



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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TECHNICAL STAFF REPORT

Planning Board Meeting of January 21, 2020

Case No./Petitioner: ZRA-195 – Kimberly Kepnes

Request: Amend Section 128.0.K. to extend the eligibility of qualified sending parcels to all parcels that contain an historic structure as located on the Maryland Historic Trust Sites Inventory (“historic structure”) and parcels located in a local historic district; to extend increased sending density rates for these properties; and to allow sending density to be received as bonus density across zoning districts.

I. BACKGROUND AND HISTORY OF EXISTING ZONING REGULATIONS

Sec. 128.0.K - Neighborhood Preservation Density Exchange Option

The Neighborhood Preservation Density Exchange Option (NPDEO) was created by Council Bill 50-2008 (ZRA-95) in 2008 to address incompatible infill development resulting from the subdivision of large existing residential lots in established neighborhoods. Through this density exchange option, parcels in the R-ED, R-20, and R-12 zoning districts that met the definition of infill development and that could be subdivided to create additional lots were eligible to send the remaining development rights to a receiving parcel in the same planning district. In R-ED and R-20, development rights could be sent at a rate of 2 per net acre and 3 per net acre in the R-12. However, the maximum number of development rights that could be sent per property was 3. An easement was required to be placed on the property restricting further development and identifying the number of development rights available and to which property they are sent.

In 2012, Council Bill 2-2012 (ZRA-137) amended this section to permit Community Swimming Pools to send density in the R-ED, R-20, and R-12 districts under certain circumstances.

During the 2013 Comprehensive Zoning process, R-SC was added to the list of zoning districts in which sending and receiving parcels could be located. Also, the minimum parcel size for receiving parcels in R-ED, R-12, and R-20 was reduced from 11 acres to 5 acres and the location of a receiving parcel was extended to within a two-mile radius of the planning district. Additional minor grammatical changes were made.

In 2015, ZRA-158 was submitted to allow development rights to be sent to properties in any planning district. DPZ and the Planning Board recommended approval; however, the ZRA was never filed as a Council Bill.

In 2017, Council Bill 32-2017 (ZRA-172) added properties that are principally used as a historic structure in R-ED, R-12, R-20, and R-SC as sending parcels; made certain Neighborhood Preservation sending parcels eligible for a Conditional Use for Historic Building Uses; and included other amendments generally relating to Historic Building Uses.

II. DESCRIPTION OF PROPOSAL

This section contains the Department of Planning and Zoning (DPZ) technical evaluation of ZRA-195. The Petitioner's proposed amendment text is attached as Exhibit A.

Section 128.0.K.1.

Section 128.0.K.1 allows developments rights (dwelling units) to be sent from parcels that are eligible to be subdivided into additional lots in the R-ED, R-20, R-12, and R-SC Districts that meet the following criteria:

- Meet the definition of residential infill according to Section 16.108(B) of the Subdivision and Land Development Regulations – *“a residential development in the area planned for both water and sewer service that creates one or more units on a property that adjoins an existing residential unit”*; or
- Are principally used for a Community Swimming Pool; or
- Are principally used for a historic structure; and
- Are eligible to be developed for additional residential lots.

The development rights may be sent from a sending parcel to a receiving parcel within the same planning district or within a two-mile radius regardless of the planning district. However, parcels that contain a historic structure may exchange density with a receiving parcel in any planning district.

The petition states that the intent of the proposed amendments is to extend sending parcel eligibility to all properties that contain a historic structure or are in a local historic district. However, the language as proposed in Exhibit A does not change which properties are eligible to be NPDEO sending parcels, since the section 128.0.K.1 only applies to parcels in R-ED, R-20, R-12, and R-SC.

Additionally, the Petitioner cites the Maryland Historic Trust Sites Inventory as the means to qualify a historic structure. However, Howard County commonly refers to the Maryland Inventory of Historic Properties (MIHP) list or the Howard County Historic Sites Inventory List (HSI). The MIHP allows any inventories to be added to this State list. It may be most appropriate to use the HIS since it requires County Council approval and Historic Preservation Commission public review. The HSI is a more discernable list that notes historic properties throughout the county eligible for local tax credits.

Section 128.0.K.1.c.

The Petitioner proposes a new section to allow properties that contain a historic structure or are in a local historic district to send density at a rate of 3 development rights per net acre or the maximum number of development rights available for that parcel, whichever is greater.

The following example applies this provision to a one-acre parcel zoned RVH, which allows 8 dwelling units per acre, that contains a single-family dwelling:

3 Development Rights Per Net Acre

3 du/acre X 1 acre = 3 development rights

Or

Maximum Number of Development Rights Available

8 du/acre X 1 acre – 1 existing dwelling = 7 development rights

The owner of the parcel would not be required to send all density at once, and any remaining density would be retained until only a single development right remains for the structure on the parcel.

Section 128.0.K.2.a.

This section requires a Neighborhood Preservation Parcel Easement on the entire sending parcel.

The Petitioner's proposal exempts properties that contain an historic structure or are in an historic district from this requirement. This would allow a portion of the parcel to be subdivided/developed after sending off a portion of the development rights, if remaining density exists. This is currently not permitted for the Neighborhood Preservation Density Exchange Option under the current Zoning Regulations.

Section 128.0.K.2.b.

This section restricts the size of new structures on a property with a Neighborhood Preservation Parcel Easement improved with an existing dwelling unit, a structure used for an Historic Building Uses Conditional Use, or a Swimming Pool, Community to 50% of the building footprint of the 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 an existing building, the Director may approve a footprint that does not exceed this average.

The Petitioner's proposal would exempt properties that contain an historic structure or are in an historic district from this requirement.

Section 128.0.K.2.c. d. e.

The proposal eliminates Section 128.0.K.2.c and changes c. do d., d. to e., and e. to f. These do not appear to be necessary, since there are no amendments proposed that impact them.

Section 128.0.K.2.f.(4)

This section requires that the Howard County Government, the Maryland Environmental Trust, the Maryland Historic Trust, or a land conservation organization approved by the County Council must be a party to the deed of Neighborhood Preservation Parcel Easement, in addition to the owner.

The Petitioner is proposing to allow a community homeowner's association or, if no community association exists, the Historic Preservation Commission to be a party to the deed of Neighborhood Preservation Parcel Easement, in addition to the property owner, if the property contains a historic structure or is in a historic district.

Section 128.0.K.3.b.

This section requires a NPDEO receiving parcel in the R-ED, R-20 and R-12 Districts to be at least 5 acres.

The Petitioner's proposal would allow development rights from properties that contain a historic structure or located in a local historic district to be received by parcels of any size in all zoning districts.

III. EVALUATION OF PROPOSAL

Section 16.208.(d) of the Howard County Code:

1. The compatibility, including potential adverse impacts and consequences, of the proposed Zoning Regulation Amendment with the existing and potential uses of the surrounding areas and within the same zoning district.

The petition indicates that the intent of the Zoning Regulation Amendment is to allow properties that contain a historic structure or are in a local historic district to be NPDEO sending parcels and to allow development rights from these properties to be sent to receiving parcels in any zoning district in all planning districts. The additional sending parcels resulting from the proposed amendments are shown in Attachments A - C. The majority of these properties are located in the Ellicott City local historic district (R-VH, HO, and HC), the

Lawyer's Hill local historic district (R-ED) and in the western portion of the county (RC and RR).

As shown in Attachment E, 11 Neighborhood Preservation Parcels have been created since 2008 consisting of 63 acres and 112 dwelling units. Fourteen subdivisions have received a total of 54 development rights from these sending parcels. This equals a 48% utilization rate which indicates that demand for the current transfer of development rights program is low.

The proposed amendment makes over 1,000 additional properties available for sending development rights under NPDEO, which could affect the sending value of those rights. The "Transfer of Development Rights (TDR) Committee Report" produced by the Maryland Department of Planning in April of 2016 (Attachment F) recommended "*Creating Demand for Bonus Density (or the Equivalent) in Receiving Zones (by) reducing the density that can be built by-right and require TDRs for the other lot rights*" (TDR, page 19). The Petitioner's proposal could significantly increase the supply of development rights that can be sent to properties in all zoning districts but does not include a density bonus in the additional zoning districts or increase the density bonus in the existing receiving zoning districts. This could result in a supply/demand imbalance and is compounded by the fact that the TDR indicates that Howard County already lacks demand for bonus density in receiving zones (TDR, page 16).

The current NPDEO allows development rights to be sent from low density single family zoning districts (R-ED, R-20, R-12, and R-SC) to higher density multi-family zoning districts (R-SA-8, R-A-15, R-APT, and CAC) or to developments over 5 acres in single family zoning districts (R-ED, R-20, R-12) within a two mile radius in order to prevent subdivision of large properties in established neighborhoods. The proposed amendments may result in exporting density from medium to high density areas such as Historic Ellicott City, which allows between 8 and 22 dwelling units per acre to lower density single family areas such as R-ED/R-20/R-SC/R-12 and could result in the concentration of development rights in different parts of the county, since there would be no requirement to keep the development rights within the same planning district or within a certain radius of the same planning district.

The current zoning districts that are eligible to receive and send density (R-ED, R-20, R-12, R-SA-8, R-A-15, R-APT, and CAC) contain a subsection that establishes the criteria for sending and receiving developments under the NPDEO, including the density bonus. The density bonus is 10%, except for R-APT where the density can increase from 25 to 35 units per acre.

The Petitioner proposes to allow development rights from properties that contain a historic structure or are in a local historic district to be sent to all zoning districts, but the standard "Density Exchange for Neighborhood Preservation Parcels" subsection is not proposed in

the additional zoning districts. Therefore, the individual zoning districts lack the requisite authorization to receive the density and do not establish a density bonus. It is unclear if a

density bonus is intended for these zoning districts and if so, if it is authorized. The additional zoning districts that permit residential uses and limit density are R-HED, RC, RR, HO, RVH, HC, R-MH, RSI, PGCC, PSC, and TNC. If the ZRA allows developments right to be sent to properties in these zoning districts with a density bonus, the density of these areas will potentially increase.

The proposed amendments have the potential to prevent infill development in the Lawyer's Hill local historic district (R-ED) and the RVH zoned area of the Ellicott City historic district, which are predominantly established single family detached areas, since excess development rights may be removed from these properties.

Additionally, the proposal could reduce subdivisions on properties with a historic structure or within a historic district, decrease the number of demolitions of historic structures, and financially help owners of a historic structure to retain and restore the historic structures. However, there is currently no provision in the Petitioner's proposal to permanently protect a historic house on the property. Options for permanently protecting any historic structure on the property could include restrictions on demolition or requirements for HPC approval for property renovations/improvements. One or more of these requirements would need to be included to provide adequate protection for the historic structures. As proposed by the Petitioner, someone could demolish a historic structure or renovate the historic structure without any oversight.

2. The properties to which the Zoning Regulation Amendment could apply and, if feasible, a map of the impacted properties.

The proposed amendments impact all properties that contain a historic structure or are in a local historic district. Additionally, the ZRA proposes to allow development rights to be sent to "any zoning district" in all planning districts. Therefore, it also impacts all properties in a zoning district that permits residential uses as a matter of right.

The follow maps are attached as Attachments A - D:

1. Properties outside of a historic district that contain a historic structure;
2. Properties in the Ellicott City Historic District;
3. Properties in the Lawyer's Hill Historic District; and
4. Additional NPDEO Receiving Parcels

3. Conflicts in the Howard County Zoning Regulations as a result of the Zoning Regulation Amendment.

Section 128.0.K.1.

The petition states that the intent of the proposed amendments is to make all properties that contain a historic structure or are in a local historic district eligible to be NPDEO sending parcels. However, the language as proposed in Exhibit A does not change which properties are eligible to be a NPDEO sending parcel, since it only makes sending parcels in a local historic district, that are also in R-ED, R-20, R-12 or R-SC, eligible to send development rights to receiving parcels in all planning districts. Additionally, the proposed amendment conflicts with the definition of “Neighborhood Preservation Sending Parcel”, which does not include all properties that contain a historic structure or that are in a local historic district.

Further, a correction should be made to clarify the historic resources reference list. The ZRA sites the amendment should apply to structures inventoried in the Maryland Historic Trust Sites Inventory. However, DPZ Resource Conservation Division commonly refers to the Maryland Inventory of Historic Properties (MIHP) list or the Howard County Historic Sites Inventory List (HSI). The MIHP allows any inventories to be added to this State list. It may be most appropriate to use the HIS since it requires County Council approval and Historic Preservation Commission public review. The HSI is a more discernable list that notes historic properties throughout the county eligible for local tax credits.

Also, many properties that contain a historic structure or that are in a local historic district are commercial properties, including those in the HO and HC zoning districts. Although the proposed amendment is not currently drafted as such, the Petitioner states the intent is to allow density to be sent from all zoning districts with a historic structure, which include commercial or mixed use districts. Transferring development rights from predominantly commercial or mixed-use areas, is not entirely consistent with intent of the NPDEO – “to prevent incompatible infill development in established single-family areas.” Furthermore, allowing non-residential properties to be NPDEO sending parcels conflicts with Sec. 128.0.K.2.d.3, which limits future use of sending parcels to residential uses, Historic Building Uses, and community swimming pools.

The reference to Section 128.K.1.b. in this section will not be necessary if the proposed amendment is approved.

Section 128.0.K.1.c.

This section is not consistent with the purpose of the NPDEO to allow transfer of

development rights, at the zoning district's allowed density rate, from low density single family zoning districts (R-ED, R-20, R-12, and R-SC) to higher density multi-family zoning districts (R-SA-8, R-A-15, R-APT, CAC) or to medium to large scale developments in single family zoning districts (R-ED, R-20, R-12).

The proposed amendments may result in exporting density from medium to high density areas such as Historic Ellicott City, which allows between 8 and 22 dwelling units per acre to lower density single family areas such as R-ED/R-20/R-SC/R-12.

Additionally, the Petitioner's proposal would allow properties to send more development rights than are permitted by the zoning district. For example, the RR and RR zoning districts require a 3-acre minimum lot size, which equates to a density of 0.333 dwelling units per acre. However, this section will allow development rights to be sent at a rate of 3 per net acre or 9 times the allowed density. Furthermore, this proposal will allow more than 3 development rights to be sent per property, which is the maximum allowed for other properties eligible for the NPDEO.

The intent of allowing density transfer to and from the west potentially conflicts with Sec. 106.0 Density Exchange Option, since it extends the NPDEO to parcels in RC/RR that contain a historic structure, which have sent development rights at a lower rate through Sec. 106.0 Density Exchange Option. These parcels could potentially send additional density, since the proposed rate in this ZRA is 3 development rights per acre.

This section would need to be revised for DPZ to properly implement since the language as drafted is unclear.

Section 128.0.K.2.a.

The Petitioner's proposal removes the requirement that a preservation easement cover the entire sending parcel for properties that contain a historic structure or are located in a historic district.

Additionally, eliminating the requirement for an easement when development rights are transferred from a property, or allowing only a partial easement, partially conflicts with the intent of this amendment to ensure "all development protects or enhances historic or other landscape resources." Additionally, this proposal is inconsistent with Sec. 114.0 Historic District, 114.1 RVH, 114.2 HO, and 114.3 HC, which were established to safeguard the heritage of the County by preserving elements of its cultural, social, economic, political and architectural history. Requiring a preservation easement on an entire sending parcel when the development rights are transferred encourages further protection for the historic environmental setting and resources.

Section 128.0.K.2.b.

This section restricts the size of new structures on a property with a Neighborhood Preservation Parcel Easement improved with an existing dwelling unit, a structure used for an Historic Building Uses Conditional Use, or a Swimming Pool, Community to no larger than 50% of the building footprint of the 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 an existing building, the Director may approve a footprint that does not exceed this average.

The Petitioner's proposal would exempt a parcel with an historic structure or that is located within an historic district from this requirement.

Section 128.0.K.2.c. d. e.

The edits to the section numbering do not appear to be necessary, since there are no amendments proposed that impact them.

Section 128.0.K.2.f.(4)

The Petitioner is proposing to allow a community homeowner's association or, if no community association exists, the Historic Preservation Commission to be a party to the deed of Neighborhood Preservation Parcel Easement in addition to the property owner.

The proposal to allow the HPC to be a party to an easement may conflict with Title 16, Subtitle 6 of the County Code. Section 16.606 outlines powers and authorities of the HPC and this section does not include authority to enter into easement agreements with private property owners.

Section 128.0.K.3.b.

While the text as drafted is unclear, the Petition states an intent for development rights to be sent from properties that contain a historic structure or are in a local historic district to be received by parcels of any size in all zoning districts. This amendment conflicts with the definition of "Neighborhood Preservation Receiving Parcel", which only includes R-ED, R-20, R-12, RSA-8, R-A-15, R-APT or CAC.

The current zoning districts that are eligible to receive and send density (R-ED, R-20, R-12, R-SA-8, R-A-15, R-APT, and CAC) contain a subsection that establishes the criteria for sending and receiving developments under the NPDEO, including the density bonus. The density bonus is 10%, except for R-APT where the density can increase from 25 to 35 units per acre. The Petitioner does not propose changes to the existing subsections and does not propose a subsection in the additional zoning districts to allow for a density bonus. This is inconsistent with the existing NPDEO sending/receiving zoning districts and conflicts

with the NPDEO, since transferring additional development rights to these zoning district as a bonus cannot occur if the zoning district's density is not increased.

Conflicts Not Resulting from the Zoning Regulation Amendment

The Department of Planning and Zoning has identified the following existing conflicts that are not a result of the proposed ZRA. If Section 128.0 is amended, these existing conflicts should also be addressed.

1) The 2013 Comprehensive Zoning Plan included parcels located in the R-SC district as potential sending parcels. However, the definitions of Neighborhood Preservation Density Exchange Option, Neighborhood Preservation Parcel, Neighborhood Preservation Receiving Parcel, and Neighborhood Preservation Sending Parcel in Section 103.0 were never updated to reflect this change.

2) Section 128.0.K.1.a was never updated to specify the rate at which density can be transferred from the R-SC district.

3) Parcels in the R-SC district were not included in the list of parcels that may receive density in Section 128.0.K.3.a..

4) In Section 128.0.K.4.g.(2), an incorrect section number is referenced. The reference to Section 128.0.L.2. should be to Section 128.0.K.2.

5) Section 128.K refers to Section 16.108(b) of the Subdivision and Land Development Regulations (a parcel that qualifies under the criteria for neighborhood infill development as defined in Section 16.108(b)). Section 16.108(b) of the Subdivision and Land Development Regulations does not define the term neighborhood infill; Neighborhood Infill is defined in the Zoning Regulations. The Subdivision and Land Development Regulations provides a definition for residential infill only.

4. The compatibility of the proposed Zoning Regulation Amendment with the Policies and objectives, specifically including the environmental policies and objectives, of the Howard County General Plan.

According to Plan Howard 2030, Historic Preservation, Howard County's efforts to inventory historic structures throughout the County is nearly complete. According to the Plan, there are presently over 1,000 properties inventoried, thirty-six of which are in the National Register of Historic Places. There are also three National and two local historic districts with potential for additional. Continued inventory efforts and designation of additional historic districts serves to recognize more historic structures and communities for preservation focus. Historic

properties and structures are throughout Howard County and across zoning districts. Extending the NPDEO to properties containing historic structures and structures in local historic districts recognizes ongoing efforts will continue to reveal properties and historic structures threatened by development and the need for preservation-focused opportunities and alternatives for current and yet to be establish historic districts.

Section 128.0.K currently contains this text specific to environmental resources:

Any parcel with the main stem of 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.

The proposed ZRA is not in conflict with the environmental policies and objectives in Plan Howard 2030.

Historic properties are located throughout the County, so there is the potential that a preservation easement on a sending parcel will further protect environmentally sensitive areas from development. However, the proposed amendment to Section 2.a. removes the requirement that an easement be placed on the entire parcel, so this protection may not be fully realized. Receiving parcels will be developed at a higher density, but existing development regulations requiring stormwater management and sensitive resource protection will minimize environmental impacts.

Requiring a preservation easement on an entire sending parcel would help to further protect the historic environmental setting and resources. Not requiring an easement when development rights are removed from the property, or allowing only a partial easement, partially conflicts with the intent of this amendment that is seeking to ensure “all development protects or enhances historic or other landscape resources.”

Over 1,000 properties on the Historic Sites Inventory would benefit from the proposed amendment that could reduce development on properties with a historic structure or within a historic district, decrease the number of demolitions of historic structures, and financially assist owners of a historic structure to retain and restore the structure.

PlanHoward 2030 supports the use of the density exchange option to protect environmentally sensitive features and states on page 24 that “Much of the remaining undeveloped residential land in the East is located in small, infill sites that are surrounded by adjacent development. These sites are often undeveloped because they contain extensive environmentally sensitive features such as steep slopes, streams, wetlands, and forest. Use of the density exchange option for neighborhood preservation parcels could allow these types of parcels to be permanently protected while their allowable development potential is sent to a more

appropriate development site.” The General Plan does not specify the zoning districts where density receiving parcels should be located; however, the Targeted Growth and Revitalization Areas place type is where PlanHoward 2030 has recommended that residential and job growth should expand.

In the same way as protecting an “environmental resource”, this petition proposes that sites with a historic structure should also send their development rights to a more appropriate site in the County. While the ZRA will limit development potential on a sending parcel, it is uncertain whether the “historic resource” will be protected from future demolition and historic loss.

Approved by:

DocuSigned by:
Amy Gowan 1/7/2021
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Amy Gowan, Director Date

Exhibit A

Petitioner's Proposed Text

PETITIONER PROPOSED TEXT (IN CAPS AND BOLD FACE TYPE)

SECTION 128.0: - Supplementary Zoning District Regulations

K. Neighborhood Preservation Density Exchange Option

1. In the R-ED, R-20, R-12 and R-SC 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 or a parcel principally used for a Swimming Pool, Community or an historic structure, as defined in the Zoning Regulations and is eligible to be developed for additional residential lots **ACROSS ZONING DISTRICTS**, may be a sending parcel for the Neighborhood Preservation Density Exchange Option within the same planning district or within a two-mile radius regardless of the planning district. However, sending parcels that contain a historic structure **OR ARE LOCATED IN A LOCAL HISTORIC DISTRICT** [~~as provided in Subsection 1.b below,~~] **AS PROVIDED IN SUBSECTION 1.C. BELOW**, may exchange density with a receiving parcel in any planning district.

a. With this Neighborhood Preservation Density Exchange Option, in the R-ED and R-20 zoning districts density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 2 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in either the R-ED, R-20, and R-SC district. In the R-12 District density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 3 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in the R-12 District.

b. A parcel that is either County-owned or encumbered with a Maryland Historic Trust Easement located in the R-ED, R-20, R-12, and R-SC District that qualifies as a Neighborhood Preservation sending parcel, and that ~~contains a historic structure, which is open and accessible to the public~~ may send density without limitation on the maximum number of development rights exchanged, provided that a single development right is retained in accordance with Subsection 4.a below.

C. A PARCEL CONTAINING A HISTORIC STRUCTURE WHICH APPEARS ON THE HOWARD COUNTY HISTORIC SITES INVENTORY OR A PARCEL IN A LOCAL HISTORIC DISTRICT SHALL BE ALLOWED TO SEND DENSITY AT A RATE OF 3 DEVELOPMENT RIGHTS PER NET ACRE OR WITHOUT LIMITATION ON THE MAXIMUM NUMBER OF ELIGIBLE DEVELOPMENT RIGHTS AVAILABLE, WHICHEVER IS GREATER. SENDING PARCELS UNDER THIS PROVISION WHICH HAVE NOT OR DO NOT SEND AT MAXIMUM DEVELOPMENT RIGHT AT ANY ONE TIME SHALL HAVE SUCH RIGHTS RETAINED UNTIL A SINGLE DEVELOPMENT RIGHT REMAINS.

2. Neighborhood Preservation Parcel Easement Requirements

a. **EXCEPT FOR A PARCEL DEVELOPING UNDER THE PROVISIONS OF SECTION K.1.C. ABOVE**, the easement shall cover the entire sending parcel or lot that complies with the definition of a Neighborhood Preservation Parcel in the Zoning Regulations.

b. **EXCEPT FOR A PARCEL DEVELOPING UNDER THE PROVISIONS OF SECTION K.1.C. ABOVE**, a Neighborhood Preservation Parcel Easement improved with an existing dwelling unit, a structure used for an Historic Building Uses Conditional Use, or a Swimming Pool, Community shall not have any new structures placed on the site that are larger than 50% of the building footprint of the 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 an existing building, the Director may approve a footprint that does not exceed this average.

[c.] D. 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.] E. 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, Historic Building Uses Conditional Uses, or principal or accessory Swimming Pool, Community uses are permitted in accordance with the Zoning Regulation.

(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.] F. 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.

(4) FOR A PARCEL DEVELOPING UNDER THE PROVISIONS OF SECTION K.1.C., A COMMUNITY HOMEOWNERS ASSOCIATION OR, IF NO COMMUNITY ASSOCIATION EXISTS, THE HISTORIC PRESERVATION COMMISSION

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 R-SA-8, R-A-15, R-APT and CAC Districts.

b. Residential development rights derived from Neighborhood Preservation sending parcels may be received as bonus density on parcels in the R-ED, R-20 and R-12 Districts for which the total development project size is at least 5 acres, **HOWEVER, SENDING PARCELS UNDER K.1.C. MAY BE RECEIVED AS BONUS DENSITY ON PARCELS OF ANY SIZE, ACROSS ZONING DISTRICTS, INCLUDING SPECIAL ZONING DISTRICTS.**

D. 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

E. Any parcel with the main stem of 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 residential parcels, one development right shall be retained on the sending parcel to allow for the continued existence of the existing dwelling unit. An unimproved Neighborhood Preservation Parcel must be owned and maintained by a homeowner's association or dedicated to Howard County.

(2) On parcels improved with Swimming Pools, Community, one development right may be retained on the sending parcel to allow for a potential future dwelling unit.

(3) On parcels improved with a structure used for an Historic Building Uses Conditional Use, one development right shall be retained on the sending parcel to allow for the operation of the Conditional Use.

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 128.0.K.
- (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 128.0.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.

How The Text Would Appear If Adopted As Proposed

SECTION 128.0: - Supplementary Zoning District Regulations

K. Neighborhood Preservation Density Exchange Option

1. In the R-ED, R-20, R-12 and R-SC 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 or a parcel principally used for a Swimming Pool, Community or an historic structure, as defined in the Zoning Regulations and is eligible to be developed for additional residential lots across zoning districts, may be a sending parcel for the Neighborhood Preservation Density Exchange Option within the same planning district or within a two-mile radius regardless of the planning district. However, sending parcels that contain a historic structure or are located in a local historic district as provided in subsection 1.C. below, may exchange density with a receiving parcel in any planning district.

a. With this Neighborhood Preservation Density Exchange Option, in the R-ED and R-20 zoning districts density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 2 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in either the R-ED, R-20, and R-SC district. In the R-12 District density may be exchanged from a Neighborhood Preservation sending parcel to an eligible receiving parcel based on a rate of 3 development rights per net acre, or fraction thereof. Except as provided below, up to a maximum of 3 development rights may be exchanged from a sending parcel located in the R-12 District.

b. A parcel that is either County-owned or encumbered with a Maryland Historic Trust Easement located in the R-ED, R-20, R-12, and R-SC District that qualifies as a Neighborhood Preservation sending parcel, and that contains a historic structure, which is open and accessible to the public may send density without limitation on the maximum number of development rights exchanged, provided that a single development right is retained in accordance with Subsection 4.a below.

c. A parcel containing a historic structure which appears on the Howard County Historic Sites Inventory or a parcel in a local historic district shall be allowed to send density at a rate of 3 development rights per net acre or without limitation on the maximum number of eligible development rights available, whichever is greater. Sending parcels under this provision which have not or do not send at maximum development right at any one time shall have such rights retained until a single development right remains.

2. Neighborhood Preservation Parcel Easement Requirements

a. Except for a parcel developing under the provisions of Section K.1.C. above, the easement shall cover the entire sending parcel or lot that complies with the definition of a Neighborhood Preservation Parcel in the Zoning Regulations.

b. Except for a parcel developing under the provisions of Section K.1.C. above, a Neighborhood Preservation Parcel Easement improved with an existing dwelling unit, a structure used for an Historic Building Uses Conditional Use, or a Swimming Pool, Community shall not have any new structures placed on the site that are larger than 50% of the building footprint of the 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 an existing building, the Director may approve a footprint that does not exceed this average.

d. 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.

e. 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, Historic Building Uses Conditional Uses, or principal or accessory Swimming Pool, Community uses are permitted in accordance with the Zoning Regulation.
- (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.

f. 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.
- (4) For a parcel developing under the provisions of Section K.1.C., a Community Homeowner's Association or, if no Community Association exists, Historic Preservation Commission.

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 R-SA-8, R-A-15, R-APT and CAC Districts.
- b. Residential development rights derived from Neighborhood Preservation sending parcels may be received as bonus density on parcels in the R-ED, R-20 and R-12 Districts for which the total development project size is at least 5 acres, however, sending parcels under K.1.C. may be received as bonus density on parcels of any size, across zoning districts, including special zoning districts.

D. 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

E. Any parcel with the main stem of 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 residential parcels, one development right shall be retained on the sending parcel to allow for the continued existence of the existing dwelling unit. An unimproved Neighborhood

Preservation Parcel must be owned and maintained by a homeowner's association or dedicated to Howard County.

(2) On parcels improved with Swimming Pools, Community, one development right may be retained on the sending parcel to allow for a potential future dwelling unit.

(3) On parcels improved with a structure used for an Historic Building Uses Conditional Use, one development right shall be retained on the sending parcel to allow for the operation of the Conditional Use.

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 128.0.K.
- (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 128.0.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.