



City of Annapolis

DEPARTMENT OF PLANNING AND ZONING

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May 18, 2017

MEMORANDUM

To: Planning Commission
From: Pete Gutwald, AICP, Director of Planning and Zoning
Re: Ordinance O-26-17/ZTA2017-004: Zoning District Boundary Adjustments
Encl: O-26-17

Purpose

The purpose of Ordinance O-26-17 is to amend Chapter 21.20 of the City Code to alter how landowners with split-zoned property may petition the Board of Appeals for the ability to apply the zoning regulations from one part of their property to the other part of the property that has a different zoning designation. Currently, landowners may petition the Board of Appeals, under Chapter 21.20, only if the new zoning regulation would apply to a small portion of the property (the lesser of twenty percent of the total area of the tract or five thousand square feet) and is in the same zoning subsection¹.

This ordinance proposes to remove the size limitation as well as one of the review criteria the Board of Appeals uses to determine whether such a boundary adjustment should be granted. An amendment to this ordinance proposed by the Department of Planning and Zoning (Amendment 2, which will be discussed later in this report) would also eliminate the restriction on applying the regulations from one zoning subsection to another. Therefore, anyone with a split-zoned property could now apply to the Board of Appeals so that the property owners could develop the land under one set of regulations.

Background

Currently there are 502 parcels in the City that are split-zoned. These parcels occur throughout the City and the proportion of the splits range in size (see attached map). The origin of the split-zoned parcels dates back to the period when zoning was first determined. In the 1970s, zoning districts were not drawn on maps that also showed property lines. When zoning maps and property line maps were merged in the 1990s, it became apparent that numerous properties were split-zoned.

It is not clear if some parcels were intentionally split-zoned in order to create a buffer between a commercially-zoned parcel and a residentially-zoned parcel, for example. Under current City Code requirements, these parcels could only be rezoned with one zoning designation through a zoning map amendment per Chapter 21.34. Zoning map amendments are undertaken following a sector study of the area, a comprehensive rezoning of the entire city following a comprehensive review of all parcels fitting a certain criteria, or a local map amendment based on a mistake made during the City zoning process or a change in the character of the neighborhood. These requirements are mandated by state law.

¹ There are four "zoning subsection" in Title 21: residential districts; commercial and industrial districts; office and mixed use districts; and waterfront maritime districts. This concept is explained further in this staff report in the fourth paragraph under "Background."

Prior to 2016, there were 583 split-zoned parcels that were rezoned under Ordinance O-41-15A as part of a general update of zoning maps based on improved mapping technology. These split-zoned parcels included only those parcels where there was less than five feet of difference between a parcel line and a zoning line.

The original intent of the “Zoning Boundary Adjustments” regulations adopted in 1970 was to provide relief to property owners in a situation where a small amount of their property was zoned something different from the majority of the property. For example, if a property owner has a parcel with less than twenty percent of that parcel zoned R1 and the rest of the property zoned R2, the property owner could apply for a boundary adjustment and to develop all of the property under R2 regulations (i.e., the regulations of the larger section of the property). The main implication for this would be smaller required setbacks, as both R1 and R2 are limited to single-family dwellings. Without relief, the property owners would have to apply the larger R1 setbacks to the twenty percent portion of their property (including any house or garage) that is located in the R1 area. It should be noted that currently Chapter 21.20 does not allow a property owner to apply the zoning regulation of the small portion to the entire property.

As currently written, Chapter 21.20 only allows zoning regulations from one district listed in the same subsection of Section 21.06.010 to apply to the rest of the property. Section 21.06.010 establishes the zoning districts and separates them into four “subsections” including residential districts; commercial and industrial districts; office and mixed use districts; and waterfront maritime districts. (The section also lists overlay districts). This means that regulations in a residentially-zoned property under Chapter 21.20 could be applied only in another residentially-zoned property, or the regulations could apply for one commercial district to another commercial district.

The zoning district subsections are shown below:
 21.06.010 - Establishment of zoning districts.

For the purpose of this Zoning Code the City is organized into the following zoning districts:

A. Residence districts:

R1	Single-Family Residence
R1-A	Single-Family Residence
R1-B	Single-Family Residence
R2	Single-Family Residence
R2-NC	Single-Family Residence Neighborhood Conservation
R3	General Residence
R3-NC	General Residence Neighborhood Conservation
R3-NC2	General Residence Neighborhood Conservation 2
R3-R	General Residence Neighborhood Revitalization
R4	General Residence
R4-R	General Residence Neighborhood Revitalization
C1	Conservation Residence
C1A	Special Conservation Residence

B. Commercial and industrial districts:

B1	Convenience Shopping
B2	Community Shopping
B3	General Commercial
B3 CD	General Commercial Corridor Design
BCE	Business Corridor Enhancement
BR	Business Revitalization
C2	Conservation Business
C2A	Special Conservation Business
PM2	Professional Mixed Office Park
II	Light Industrial

C. Office and mixed use districts:

P	Professional Office
MX	Mixed Use
PM	Professional Mixed Office
C2P	Special Conservation Professional

D. Waterfront maritime districts:

WMC	Waterfront Maritime Conservation
WMM	Waterfront Mixed Maritime
WMI	Waterfront Maritime Industrial
WME	Waterfront Maritime Eastport

If the restriction on applying regulations from one subsection to another were removed, more owners with split-zoned property could file for relief. For example, there are parcels on Fourth Street where the lots are split between R2-NC and B2. Previously, if property owners wanted to be able to develop their property as all B2, they would not be able to for up to five reasons:

1. The property owner is not eligible for a local map amendment because the zoning was intentional and there has not been a change in the character of the neighborhood.
2. There is no sectional or comprehensive zoning map amendment effort underway to address all split-zoned parcels in the city.
3. The split portion of the lot exceeded the lesser of twenty percent of the total area of the tract or five thousand square feet
4. The zones were not in the same "subsection" of the zoning code.
5. The property owner could not meet all of the review criteria including "unique conditions" which is stated as "conditions upon which an application for a zoning district boundary adjustment are unique to the property and are not applicable, generally, to other property within the same zoning classification."

Analysis

The Department of Planning and Zoning has reviewed this legislation, analyzed the Land Use Article of the Annotated Code of Maryland, and has had follow-up discussions with the alderman who introduced the legislation. The Office of Law has also reviewed the legislation and has determined that it is consistent with the State Land Use Article.

Under state law, the legislative body shall adopt zoning regulations:

- (1) in accordance with the plan;
- (2) with reasonable consideration for, among other things, the character of the district or zone and its suitability for particular uses; and
- (3) with a view to conserving the value of property and encouraging orderly development and the most appropriate use of land.

Md. LAND USE Code Ann. § 4-202 (2017)

There are situations where property owners might need relief from a certain requirement in the zoning regulations. The state enabling legislation allows variances for modifications to the following:

- (1) may be only of density, bulk, dimensional, or area requirements of the zoning law;
- (2) may be only allowed where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty as specified in the zoning law; and
- (3) may not be contrary to the public interest.

Md. LAND USE Code Ann. § 4-206 (2017)

In Title 21, variances are permitted in the following situations:

- A. To permit any yard or setback less than a yard or a setback required by the applicable regulations.
- B. To permit the use of a lot or lots for a use not otherwise allowed solely because of the insufficient area or width of the lot or lots. However, the respective area and width of the lot or lots shall not be less than eighty percent of the required area and width. Lot area and lot width variances for existing legally established religious institutions may exceed eighty percent of the applicable lot area and width requirements.
- C. To permit an increase of not more than twenty percent in the maximum gross floor area of any use.
- D. To vary the lot coverage restrictions in the R1-A and the R1-B single-family residence districts.
- E. To allow in the case of single-family detached dwellings in any residential zoning district, a building height of three stories, provided that the height does not exceed that of the underlying zoning or height districts.
- F. To increase by not more than twenty percent the maximum distance that required parking spaces are permitted to be located from the use served.
- G. To vary the provisions of the critical area program subject to the requirements and standards of Section 21.54.160.
- H. To vary the limitations for signs in the specific instances set forth in Section 21.70.110.
(Section 21.28.040 - Permitted variances)

The Board of Appeals must make a finding that each application meets all of the following review criteria:

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.
- B. The conditions upon which a petition for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.
- C. The purpose of the variance is not based exclusively upon a desire to increase financial gain.
- D. The alleged difficulty or hardship has not been created by any present or any previous owners of the property, whether individual or entity, to whom or to which the property has been transferred for fair market value, for other adequate or sufficient consideration, or as a result of inheritance or court order.
- E. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
- F. The variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion of the public streets, increase the danger of fire, endanger the public safety, or alter the essential character of the neighborhood or district in which the property is located.
(21.28.050 - Review criteria and findings)

As written, the proposed ordinance would allow property owners to no longer be required to meet “unique conditions” review criteria. The code currently reads:

21.20.030 - Review criteria and findings.

The Board of Appeals may grant a zoning district boundary adjustment based upon the following findings:

- A. Unique Conditions. The conditions upon which an application for a zoning district boundary adjustment are unique to the property and are not applicable, generally, to other property within the same zoning classification.
- B. Public Welfare and Safety. The granting of the district boundary adjustment will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
- C. Surrounding Properties. The proposed adjustment will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with the neighborhood.

The proposed ordinance would remove the first criteria. The Department recommends that instead of removing this criteria completely, that it be altered to be in accordance with state code that allows that variances “may be only allowed where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty as specified in the zoning law” (Md. LAND USE Code Ann. § 4-206.02).

This review criteria would be less restrictive than the existing language in Title 21, but allowable under state code. Therefore, the Department proposes Amendment 1 as:

Amendment 1

21.20.030 - Review criteria and findings.

The Board of Appeals may grant a zoning district boundary adjustment based upon the following findings:

- A. Unique Conditions. ~~The conditions upon which an application for a zoning district boundary adjustment are unique to the property and are not applicable, generally, to other property within the same zoning classification.~~ OWING TO CONDITIONS PECULIAR TO THE PROPERTY AND NOT BECAUSE OF ANY ACTION TAKEN BY THE APPLICANT, A LITERAL ENFORCEMENT OF THE ZONING LAW WOULD RESULT IN UNNECESSARY HARDSHIP OR PRACTICAL DIFFICULTY AS SPECIFIED IN THE ZONING LAW.
- B. Public Welfare and Safety. The granting of the district boundary adjustment will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
- C. Surrounding Properties. The proposed adjustment will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with the neighborhood.

The next set of amendments are technical in nature. The proposed ordinance also allows property owners to proceed with a map amendment and despite the size of the portion of the land with the split-zoned. The Department offers two alterations to help clarify and further the goals of the ordinance.

Alteration 1: A proposed amendment would also eliminate the restriction on applying the regulations from one zoning subsection to another. Therefore, anyone with a split-zoned property could now apply to the Board of Appeals so that the property owner could develop the land under one set of regulations.

Therefore, currently proposed Section 21.20.010:

21.20.010 - Purpose and authority.

Where a zoning district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures below, may approve an application to extend the zoning district regulations for either portion of the tract to any contiguous portion of the tract included in a zoning district listed in the same subsection of Section 21.06.010 as the regulations being extended; ~~provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.~~

would now read:

21.20.010 - Purpose and authority.

Where a zoning district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures below, may approve an application to extend the zoning district regulations for either portion of the tract to any contiguous portion of the tract ~~included in a zoning district listed in the same subsection of~~ Section 21.06.010 as the regulations being extended; provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.

Alteration 2: However, this could create a situation where the owners of a parcel with a small amount of commercial, but majority residentially-zoned property could petition to apply the commercial regulations to the entire parcel, despite the majority residential zone. Therefore, a second amendment would further alter this section to:

21.20.010 - Purpose and authority.

Where a zoning district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures below, may approve an application to extend the zoning district regulations for ~~either portion~~ THE MAJORITY of the tract to any contiguous portion of the tract ~~included in a zoning district listed in the same subsection of Section 21.06.010 as the regulations being extended;~~ provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.

The Department proposed both alterations be made under "Amendment 2."

Amendment 2

21.20.010 - Purpose and authority.

Where a zoning district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures below, may approve an application to extend the zoning district regulations for ~~either portion~~ THE MAJORITY of the tract to any contiguous portion of the tract ~~included in a zoning district listed in the same subsection of Section 21.06.010 as the regulations being extended;~~ provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.

An additional amendment is to update Section 21.06.040 to read the same as Amendment 2. This section of the code has similar language as Section 21.20.010, however it appears in Chapter 21.06 - Zoning Districts and Mapping. The Department recommends the following code section is changed from:

21.06.040 - Lots divided by zoning district boundaries.

Where a district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures established in Division II, Chapter 21.20 may approve an application to extend the regulations for either portion of the tract to any contiguous portion of the tract included in a zoning district listed in the same subsection of Section 21.06.010 as the regulations being extended; provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.

To:

Amendment 3:

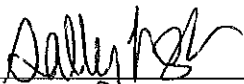
21.06.040 - Lots divided by zoning district boundaries.

Where a ZONING district boundary divides a tract in single ownership, the Board of Appeals, in accordance with the procedures established in Division II, Chapter 21.20 may approve an application to extend the regulations for ~~either portion~~ THE MAJORITY of the tract to any contiguous portion of the tract ~~included in a zoning district listed in the same subsection of Section 21.06.010 as the regulations being extended; provided, however, that the Board shall not extend the regulations to an extent greater than twenty percent of the total area of the tract or five thousand square feet, whichever is less.~~

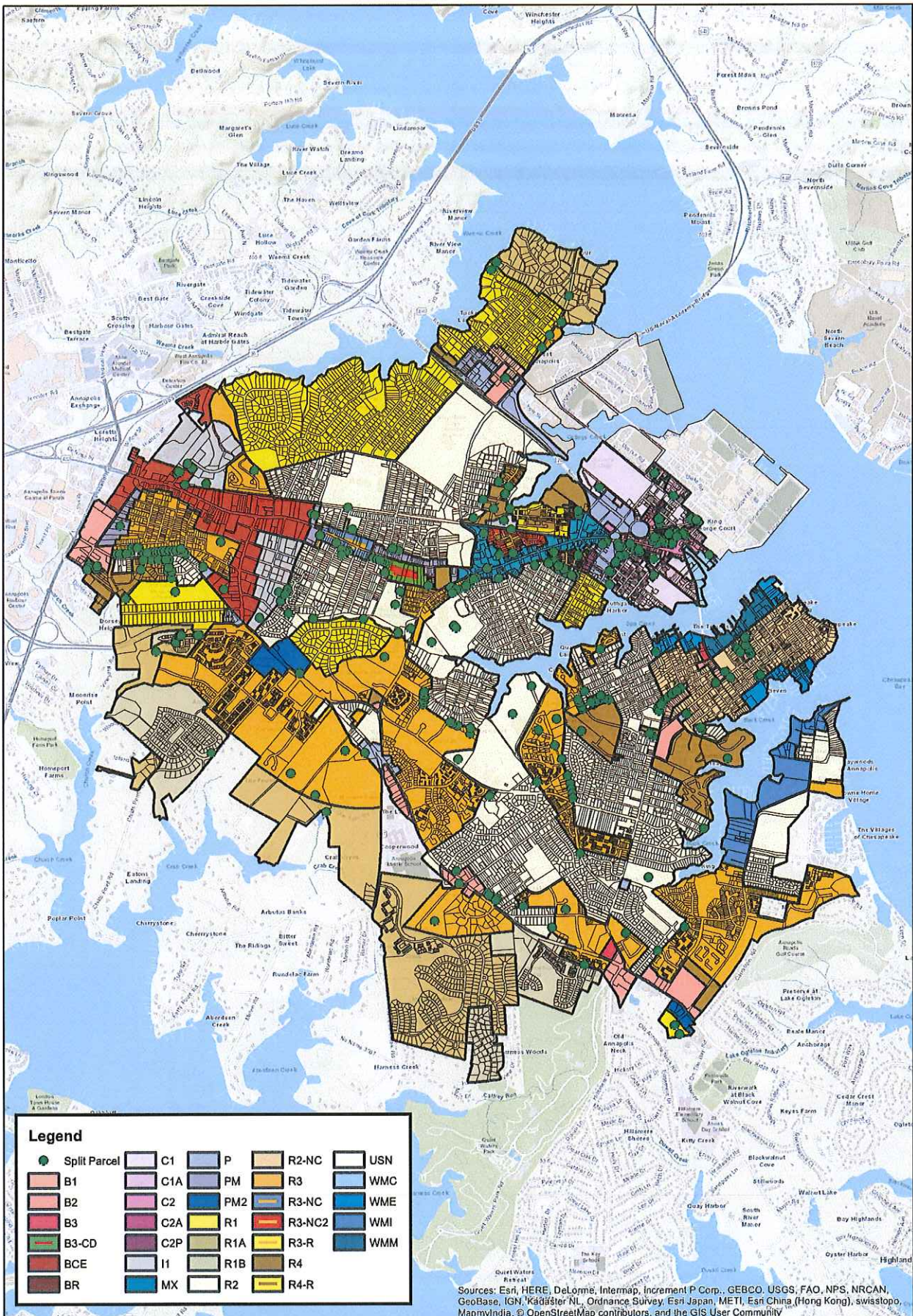
Recommendation

Based upon the information provided above, the Department recognizes that Chapter 21.20 was intended to provide owners of split-zoned property relief under certain circumstances. The proposed ordinance offers this relief to property owners previously exempt from the modification. The Department offers three amendments to clarify the ordinance and to keep it in line with the intention of state code. Staff recommends that the proposed O-26-17 be APPROVED with amendments.

Report Prepared by



Sally Nash, Ph.D., AICP
Chief of Comprehensive Planning



Legend									
	Split Parcel		C1		P		R2-NC		USN
	B1		C1A		PM		R3		WMC
	B2		C2		PM2		R3-NC		WME
	B3		C2A		R1		R3-NC2		WMI
	B3-CD		C2P		R1A		R3-R		WMM
	BCE		I1		R1B		R4		
	BR		MX		R2		R4-R		

Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



Split Zone Parcel Locations

City of Annapolis MIT GIS

Map Created By: MIT GIS

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