

roduced \_\_\_\_\_  
Public hearing \_\_\_\_\_  
Council action \_\_\_\_\_  
Executive action \_\_\_\_\_  
Effective date \_\_\_\_\_

## County Council of Howard County, Maryland

2016 Legislative Session

Legislative day # 1

**BILL NO. 2 - 2016 (ZRA - 156)**

**Introduced by the Chairperson  
at the request of ATAPCO Howard Square I Business Trust**

**AN ACT** amending the Howard County Zoning Regulations' CAC (Corridor Activity Center) Zoning District to allow for the reduction of the commercial space requirement in residential developments, if determined appropriate by the Department of Planning and Zoning; and generally relating to CAC developments.

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Introduced and read first time \_\_\_\_\_, 2016. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

Having been posted & notice of time & place of hearing and title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2016.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

This Bill was read the third time \_\_\_\_\_, 2016 and Passed \_\_\_\_, Passed with amendments \_\_\_\_, Failed \_\_\_\_.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_\_\_ day of \_\_\_\_\_, 2016 at \_\_\_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

Approved/vetoed by the County Executive on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law.  
Strikeout indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard**  
2 **County Zoning Regulations are hereby amended to read as follows:**

3  
4 *By amending:*

5 *Section 127.5: “CAC (Corridor Activity Center) District”*

6 *Subsection E. “Requirements for CAC Development”*

7 *Number 3 “Requirements for Residential Uses”*

8 *Letters C and D*

9  
10  
11 **Howard County Zoning Regulations**

12  
13 **SECTION 127.5: “CAC (Corridor Activity Center) District”**

14  
15 **E. Requirements for CAC Development**

16  
17 **3. Requirements for Residential Uses**

18 c. For every dwelling unit that is developed, ~~[[300]]~~ 70 square feet of  
19 commercial space must be developed on the site. ~~[[The Director of the~~  
20 ~~Department of Planning and Zoning may, however, reduce the~~  
21 ~~commercial space requirement to 100 square feet per residential unit~~  
22 ~~under the following conditions:~~

23 (1) The site is constrained in terms of size, shape, environmental  
24 factors, access, or proximity to existing vicinal commercial  
25 development in a manner that limits commercial development  
26 potential; or

27 (2) The proposed design includes recreational, public, or non-  
28 profit uses on the first floor that benefit and are accessible to  
29 the general public.]]

30  
31 ~~[[d. Based on documented hardship, the Planning Director may further~~  
32 ~~reduce the commercial space requirement to 70 square feet per acre for~~  
33 ~~parcels that have 800 units or more, provided the criteria listed in b (1)~~  
34 ~~and (2) are used in the evaluation.]]~~

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D. THE DEPARTMENT OF PLANNING AND ZONING SHALL PERMIT A REDUCTION IN THE COMMERCIAL SPACE REQUIREMENT TO NOT LESS THAN 25 SQUARE FEET PER DWELLING UNIT PROVIDED THAT A FEE OF 50 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 ROUTE 1 CORRIDOR, AS ALLOWED UNDER SECTION 26.106 OF THE HOWARD COUNTY CODE.

HOWEVER, FOR CAC DEVELOPMENTS WITH NO FRONTAGE ON US ROUTE 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, INCLUDING A FULL REDUCTION OF THE COMMERCIAL SPACE REQUIREMENT IF THE DEPARTMENT OF PLANNING AND ZONING FINDS BASED ON A MARKET STUDY SUBMITTED BY THE DEVELOPER THAT THE REDUCTION IS NECESSARY FOR THE FINANCIAL VIABILITY OF THE PROJECT.

*Section 2. Be it further enacted by the County Council of Howard County, Maryland, that this Act shall become effective 61 days after its enactment.*

Amendment 1 to Council Bill 2-2016

BY: Calvin Ball

Legislative Day No: 4  
Date: April 4, 2016

Amendment No. 1

*(This amendment would impose a fee and establish other conditions for approval of further reductions in commercial space for a development)*

On the title page, in the last line of the title page, after the semi colon, insert:  
“Imposing a fee and establishing other conditions for approval of further reductions in commercial space for a development.”

Page 1, line 19, after “site”, delete “.” and insert “PROVIDED, HOWEVER, THAT FOR PARCELS PROVIDING MODERATE INCOME HOUSING UNDER SECTION 127.5.E.3.F.(1), THE COMMERCIAL SPACE REQUIREMENT AS SET FORTH IN SECTION 127.5.E.3.C. SHALL BE DETERMINED BASED ON EIGHTY-FIVE PERCENT OF RESIDENTIAL UNITS DEVELOPED AND FOR PARCELS PROVIDING MODERATE INCOME HOUSING UNDER SECTION 127.5.E.3.F.(2), THE COMMERCIAL SPACE REQUIREMENT AS SET FORTH IN SECTION 127.5.E.3.C. SHALL BE DETERMINED BASED ON SEVENTY-FIVE PERCENT OF RESIDENTIAL UNITS DEVELOPED.”

Page 2, line 2, after “D.” insert “FOR PARCELS THAT HAVE 800 UNITS OR MORE,”

Page 2, line 4, delete “25” and replace with “20”

Page 2, line 15, after “1” insert “AND WHICH ADJOIN A DEVELOPMENT OF 800 UNITS OR MORE,”

On page 2, line 23, insert the following:

“THE FEE AS PROVIDED FOR IN THIS SUBSECTION SHALL BE PAID AT THE TIME OF APPROVAL OF A SITE DEVELOPMENT PLAN FOR THE NON-RESIDENTIAL PORTIONS OF THE DEVELOPMENT. THE FEE MAY BE REDUCED AS FOLLOWS:



- 1           (1) THE FEE SHALL BE REDUCED ONE DOLLAR PER SQUARE FOOT FOR EVERY PERCENTAGE  
2           POINT OF AMENITY AREA PROVIDED IN EXCESS OF THAT REQUIRED FOR THE PROJECT  
3           LIMITED TO A MAXIMUM OF FIVE PERCENT.
- 4           (2) THE TOTAL FEE SHALL BE REDUCED DOLLAR-PER-DOLLAR FOR ANY AMOUNT OF  
5           CONTRIBUTIONS PAID BY THE DEVELOPER FOR PUBLIC IMPROVEMENTS IN EXCESS OF THE  
6           PROPORTIONAL SHARE REQUIRED BY HOWARD COUNTY.
- 7           (3) THE FEE SHALL BE REDUCED TWO DOLLARS PER SQUARE FOOT FOR PROJECTS IN WHICH  
8           OVER TWENTY-FIVE PERCENT OF THE RESIDENTIAL UNITS ARE LEED CERTIFIED, FOUR  
9           DOLLARS PER SQUARE FOOT FOR PROJECTS IN WHICH OVER TWENTY-FIVE PERCENT OF  
10           THE RESIDENTIAL UNITS ARE LEED SILVER CERTIFIED, SIX DOLLARS PER SQUARE FOOT  
11           FOR PROJECTS IN WHICH OVER TWENTY-FIVE PERCENT OF THE RESIDENTIAL UNITS ARE  
12           LEED GOLD CERTIFIED, AND EIGHT DOLLARS PER SQUARE FOOT FOR PROJECTS IN WHICH  
13           OVER TWENTY-FIVE PERCENT OF THE RESIDENTIAL UNITS ARE LEED PLATINUM  
14           CERTIFIED.

15

16           IN THE EVENT THAT THE DEVELOPER PAYS THE FEE AS PROVIDED FOR IN THIS SUBSECTION,  
17           NO ADDITIONAL RESIDENTIAL UNITS MAY BE RECEIVED OR CONSTRUCTED ON THE PROPERTY  
18           PURSUANT TO SECTION 127.5.F.

19

20           E. THE PHASING OF RESIDENTIAL AND COMMERCIAL CONSTRUCTION AND OPEN SPACE  
21           AMENITY AREAS SHOULD BE PROPORTIONAL. NO MORE THAN 50% OF THE RESIDENTIAL  
22           UNITS SHALL BE CONSTRUCTED PRIOR TO COMMENCING A PROPORTIONAL AMOUNT OF  
23           COMMERCIAL CONSTRUCTION AND OPEN SPACE AMENITY AREAS. FOR DEVELOPMENTS  
24           OF 800 UNITS OR MORE OR DEVELOPMENTS ADJOINING SUCH LARGER DEVELOPMENTS,  
25           NO MORE THAN 70% OF THE RESIDENTIAL UNITS SHALL BE CONSTRUCTED PRIOR TO  
26           COMMENCING THE CONSTRUCTION OF THE NON-RESIDENTIAL PORTIONS OF THE  
27           DEVELOPMENT UNLESS THE FEE AS SPECIFIED IN SUBSECTION (D) ABOVE IS PROVIDED.”.

28           On page 2, immediately following line 23, insert the following:

29           “[e. The phasing of residential and commercial construction and open space amenity areas  
30           should be roughly proportional. No more than 50% of the residential units shall be  
31           constructed prior to commencing a roughly proportional amount of commercial  
32           construction and open space amenity areas. For developments of 800 units or more, no



1 more than 60% of the residential units shall be constructed prior to commencing the  
2 construction of the non-residential portions of the development.]]”

3

4 Renumber the remainder of the ordinance accordingly.





**Pending legislation CB19-2016 and CB2-2016**

Susan Garber [buzysusan23@yahoo.com]

**Sent:** Sunday, April 03, 2016 8:45 PM

**To:** CouncilMail; Kittleman, Allan

**FILE COPY**

In the interest of time I will present my thoughts briefly.

**CB19-2016:**

I greatly appreciate that all of the materials submitted were posted to the Council website to provide citizens with an opportunity to study them.

After reading through the extensive materials and asking further questions of some of the individuals who testified AGAINST CB19-2016, I find I agree with their conclusions. Therefore I request that you NOT pass this bill.

At a minimum I believe you should table this bill, ask questions of those who testified and carefully examine the evidence. It would appear that YOU as well as the public may have been fooled by some document switching at a time when you had a very large amount of documents under consideration.

It is critical that the Council not give the appearance of favoring particular land owners and/or their attorneys and that they remain committed to preserving some areas for less dense development.

**CB2-2016:**

I want to reiterate my position that ATAPCO should NOT be granted any further changes. The level of residential density is already appalling and there are a great number of infrastructure inadequacies. Please do not be influenced by Mr. Oh's ridiculous comment that they could build the commercial space, but it would sit vacant. I'm sure the County could find a use for the vacant building--to house small non-profits, to provide much needed meeting space, etc. ATAPCO should not be allowed another bait and switch for higher residential density. Therefore I request that you NOT pass this bill.

Best regards,  
Susan Garber  
Laurel, MD

**FILE COPY**

Date: 19 January 2016

Subject: Howard County Citizens Association Opposes CB2-2016 (ZRA-156)

The Howard County Citizens Association (HCCA) opposes the approval of CB2-2016, ZRA-156. We simply ask is there a real need to amend the Corridor Activity Center (CAC) zoning regulations at this time. We especially ask this question based on the fact that before us tonight is a proposed Bill and rightfully so to analyze the feasibility of the BRX zone. The CAC is currently one of 42 zoning types in the County. In looking at the Technical Staff Report on page 2, Section II – Existing Regulations it states, “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 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.”

So after the extensive number of attempted CAC revisions it is apparent that this particular zoning type is not working and has admitted problems thus the need to put on hold like the BRX until further review. Furthermore this technical staff report was signed off by the previous DPZ Director and we believe the new Director with his staff should have an opportunity to review it.

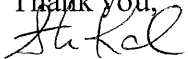
We also note that in the Planning Board Recommendations on page 1 lines 25 thru 28 that Mr. Oh stated, “The Technical Staff Report did a good job of expressing the issues about the provision of commercial space in CAC developments. He explained that this issue was discussed during the Comprehensive Zoning Plan process, and he emphasized that if it can work on an economic basis, the developers do prefer to build the commercial space.” So if this is the case what is the compelling need to propose such a Bill? One should not be allowed to make changes to fit their needs without hearing the pros and cons from both sides. Please refer to the Technical Staff Report, Exhibit A – The Petitioner's Proposed Text and Exhibit B – DPZ's Recommended Revisions. You will notice that the Petitioner wants to delete from “F” the Moderate Income Housing requirement while DPZ rightfully does not.

HCCA recommends that it would be very prudent on the Council’s part to consider forming a Working Group consisting of DPZ, a few citizens, developers and land-use attorneys to get together to completely review, analyze the feasibility, determine the merits and the contents of not only the CAC zoning, but the BRX as well as the other zoning types. Like the proposed CB-55 BRX, the acronym CAC should be substituted which would be a step in the right direction. It would read that there should be consideration for temporarily prohibiting applications for proposed re-zonings to the CAC zoning districts; finding that such applications, if approved under the current Zoning Regulations, could lead to development incompatible with surrounding residential uses; finding that the potential incompatibility represents a current threat to the public health, safety and welfare; providing that the purposes of this Act are to provide the

Department of Planning and Zoning with time to study the deficiencies in the CAC districts, investigate alternatives and make recommendations for improvement and give the County Council time to act on the recommendations.

If the Council agrees that a Working Group should be established then HCCA would like your consideration for us to be a member of such a Group. We ask you to consider not having business as usual as we hope you really zone in on the problem so we will not have any setbacks in the future.

Thank you,



Stu Kohn  
HCCA, President

## Speaking AGAINST CB2-2016 (ZRA-156)

I'm here to implore you to delay consideration of this ZRA until you've had sufficient time to consider it and its effect on the Route One corridor in its entirety. As you have stated on the BRX/BR legislation, mistakes can be made and there is a duty to re-examine and correct them.

Approving this ZRA at this time would be one more incidence of:

1. accepting piecemeal changes as they are requested, rather than establishing and adhering to a plan
2. leaving decisions up to the DPZ Director. There are at least 23 examples in the Zoning Code where defined conditions can be over-riden by the DPZ Director (quote "the Director of Planning and Zoning, however may...",) not including repetition's in various zones. This much discretion takes the law out of the law. I'm pleased that the current Director of the DPZ recognizes this as a problem and doesn't welcome this "discretion" without very well defined criteria on which to make the decisions.
3. making a bad situation worse—there are already 44 uses permitted by matter of right and 7 accessory uses YET it seems that the ONLY use of the zone has been for residential development—no surprise since allowing high density residential is a significantly lucrative up-zoning for property owners
4. allowing undefined terms leaves everything subject to interpretation. For example no definition of **hardship**. I might define hardship as a senior citizen on a fixed income having to pay a stormwater management fee which can't be deducted from income taxes-- on top of already high property taxes—but I suspect that's not what's being referred to here.
5. If one examines the zoning map, there is in fact NO property actually zoned CAC—only CAC-CLI, CAC-CE, or CAC-CLI-CR . That's not zoning: that's an invitation for "anything goes."

- **PLEASE NOTE:** There is NO Southeast Area Plan. Despite the former DPZ director's claims that a Southeast area plan was almost finished, it was in fact never started. With no plan in place it is foolish to begin willy-nilly changes to the CAC zone.
  - The Route One Streetscape plan has never been implemented; thus holding it up as a crucial criterion for CAC development is unwise and unwarranted.
6. Residential development is replacing commercial and industrial in the corridor designated as the County's economic engine –don't let this catch all zone waste this remaining valuable resource.
  7. There is no clarity on whether a new schools test would be conducted to address the additional residential units occupying what was to be commercial space. Is this an attempt to get past both schools and allocations rulings or will they have to wait in line for the additional units?

The CAC zone is a crazy quilt, one of the most prominent examples of a zone written specifically to accommodate particular development proposals. With the CAC regulations in one hand and the zoning map in the other, any long term resident of the area can name the specific property that was being helped by the wording of each requirement and bulk regulation within this zoning category.

If the developer gets this change then citizens should get changes in return. Ex: eliminate the minimum setback of 10 feet from Route One! It creates too great a mass next to a busy highway and places dwelling units too close to traffic noise and trucks hurtling down the road. US 1 IS an interstate highway, just as is I-70 and I-95, although not limited access. ( Compare to state roads: You don't build anything 10 feet from Route 29 or Rt 175? What's different about Route One to justify this hazardous requirement? At this point, US-1 is most similar to US-40 and you aren't building 10 feet from that roadway either.)

In conclusion please don't approve this ZRA request and don't permit additional projects under this zone until the zone can be fully re-evaluated.

Thank you.

## CAC Testimony 1/19/2016

John Garber

9100 Gorman Road

Laurel, MD.

I am testifying against CB2-2016 (ZRA156). The text of the CAC zone should not be changed and any application of the zone in its current form should be suspended pending a study of its usefulness.

Portions of my written text before you are grayed out and will not be read aloud but are to be considered a part of the record.

### A. Purpose

*"Many parcels in the CAC District (Corridor Activity Center) were developed before this district was created. It is not the intent of these requirements to disallow the continued use of sites developed prior to the CAC District. The intent of this district will be achieved by bringing the sites into compliance with these requirements and the standards of the Route 1 Manual as uses are expanded or redeveloped."*

The statement of purpose for CAC zone summarizes the obvious conditions where development has already taken place. However, it directs one away from the main purpose which is to ease the conversion of manufacturing and industrial areas into residential uses by using minimal commercial activities as a transition mechanism.

This zone is unworkable and ineffective by itself. This is demonstrated by the fact that it is not used without companion CLI or CR Overlay Districts. It cannot be saved by and should not be saved by more tinkering with an already confusing text. Let's look at two examples from the CAC zone text that demonstrate conditions it fails to successfully address. Here is an example of:

# CAC Zone micro management

## D. Bulk Regulations

### 2. Maximum building height:

- a. CAC Development abuts Route 1..... 55 feet

With the following exceptions:

- (1) For hotels and for structures incorporating either first floor retail or structured parking, if an additional 1 foot in height is provided for every 2 feet of additional setback above the minimum from an adjoining residential district excluding residential uses in the CAC District ..... 65 feet
- (2) For office structures on parcels adjoining I-95..... 100 feet
- (3) For office structures on parcels adjoining I-95 if an additional 2 foot in height is provided for every 1 foot of additional setback above the minimum from the I-95 right-of-way ..... 120 feet

Here is an example of:

## CAC Zone ambiguity

### E. Requirements for CAC Development

#### 3. Requirements for Residential Development

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. Requirements for TNC Development

#### 3. Requirements for Residential Development



d. The phasing of residential and commercial construction should be roughly proportional. Once building permits have been issued for 50% of the residential units, no more building permits for residential units will be issued until the developer obtains building permits for a proportional amount of commercial construction or renovation. This requirement may be satisfied by continuing presence of a proportional amount of existing commercial development that is intended to remain as part of the development project, provided that the existing commercial space is redeveloped and the redevelopment is subject to the same requirements as new commercial construction in the TNC District.

I would note that the word "roughly" is only used three times in the 453 page Howard County Zoning Regulations and I would be surprised to find it used in any other jurisdictions zoning regulations.

I submit that the use of the CAC zone to address issues in the RT-1 corridor is fatally flawed. It is clear that this site specific approach has failed to generate any meaningful improvement. In addition, at this time there is no sub-county area plan within which these kinds of actions for RT-1 can be meaningfully structured. Zoning is a tool to be used to implement a plan, what we have here is the application of zoning in a planning vacuum.

CB2-2016

The Greater Elkridge Community Association opposes this bill. CAC zoning is for dense mixed developments of commercial and residential, not dense residential.

If a developer decides the market does not support the commercial space in a CAC project, there is a more appropriate remedy than allowing the DPZ to convert the commercial development into additional dense residential development. The developer may petition to have the zoning on the property changed to residential at a density appropriate for the area and acceptable to the community.

If the developer wishes to still have a small amount of commercial space, the developer may keep a portion of the development CAC, and change the rest to residential zoning.

Dense residential development imposes heavy costs on the county in the form of services demanded by the residents. Commercial development does not impose such costs, and is a better fiscal proposition for the county.

Given the overcrowded schools in the Route 1 corridor, and specifically the severe overcrowding of Howard High School, it is inappropriate to allow increased dense residential development without full review and community involvement.

Lisa Markovitz

President, The People's Voice, LLC

Testimony to Howard County Council

01/19/2016

Oppose CB 2 - 2016

This bill seeks to amend the zoning regulations for the Corridor Activity Center (CAC) zone by reducing the amount of commercial development requirement per residential unit from 300 to 70. This is a large decrease. The current regulation already allows leeway for the DPZ to reduce from 300 to as low as 70 if they see fit, and can go even lower with stated criteria addressing the exact concerns one would already consider with larger residential developments, like the petitioner's.

Creating a by-right ability to provide such a lower ratio of commercial to residential takes the power out of the hands of planners, and removes oversight per project that the current regulations state.

Why eliminate the review process to this degree? It is not beneficial to the community to keep changing zoning regulations requested by a single entity, instead of having a particular project's need seeking a variance, especially when the change is so significant. This project could have received what it needed under the current regulations with the review process by DPZ that is already in place there. Why change the regulation to grant it automatically without review as a matter of right?

Also, I disagree with the petitioner that the intent of the original regulation was to invoke a ratio requirement based on the number of acres versus number of units. The regulation states per residential unit and that makes sense and seems likely to have been the actual intent.

As for a fee-in-lieu component, this should not be granted as a matter of right either, but should be allowed if deemed to be meeting the criteria listed in the original regulation as not being feasible to provide, or seek a variance. The regulation already takes into consideration the changing market tides of residential and commercial space, by allowing DPZ the review and allowance for lower ratios. It doesn't make sense to regulate market changes applying over long periods. The regulation is already written with flexibility and should not be changed to reduce the work of planning and oversight for the community.

Cathy Hudson  
6018 Old Lawyers Hill Rd  
Elkridge, Md 21075

Re CB2 opposed

Nearly 20 years ago residents and citizens were brought together in focus group like sessions. We were shown lovely pictures of boulevards with wide sidewalks, tree canopies, storefronts on the ground floor and residences above. There were fountains and public gathering places and people strolling along the sidewalks. We bought into that vision although the housing density was much more than anything that existed in the area at that time.

Flash forward to the year 2016 and what do we have. High density housing that often look like barracks, little to no commercial along the sidewalks to attract us-and if there is commercial space there might not be an entrance from the sidewalk. And the commercial space has been whittled down more and more-and in some cases if this is passed it won't be required at all. And community space? I have yet to see any.

The vision has failed. This zoning category has failed. Various adjustments to the zoning category have tried to apply a bandaid to fix it and it hasn't and won't work. And putting money into a pot to build commercial somewhere else will not work in an area where there isn't land available to build commercial and where developers don't want commercial on their land in the first place.

So what should be done. First, don't ask the developers what they want-they want more housing units and luxury ones at that and we don't need more housing where roads and schools are too crowded. Ask the people who live in the Rt 1 community what they want and need. We want to see fountains and gathering places and small parks as we drive down Rt 1. We need community meeting rooms desperately.

So I request that whatever changes you decide need to be made, please ensure that there are no further added housing units taking up that space, but leave space for other things that will make that community attractive and useful for the larger community. And if the developer won't use that commercial space for commercial building, then let them turn that acreage over to the county (with some money) so that they county can provide services to the community.



# Howard County Council

George Howard Building  
3430 Court House Drive  
Ellicott City, Maryland 21043-4392

## COUNCILMEMBERS

Mary Kay Sigaty, Chairperson  
District 4  
Jon Weinstein, Vice Chairperson  
District 1  
Calvin Ball  
District 2  
Jennifer Terrasa  
District 3  
Greg Fox  
District 5

March 3, 2015

ZRA= 156  
Tech staff Report= ✓  
Planning Board = ✓  
Legislation = CBZ-2016

TO: Marsha McLaughlin, Director  
Department of Planning & Zoning

RE: ZRA-156, Atapco Howard Square I Business Trust

Attached is Petition No. ZRA-156, filed by Sang Oh, Esq. on behalf of Atapco Howard Square I Business Trust, to amend Sec. 127.5.E.3.d. to clarify an amendment enacted during the 2013 Comp Zoning & to add new Section 127.5.E.3.e. to allow a further reduction in commercial space required in CAC for certain properties subject to payment of optional fee.

Please notify our office when you schedule this case before the Planning Board. Should you have any questions, please contact me at 313-2395 or Theodore Wimberly at 313-2001.

Robin Regner  
Administrative Assistant

### Attachment

cc: Council Members  
Paul Johnson, Esq.  
Theodore Wimberly  
Jessica Feldmark  
Jennifer Sager  
T. Sieglein  
Sang Oh, Esq.



**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 12:44

RECEIVED  
HOWARD COUNTY COUNCIL

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

See attached Supplemental Statement.

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[You may attach a separate document to respond to Section 5. If so, this document shall be titled "Response to Section 5"]

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.\_\_\_\_\_

See attached Supplemental Statement.

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[You may attach a separate document to respond to Section 6. If so, this document shall be titled "Response to Section 6."]

7. Unless your response to Section 6 above already addresses this issue, please provide an explanation of the public benefits to be gained by the adoption of the proposed amendment(s) Same as above\_\_\_\_\_

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[You may attach a separate document to respond to Section 7. If so, this document shall be titled "Response to Section 7."]

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

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[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. \_\_\_\_\_

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



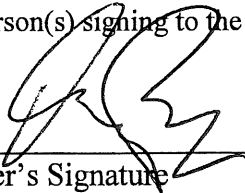
10. You must provide the full proposed text of the amendment(s) as a separate document entitled "Petitioner's Proposed Text" that is to be attached to this form. This document must use this standard format for Zoning Regulation Amendment proposals; any new proposed text must be in CAPITAL LETTERS, and 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.**

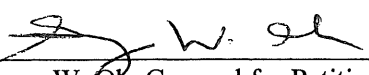
11. The Petitioner agrees to furnish additional information as may be required by the Department of Planning and Zoning prior to the petition being accepted for scheduling, by the Planning Board prior to its adoption of a Recommendation, and/or by the County Council prior to its ruling on the case.

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.

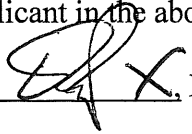
ZONING MATTER: Atapco Howard Square I Business Trust, Attn. Russ Powell

**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


 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 Polonsky

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

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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 b(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**

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State Government Article, Sections 15-848-15-850**

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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: [Signature]  
Date: 2/27/15