for maintenance of the neighborhood preservation parcel.
  - (5) The responsibility for enforcement of the deed of Neighborhood Preservation Parcel Easement.
  - (6) The provisions for succession in the event that one of the parties to the deed of neighborhood preservation parcel easement ceases to exist.
- e. One of the following entities shall be a party to the deed of Neighborhood Preservation Parcel Easement in addition to the property owner:
  - (1) Howard County Government; or
  - (2) Maryland Environmental Trust or Maryland Historical Trust; or
  - (3) A land conservation organization approved by the County Council.

### 3. Receiving Development Requirements

- a. Residential development rights derived from neighborhood preservation sending parcels may be received as bonus density for developments on parcels in the RSA-8, R-A-15 and CAC Districts.

- b. Residential development rights derived from neighborhood preservation sending parcels may be received as bonus density for developments on parcels at least 11 acres in size in the R-20 and R-12 Districts.
- c. Development rights shall be received in accordance with the following ratios:

Type of Dwelling Unit to be Constructed	Number of Development Rights needed per Dwelling Unit
Single-Family Dwelling	1
Townhouse Dwelling	.5
Apartment	.33

- d. Any parcel with the main stem of either the Patapsco River, the Patuxent River, the Little Patuxent River, the Middle Patuxent River, or the Deep Run running through the property shall be excluded for consideration as a receiving parcel for development of single-family attached or multi-family housing.

4. Additional Requirements

a. Sending Parcels

- (1) ON IMPROVED PARCELS, ~~[[One]]~~ ONE development right ~~[[must]]~~ SHALL be retained on the sending parcel to allow for the continued existence of the existing dwelling unit.
- (2) ON PARCELS IMPROVED WITH COMMUNITY SWIMMING POOLS, ONE DEVELOPMENT RIGHT MAY BE RETAINED ON THE SENDING PARCEL TO ALLOW FOR A POTENTIAL FUTURE DWELLING UNIT.

b. Density Exchange

The exchange of density shall take place as a private exchange between property owners, subject to the approval of the sending and receiving parcels by the Department of Planning and Zoning in accordance with the procedures set forth below.

c. Approval of Sending Parcel

An application for approval of the sending parcel shall be made at any time before the initial plan for the receiving development is technically complete and tentative housing unit allocations have been granted by the Department of Planning and Zoning, and shall include the following:

- (1) A final plat of the sending parcel.
- (2) Documentation that the sending parcel complies with the criteria in Section 128.L.1.
- (3) A calculation of the maximum number of development rights which may be removed from the sending parcel.

d. Application for Receiving Development

An application for the use of the bonus density on a receiving parcel shall be made to the Department of Planning and Zoning and shall include a calculation of the proposed density and the number of development rights to be obtained from one or more sending parcels.

e. Approval of Receiving Development

The Department of Planning and Zoning shall tentatively approve the transfer of receiving bonus density to the receiving development when the initial plan submission for the development is technically complete and before tentative housing unit allocations are granted.

f. Phasing of Receiving Developments

Density for receiving developments may be recorded in sections. A Final Subdivision Plan or Site Development Plan shall not be approved for the receiving development until one or more sending parcels are approved which provide the necessary number of additional development rights for the lots shown on the Final Subdivision Plan, or the dwelling units indicated on the Site Development Plan.

g. Recordation of Sending Parcels and Receiving Developments.

Following the approval of the initial plan for the receiving development, the following documents shall be recorded together in the land records of Howard County.

- (1) A revision plat or a final plat of easement for each sending parcel, designating the property as a neighborhood preservation sending

parcel and indicating the number of development rights that have been removed from the parcel, the location of the receiving development, and that one development right has been retained for the existing OR A POTENTIAL FUTURE dwelling unit on the neighborhood preservation sending parcel.

- (2) A deed of Neighborhood Preservation Parcel Easement for each neighborhood preservation sending parcel that complies with Section 128.L.2.
- (3) A final plat for the receiving development parcel which may be a final subdivision plat dividing the receiving development parcel into lots, or may be a density-receiving plat that records the number of development rights received from sending parcels but does not subdivide the receiving development parcel. Density recorded on the final plat for the receiving development parcel shall only be used on that receiving development parcel.

**ATTACHMENT B - DPZ RECOMMENDED TEXT**

**Section 103.A.152**

Preservation Parcel, Neighborhood: A residential infill parcel in the R-20, R-12, or R-ED zoning districts that existed on September 9, 2008 and is designated as a sending parcel on a revision plat or a final plat or easement. A Neighborhood Preservation Parcel shall be encumbered by a Neighborhood Preservation Parcel Easement, and is either improved with A COMMUNITY SWIMMING POOL AS DEFINED IN SECTION 103, OR an existing dwelling unit, or if unimproved, must be owned and maintained by a Homeowners Association or dedicated to the Howard County Department of Recreation and [[ p]]Parks. Any new structures placed on [[the]] AN IMPROVED site shall not be larger than 50 percent of the building footprint of the [[dwelling unit]] PRINCIPAL STRUCTURE existing at the time the Neighborhood Preservation Easement is recorded, except as provided in Section 128.L.2.b.

**Section 107.D.4.d**

- d. From lot lines - structures and uses in all development projects except single-family attached:
- (1) Principal structures
    - (a) Front .....20 feet
    - (b) Side.....7.5 feet
    - Except zero lot line dwellings .....0 feet
    - A minimum of 15 feet must be provided between structures
    - (c) Rear .....25 feet
    - EXCEPT LOTS RECORDED AFTER [ the effective date of ZRA 137]
    - WHICH ONLY ADJOIN OPEN SPACE ALONG A MAJORITY OF
    - THE REAR LOT LINE [[ADJOINING OPEN
    - SPACE]].....15 feet
  
  - (2) Detached accessory garages or sheds
    - (a) Front .....20 feet
    - (b) Side.....0 feet
    - (c) Rear .....0 feet
  
  - (3) Other accessory structures
    - (a) Front .....20 feet
    - (b) Side.....7.5 feet
    - (c) Rear .....5 feet

- (4) Uses (other than structures) in all development projects except single-family detached or attached.....20 feet

**Section 107.G.**

**G. Density Exchange For Neighborhood Preservation Parcels**  
*[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]*

- 1. A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development regulations [[AND]] OR PARCELS PRINCIPALLY USED FOR A COMMUNITY SWIMMING POOL[[S]], AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS, may be [[a]] sending parcels for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

**Section 108.F.**

**F. Density Exchange For Neighborhood Preservation Parcels**  
*[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]*

- 1. A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development regulations [[AND]] OR PARCELS PRINCIPALLY USED FOR A COMMUNITY SWIMMING POOL[[S]], AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS may be [[a]] sending parcels for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

**Section 109.F.**

**F. Density Exchange For Neighborhood Preservation Parcels**  
*[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]*

- 1. A parcel qualifying with the criteria for residential infill development as defined in Section 16.108(b) of the Subdivision and Land Development regulations [[AND]] OR PARCELS PRINCIPALLY USED FOR A COMMUNITY SWIMMING POOL[[S]], AS DEFINED IN SECTION 103 OF THE ZONING REGULATIONS may be [[a]] sending parcels for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

**Section 128.A.1.d.**

**A. Supplementary Bulk Regulations**

The following supplementary regulations shall apply in addition to the requirements of the applicable zoning district.

**1. Exceptions to Setback Requirements**

Type of Building Feature Structure, or Land Use	Zoning District	Maximum Encroachment Into Setback
d. Open and enclosed porches and decks	All residential districts except NT	[[EXCEPT FOR R-ED LOTS ADJOINING OPEN SPACE,]] 10 feet into a front or rear setback, a setback from a project boundary, a setback from a different zoning district, or a required distance between buildings, <u>EXCEPT THAT FOR R-ED LOTS RECORDED AFTER [the effective date of ZRA 137] WITH 15 FOOT REAR SETBACKS IN ACCORDANCE WITH SECTION 107.D.4.D.(1)(C), OPEN AND ENCLOSED PORCHES AND DECKS SHALL NOT ENCROACH INTO A REAR SETBACK.</u>

**Section 128.L.**

**L. Density Exchange For Neighborhood Preservation Parcels**

1. In the R-ED, R-20, and R-12 districts, a parcel that qualifies under the criteria for neighborhood infill development as defined in Section 16.108.(b) of the Subdivision and Land Development Regulations and is eligible to be developed for additional residential lots, may be a sending parcel for neighborhood preservation within the same planning district.

With this neighborhood preservation density exchange option, in the R-ED and R-20 districts density may be exchanged from a Neighborhood Preservation Parcel



sending parcel to an eligible receiving parcel based on a rate of 2 development rights per net acre, up to a maximum of 3 development rights per parcel. In the R-12 district density may be exchanged from a Neighborhood Preservation Parcel sending parcel to an eligible receiving parcel based on a rate of 3 development rights per net acre, up to a maximum of 3 development rights per parcel.

2. Neighborhood Preservation Parcel Easement Requirements

- a. The easement shall cover the entire sending parcel or lot that complies with the definition of a Neighborhood Preservation Parcel in Section 103.
- b. A Neighborhood Preservation Parcel Easement improved with an existing dwelling unit OR A COMMUNITY SWIMMING POOL shall not have any new structures placed on the site that are larger than 50 percent of the building footprint of the [[dwelling unit]] STRUCTURE existing at the time the neighborhood preservation easement is recorded. However, if the average footprint size of the nearest six dwellings is greater than the footprint of [[the]] AN existing building, the Director may approve a footprint that does not exceed this average.
- c. The easement shall be approved by the Department of Planning and Zoning and shall be recorded at the time of recordation of the final plat for the Neighborhood Preservation Parcel.
- d. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
  - (1) The location and size of all existing improvements on the parcel covered by the easement.
  - (2) A prohibition on future subdivision of the Neighborhood Preservation Parcel.
  - (3) A prohibition on future use or development of the parcel for uses incompatible with the neighborhood preservation parcel easement. Only principal or accessory residential uses, OR PRINCIPAL OR ACCESSORY COMMUNITY SWIMMING POOL USES, are permitted in accordance with the zoning regulations. [[, EXCEPT THAT OTHER RECREATIONAL USES MAY BE PERMITTED ON PARCELS IMPROVED WITH A COMMUNITY SWIMMING POOL AS PERMITTED UNDER THE ZONING REGULATIONS.]]
  - (4) The provisions for maintenance of the neighborhood preservation parcel.

- (5) The responsibility for enforcement of the deed of Neighborhood Preservation Parcel Easement.
  - (6) The provisions for succession in the event that one of the parties to the deed of neighborhood preservation parcel easement ceases to exist.
- e. One of the following entities shall be a party to the deed of Neighborhood Preservation Parcel Easement in addition to the property owner:
- (1) Howard County Government; or
  - (2) Maryland Environmental Trust or Maryland Historical Trust; or
  - (3) A land conservation organization approved by the County Council.

3. Receiving Development Requirements

- a. Residential development rights derived from neighborhood preservation sending parcels may be received as bonus density for developments on parcels in the RSA-8, R-A-15 and CAC Districts.
- b. Residential development rights derived from neighborhood preservation sending parcels may be received as bonus density for developments on parcels at least 11 acres in size in the R-20 and R-12 Districts.
- c. Development rights shall be received in accordance with the following ratios:

Type of Dwelling Unit to be Constructed	Number of Development Rights needed per Dwelling Unit
Single-Family Dwelling	1
Townhouse Dwelling	.5
Apartment	.33

- d. Any parcel with the main stem of either the Patapsco River, the Patuxent River, the Little Patuxent River, the Middle Patuxent River, or the Deep Run running through the property shall be excluded for consideration as a receiving parcel for development of single-family attached or multi-family housing.

4. Additional Requirements

- a. Sending Parcels

- (1) ON IMPROVED PARCELS, ~~[[One]]~~ ONE development right ~~[[must]]~~ SHALL be retained on the sending parcel to allow for the continued existence of the existing dwelling unit.
- (2) ON PARCELS IMPROVED WITH COMMUNITY SWIMMING POOLS, ONE DEVELOPMENT RIGHT MAY BE RETAINED ON THE SENDING PARCEL TO ALLOW FOR A POTENTIAL FUTURE DWELLING UNIT.

b. Density Exchange

The exchange of density shall take place as a private exchange between property owners, subject to the approval of the sending and receiving parcels by the Department of Planning and Zoning in accordance with the procedures set forth below.

c. Approval of Sending Parcel

An application for approval of the sending parcel shall be made at any time before the initial plan for the receiving development is technically complete and tentative housing unit allocations have been granted by the Department of Planning and Zoning, and shall include the following:

- (1) A final plat of the sending parcel.
- (2) Documentation that the sending parcel complies with the criteria in Section 128.L.1.
- (3) A calculation of the maximum number of development rights which may be removed from the sending parcel.

d. Application for Receiving Development

An application for the use of the bonus density on a receiving parcel shall be made to the Department of Planning and Zoning and shall include a calculation of the proposed density and the number of development rights to be obtained from one or more sending parcels.

e. Approval of Receiving Development

The Department of Planning and Zoning shall tentatively approve the transfer of receiving bonus density to the receiving development when the initial plan submission for the development is technically complete and before tentative housing unit allocations are granted.

f. Phasing of Receiving Developments

Density for receiving developments may be recorded in sections. A Final Subdivision Plan or Site Development Plan shall not be approved for the receiving development until one or more sending parcels are approved which provide the necessary number of additional development rights for the lots shown on the Final Subdivision Plan, or the dwelling units indicated on the Site Development Plan.

g. Recordation of Sending Parcels and Receiving Developments.

Following the approval of the initial plan for the receiving development, the following documents shall be recorded together in the land records of Howard County.

- (1) A revision plat or a final plat of easement for each sending parcel, designating the property as a neighborhood preservation sending parcel and indicating the number of development rights that have been removed from the parcel, the location of the receiving development, and that one development right has been retained for the existing OR A POTENTIAL FUTURE dwelling unit on the neighborhood preservation sending parcel.
- (2) A deed of Neighborhood Preservation Parcel Easement for each neighborhood preservation sending parcel that complies with Section 128.L.2.
- (3) A final plat for the receiving development parcel which may be a final subdivision plat dividing the receiving development parcel into lots, or may be a density-receiving plat that records the number of development rights received from sending parcels but does not subdivide the receiving development parcel. Density recorded on the final plat for the receiving development parcel shall only be used on that receiving development parcel.