



**PETITION TO AMEND THE  
ZONING REGULATIONS OF  
HOWARD COUNTY**

DPZ Office Use Only:

Case No. ZRA- 156

Date Filed: \_\_\_\_\_

**1. Zoning Regulation Amendment Request**

I (we), the undersigned, hereby petition the County Council of Howard County to amend the Zoning Regulations of Howard County as follows: Amend Section 127.5.E.3.d. to clarify an amendment to the Zoning Regulations enacted during the 2013 Comprehensive Zoning; also to add a new section 127.5.E.3.e. so as to allow a further reduction in the required commercial space requirement in the CAC for certain properties subject to the payment of an optional fee.

[You must provide a brief statement here. "See Attached Supplement" or similar statements are not acceptable. You may attach a separate document to respond to Section 1 in greater detail. If so, this document shall be titled "Response to Section 1"]

**2. Petitioner's Name** Atapco Howard Square I Business Trust, Attn. Russ Powell

Address 10 E. Baltimore Street, Baltimore, Maryland 21202

Phone No. (W) 410-347-7174 (H) \_\_\_\_\_

Email Address rpowell@atapco.com

**3. Counsel for Petitioner** Sang W. Oh, Esquire, Talkin & Oh, LLP

Counsel's Address 5100 Dorsey Hall Drive, Ellicott City, Maryland 21042

Counsel's Phone No. (410) 964-0300

Email Address soh@talkin-oh.com

**4. Please provide a brief statement concerning the reason(s) the requested amendment(s) to the Zoning Regulations is (are) being proposed** \_\_\_\_\_

See attached Supplemental Statement.

2015 FEB 27 P 12:43  
RECEIVED  
HOWARD COUNTY COUNCIL



8. Does the amendment, or do the amendments, have the potential of affecting the development of more than one property, yes or no? Yes.

If yes, and the number of properties is less than or equal to 12, explain the impact on all properties affected by providing a detailed analysis of all the properties based upon the nature of the changes proposed in the amendment(s). If the number of properties is greater than 12, explain the impact in general terms.

See Supplemental Statement

---

---

---

---

---

---

---

---

---

---

[You may attach a separate document to respond to Section 8. If so, this document shall be titled "Response to Section 8."]

9. If there are any other factors you desire the Council to consider in its evaluation of this amendment request, please provide them at this time. Please understand that the Council may request a new or updated Technical Staff Report and/or a new Planning Board Recommendation if there is any new evidence submitted at the time of the public hearing that is not provided with this original petition. \_\_\_\_\_

---

---

---

---

---

---

---

---

---

---

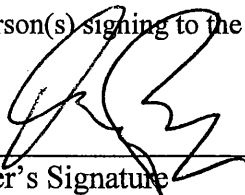
[You may attach a separate document to respond to Section 9. If so, this document shall be titled "Response to Section 9."]

10. You must provide the full proposed text of the amendment(s) as a separate document entitled "Petitioner's Proposed Text" that is to be attached to this form. This document must use this standard format for Zoning Regulation Amendment proposals; any new proposed text must be in CAPITAL LETTERS, and any existing text to be deleted must be in [[ Double Bold Brackets ]]. In addition, you must provide an example of how the text would appear normally if adopted as you propose.

**After this petition is accepted for scheduling by the Department of Planning and Zoning, you must provide an electronic file of the "Petitioner's Proposed Text" to the Division of Public Service and Zoning Administration. This file must be in Microsoft Word or a Microsoft Word compatible file format, and may be submitted by email or some other media if prior arrangements are made with the Division of Public Service and Zoning Administration.**

11. The Petitioner agrees to furnish additional information as may be required by the Department of Planning and Zoning prior to the petition being accepted for scheduling, by the Planning Board prior to its adoption of a Recommendation, and/or by the County Council prior to its ruling on the case.
12. The undersigned hereby affirms that all of the statements and information contained in, or filed with this petition, are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information. If the Petitioner is an entity that is not an individual, information must be provided explaining the relationship of the person(s) signing to the entity.

Atapco Howard Square I Business Trust  
Petitioner's name (Printed or typed)

  
Petitioner's Signature

2/25/15  
Date

  
Sang W. Oh, Counsel for Petitioner

2/26/15

[If additional signatures are necessary, please provide them on a separate document to be attached to this petition form.]

**FEE**

The Petitioner agrees to pay all fees as follows:

Filing fee.....\$695.00. If the request is granted, the Petitioner shall pay \$40.00 per 200 words of text or fraction thereof for each separate textually continuous amendment (\$40.00 minimum, \$85.00 maximum)

Each additional hearing night.....\$510.00\*

**The County Council may refund or waive all or part of the filing fee where the petitioner demonstrates to the satisfaction of the County Council that the payment of the fee would work an extraordinary hardship on the petitioner. The County Council may refund part of the filing fee for withdrawn petitions. The County Council shall waive all fees for petitions filed in the performance of governmental duties by an official, board or agency of the Howard County Government.**

**APPLICATIONS: One (1) original plus twenty four (24) copies along with attachments.**

\*\*\*\*\*

**For DPZ office use only:**

**Hearing Fee \$** \_\_\_\_\_

**Receipt No.** \_\_\_\_\_

**PLEASE CALL 410-313-2395 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION**

**County Website: [www.howardcountymd.gov](http://www.howardcountymd.gov)**

Revised:07/12  
T:\Shared\Public Service and Zoning\Applications\County Council\ ZRA Application

## **INSTRUCTIONS TO THE APPLICANT/PARTY OF RECORD**

- As required by State Law, applicants are required to complete the AFFIDAVIT AS TO CONTRIBUTION that is attached, and if you have made a contribution as described in the Affidavit, please complete the DISCLOSURE OF CONTRIBUTION that is attached.
- If you are an applicant, Party of Record (i.e., supporter/protestant) or a family member and have made a contribution as described in the Affidavit, you must complete the DISCLOSURE OF CONTRIBUTION that is attached.
- Filed affidavits and disclosures will be available for review by the public in the office of the Administrative assistant to the Zoning Board during normal business hours.
- Additional forms may be obtained from the Administrative Assistant to the Zoning Board at (410-313-2395) or from the Department of Planning and Zoning.
- Completed form may be mailed to the Administrative Assistant to the Zoning Board at 3430 Courthouse Drive, Ellicott City, MD 21043.
- Pursuant to State Law, violations shall be reported to the Howard County Ethics Commission.

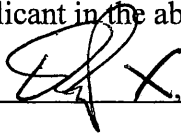
ZONING MATTER: Atapco Howard Square I Business Trust, Attn. Russ Powell

**AFFIDAVIT AS TO CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Atapco Howard Square I  
Business Trust, the applicant in the above zoning matter

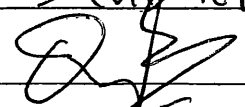
\_\_\_\_\_, HAVE

 X, HAVE NOT

made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before application in or during the pendency of the above referenced zoning matter.

I understand that any contribution made after the filing of this Affidavit and before final disposition of the application by the County Council shall be disclosed within five (5) business days of the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: David Polovsky  
Signature:   
Date: 2/25/15



ZONING MATTER: Atapco Howard Square I Business Trust, Attn. Russ Powell

**DISCLOSURE OF CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

This Disclosure shall be filed by an Applicant upon application or by a Party of Record within 2 weeks after entering a proceeding, if the Applicant or Party of Record or a family member, as defined in Section 15-849 of the State Government Article, has made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate of the treasurer of a political committee during the 48-month period before the application was file or during the pendency of the application.

Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR  
PARTY OF RECORD: \_\_\_\_\_

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_


ZONING MATTER: Atapco Howard Square I Business Trust, Attn. Russ Powell

**AFFIDAVIT AS TO ENGAGING IN BUSINESS WITH AN ELECTED OFFICIAL**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

I, Atapco Howard Square I  
Business Trust, the applicant in the above zoning matter

\_\_\_\_\_, AM

, AM NOT

Currently engaging in business with an elected official as those terms are defined by Section 15-848 of the State Government Article of the Annotated Code of Maryland.

I understand that if I begin engaging in business with an elected official between the filing of the application and the disposition of the application, I am required to file an affidavit in this zoning matter at the time of engaging in business with elected official.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: David Polonsky

Signature: 

Date: 2/25/5

**SUPPLEMENT TO PETITION TO AMEND THE  
ZONING REGULATIONS OF HOWARD COUNTY**

Atapco Howard Square I Business Trust, Petitioner

---

Petitioner, Atapco Howard Square II Statutory Trust (“Atapco” or “Petitioner”) p, by and through their attorneys, Sang W. Oh and Talkin & Oh, LLP, submits this Supplement in support of its Petition to Amend the Zoning Regulations of Howard County.

The Petitioner requests two amendments to Section 127.5 of the Howard County Zoning Regulations (CAC: Corridor Activity Center). The first amendment (“First Amendment”), which seeks to correct Section 127.5.E.3.d., for what are ostensibly drafting errors that were made during C.B. 32-2013. The second amendment (“Second Amendment”) seeks to further reduce the required square footage of commercial space for certain properties with the payment of a fee. The details of the proposed changes are shown on the attached Proposed Text Amendment (collectively, the “Amendments”). A brief statement concerning the reason(s) the requested Amendments to the Zoning Regulations are being proposed are as follows:

**4. Please provide a brief statement concerning the reason(s) the requested amendment(s) to the Zoning Regulations is (are) being proposed.**

The Petitioner is the developer of Howard Square, A CAC mixed-use project under development in Eldridge on Route 1, southeast of Port Capital Drive. The proposed Amendments are a follow-up and continuation of issues discussed during the 2013 Comprehensive Zoning (C.B. 32-2013) and how best to ensure that the CAC developments along Route 1 become viable communities and offer services appropriate to serve the needs of the surrounding community. During C.B. 32-2013, some amendments were made to the CAC zoning district; however, it was agreed by all of those involved that the amendments made as part of C.B. 32-2013 were temporary in nature and that there needed to be a more comprehensive solution. The Amendments being offered in this Petition seek to effectuate that intent.

First Amendment - as currently drafted, the requirement of 70 square feet of commercial space per **acre** in accordance with the criteria listed in **h(1)** and (2) appear to be drafting errors. The reference to subsection “b” is illogical. A proper reference to subsection “c” would appear to be much more logical. The requirement of commercial space being based on a per acre basis would basically nullify the commercial requirement in the CAC without any positive benefits. Petitioner contends that this was not the intent.

**5. Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with the current General Plan for Howard County.**

PlanHoward 2030 provides that the demand for commercial development and office space is significantly lower than supply. “Through 2030, the demand for office space is expected to peak at just over three million square feet. This demand is low when compared to the 14.1 million square feet of approved office space in the pipeline in Howard and Anne Arundel Counties.” PlanHoward 2030, p. 58.

The low demand for commercial development has been particularly noticeable within the Route 1 Corridor. Ashbury Courts, a similar mixed-use development in the CAC district, successfully petitioned for a zoning regulation change to allow for increased residential density and the possibility, with approval from the Director of the Department of Planning and Zoning (“DPZ”), of a lower square footage requirement for commercial development. The Ashbury regulation amendment was premised upon the fact that market demand for Ashbury Court residential units was strong, while commercial space suffered from a 75 percent vacancy rate.

A Market Analysis and Strategic Implementation Analysis of the Route 1 Corridor by Robert Charles Lesser & Co. (the “RCLCO Study”) found that “[t]he coupling of commercial square footage to residential units in the CAC zone has proven to be highly problematic with much of this commercial space remaining vacant after construction or having great difficulty in securing financing for prospective projects. The significant yields in commercial space assumed in future CAC development, all of it in

small increments because of its strict tie-in to concurrent onsite residential development (300 square feet per dwelling unit), will continue to be problematic.” RCLCO Study, p. 16. The RCLCO study recommends replacing the CAC district entirely, partly so that “there will be no automatic coupling of residential and non-residential uses.” RCLCO Study, p. 16.

The Amendments do not seek to de-couple the residential and non-residential component of the CAC district. To the contrary, the Petitioner has steadfastly maintained that it is desirable to have some commercial development in Howard Square in some manner. The amount of required commercial space imposed by the Zoning Regulations, however, between Rt. 100 and Rt. 175 grossly exceeds the amount of commercial that is required for the anticipated population. Howard Square will have approximately 1000 units. The Bluestream CAC development will have approximately 1200 units. Other CAC or TOD properties create the potential for a few hundred more residences. Even if the reduction of 70 square feet per residential unit is allowed for Howard Square and Bluestream (which has not yet been determined), the total commercial space required between these two developments is more than 150,000 square feet.

This commercial requirement is greater than what exists in a typical Columbia village center. Yet the population that surrounds these CAC development is far less than the amount of residential units in a typical Columbia village. In addition, there is further commercial development and re-development potential in the area between Rt. 100 and Rt. 175. Left unchanged, the current CAC zoning regulations will not promote sound, viable commercial development for Howard Square and Bluestream. The flexibility to allow some portion of commercial development below the limit of 70 square feet per residential unit is consistent with discussions that have occurred on this issue up to this point. It will, furthermore, result in better-planned communities.

The Amendments seek a reduction of the commercial space required per residential unit to an amount more in line with market demands. According to recommendations offered by the Capital Region Council of Governments (the “CRCOG”) regarding urban land planning, “A minimum of 12 square feet to a maximum of 25 square feet per housing unit is recommended for the local neighborhood retail

component. . . . The national standard for neighborhood retail is approximately 19 square feet per capita, which most experts agree is overbuilt. According to [the global real estate firm] Cushman and Wakefield, the ideal ratio is approximately 9 square feet per capita. Because all retail needs cannot be met in each neighborhood, a lower ratio of approximately 12 square feet per household is recommended to meet local needs.”

According to the CRCOG study, 25 square feet of retail space per housing unit is the maximum that is sustainable in a development, while the study recommends as little as 12 square of retail space per housing unit for the retail component to be viable. While this recommendation pertains only to retail space, as opposed to all commercial uses as the CAC district commercial-residential coupling assumes, developments such as Howard Square are unlikely to offer large areas of commercial space other than retail.

Requiring a fixed amount of commercial development, at a level that market demand cannot support, ultimately undermines the redevelopment goals of the Route 1 Corridor and is detrimental to the vitality of new development in the area. Policy 5.4.b of PlanHoward 2030 recognizes the need for increased flexibility in the Corridor: “Evaluate the efficacy of existing Route 1 zoning districts (CE, CAC, TOD); consider more flexibility, especially regarding commercial uses.”

It is not in the interests of the general public or the County to require that a developer seeking to revitalize the Route 1 Corridor construct commercial space that will sit vacant and unoccupied. Furthermore, redevelopment opportunities will not reach their full potential, and might be passed over entirely, when dwelling units otherwise permitted must be left unconstructed to meet intractable commercial space requirements.

Instead, the proposed fee can be used by the Economic Development Authority to promote retail redevelopment in locations which are more strategically-located as crossroads locations as discussed by the RCLCO study.

**6. The Legislative Intent of the Zoning Regulations in Section 100.A. expresses that the Zoning Regulations have the purpose of "...preserving and promoting the health, safety and welfare of the community." Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with this purpose and the other issues in Section 100.A.**

The Amendments will preserve and promote the health, safety and welfare of the community. Empty retail space or empty lots in what are supposed to be vibrant communities should be discouraged.

**7. Do the amendments have the potential of affecting the development of more than one property, yes or no? If yes, and the number of properties is less than or equal to 12, explain the impact on all properties affected by providing a detailed analysis of all the properties based upon the nature of the changes proposed in the amendments.**

The number of developments affected by the Amendments are two (2): Howard Square and Bluestream. These are the only parcels that have 800 or more units of residential development. The purpose of the Amendments is to ensure that the development between Rt. 100 and Rt. 175, specifically, Howard Square and Blue Stream, are done in a manner that results in vibrant communities and not blight.

**Proposed Text  
CAC ZRA**

Amend Section 127.5.E.3.d. as follows:

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, provide the criteria listed in [b]C(1) and (2) are used in the evaluation.

Also, add new Section 127.5.E.3.e.:

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 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.

**RENUMBER ALL OTHER SECTIONS ACCORDINGLY**



ZONING MATTER: Atapco Howard Square I Business Trust, Attn. Russ Powell

**DISCLOSURE OF CONTRIBUTION**

**As required by the Annotated Code of Maryland  
State Government Article, Sections 15-848-15-850**

This Disclosure shall be filed by an Applicant upon application or by a Party of Record within 2 weeks after entering a proceeding, if the Applicant or Party of Record or a family member, as defined in Section 15-849 of the State Government Article, has made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate of the treasurer of a political committee during the 48-month period before the application was file or during the pendency of the application.

Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR  
PARTY OF RECORD: Atapco Howard Square I Business Trust

RECIPIENTS OF CONTRIBUTIONS:

NO CONTRIBUTIONS MADE

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<del>None</del>		<del>0</del>

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: David Polowsky  
Signature: [Handwritten Signature]  
Date: 2/27/15