

June 4, 2016

To: Town Council, Town of Chevy Chase

From: Land Use Committee

RE: Report Regarding Floating Zones

Introduction

This report examines the potential impacts of floating zones on the Town and makes recommendations for the Council to consider.

Montgomery County's revised Zoning Code adopted in 2014 includes a rezoning tool, *the floating zone*, which can be applied on top of a property's original zone. When applied, it changes the uses allowed on that property and may change the height, density, setbacks and other stipulations for development of that property.

Why is it of particular concern to us now? Floating zones can be applied to R-60 properties if they abut or confront multi-family or commercially zoned properties or a nonresidential road. Some Town properties are already eligible; more will become so if additional properties immediately adjacent to the Town are rezoned multi-family or commercial through the Bethesda Downtown Plan. Once a property's zoning is changed through application of a floating zone, the zoning of properties contiguous to it can also change, which can result in "floating zone creep" – the encroachment of multi-family and commercial properties within the Town borders.

As a community, we have to decide how we feel about Town residential homes being turned into businesses, or replaced with multi-family or commercial buildings (on single or combined lots). The answer to that will determine whether the Town seeks to mitigate, limit or prevent floating zone development on some or all Town properties.

The Land Use Committee (LUC) was tasked with investigating where *floating zones* can be used in the Town, their potential uses within the Town and if and/or how the Town might limit their impacts. This report includes:

- basic information about floating zones,
- which properties in the Town currently are eligible for them and which will soon become eligible,
- an assessment of potential uses of floating zones in the Town, and
- suggestions for mitigation and further discussion.

Committee Process

To obtain current information about floating zones, the LUC reviewed applicable sections of Montgomery County's current Zoning Code (e.g., Chapter 59-5), the County's current zoning code map, the draft Bethesda Sector Plan and related Planning Board decisions, and obtained additional information from Montgomery County Planning staff. At several of its monthly meetings, the Committee has discussed this material,

possible uses of floating zones in the Town and their impacts, measures that could be taken to limit floating zones or mitigate their impacts, and potential recommendations for the Town to consider. We also discussed the need for more input from the community in order to ascertain if, indeed, residents would want to limit such development.

Background

What is a floating zone?

A *floating zone* is a zone that is applied on top of a property's original (base) zone at the request of the property owner. Once a floating zone has been applied to a property, the floating zone's characteristics supersede those of the base zone, though the base zone may moderate some of them. The purpose of floating zones is to add "flexibility" to the zoning code on a property-by-property basis, so that development other than that allowed under the property's original zoning can be permitted.

Changing a property's zoning not only affects the types of buildings, their height, FAR, setbacks, etc. that can be constructed on that property, it also changes the uses allowed on that property. The County Zoning Code has extensive "use" tables showing what types of uses (e.g., day care center of a certain size, bed and breakfast, lawyer's office of a certain size, 7-11 store, etc.) are allowed by right, allowed with some minor conditions, allowed with a conditional use permit, or not allowed at all. A more restrictive list of uses is allowed in the R-60 zone (all properties in the Town are zoned R-60) than in multi-family or the various commercial zones.

What types of floating zones can be applied to R-60 properties?

Floating zone types that can be applied to R-60 properties include:

Residential Floating zones:

Townhouse-Floating (RTF#)
Apartment-Floating (AF#).

Commercial/Residential Floating zones

Commercial Residential Neighborhood-Floating (CRNF#C#R#H#)
Commercial Residential Town-Floating (CRTF#C#R#H#)
Commercial Residential-Floating (CRF#C#R#H#)

Employment Floating zones

Four different types, but none seem likely.

When is an R-60 property eligible for a floating zone?

A property zoned R-60 is eligible for a floating zone:

- 1) If it is recommended in a master plan, or

- 2) When not recommended in a master plan, the property meets certain location requirements and “prerequisites”:

Location requirements:

- a) An R-60 property is eligible for a Townhouse-F, Apartment-F, or CR Neighborhood-F floating zone if:
 - i) It abuts or confronts a property that is zoned Residential Townhouse, Residential Multi-Unit, Commercial/Residential, or Employment, or
 - ii) It fronts on a nonresidential road.
- b) An R-60 property is eligible for a CR Town-F or CR-F floating zone if:
 - i) It abuts or confronts a property that is zoned Commercial/Residential, Employment, or Industrial, or
 - ii) It fronts on a nonresidential road.
- c) Once a floating zone is applied to a property, any R-60 property that abuts or confronts it becomes eligible for a floating zone.

These location criteria initially limit floating zones to properties along the edges of a residential neighborhood. However, once floating zones are applied to edge properties, the properties abutting or confronting them become eligible, and “floating zone creep” sets in.

Prerequisites:

When requesting a floating zone that was not recommended in a master plan, for a property with a residential base zone, the application must satisfy a minimum of two prerequisites from each of the following three categories (Section 5.1.e.D of the zoning code):.

- a) Transit and infrastructure
- b) Vicinity and facilities
- c) Environment and Resources

The prerequisites are easy to meet.

What is the process for obtaining a floating zone for a property?

Application of a Floating zone requires approval of a Local Map Amendment under Section 7.2.1. The process involves review by planning staff, the Planning Board, the Hearing Examiner, and a decision by the County Council. It is rather complicated and does not seem to allow for much individual resident input, though a municipality can comment. If a municipality objects, six members of the County Council must approve the application rather than the usual five.

Which Town properties are currently eligible for a floating zone?

Town properties currently eligible for a floating zone are listed below and shown on the attached Map A:

- 1) All properties on the north side of Elm St., because they abut commercially zoned properties on Montgomery Ave.
- 2) All properties on the west side of Oakridge Lane between Elm St. and Lynn Dr., because they abut commercially zoned properties on Montgomery Ave.
- 3) Properties on Lynn Drive that abut the Georgetown Branch right-of-way are eligible for floating zones, because they abut commercially zoned properties on Montgomery Ave.
- 4) All properties confronting East-West Highway and Connecticut Ave., because these two roads are classified as nonresidential.
- 5) 4509 Leland, 4512 Leland, 4503 Walsh, 4425 Stanford, 4430 Stanford, because these properties confront a nonresidential section of their streets.

Which Town properties will become eligible for a floating zone when the Bethesda Sector Plan is adopted?

If properties on the west side of West Ave. and 46th St: between Walsh and Willow are rezoned from R-60 to a CR zone under the updated Bethesda Sector Plan, the following properties will become eligible for floating zones (see Map B):

- 1) All properties on the east side of 46th St. between Willow and Walsh.
- 2) All properties on the east side of West Ave.
- 3) Two properties on the north side of Walsh Street that confront commercial properties on Walsh.

Will the Town's setbacks, height, FAR, and, stormwater, tree, other regulations apply to floating zone development on Town lots?

The Town has the authority to regulate building FAR, height, and setbacks, among other things, so the Town's current regulations regarding these would apply to development on a lot with a floating zone. The Town also regulates other things such as driveway width and curb cuts, impervious surfaces, stormwater management, trees, signage, and parking and these regulations also would apply to floating zone development. However, the Town may need to adopt additional regulations to regulate floating zone development. For example, County regulations for townhouse floating zones specify the number of units per acre that can be built rather than FAR. The Town may wish to consider adding regulations regarding the number of units. As another example, an allowed use of a property under the County zoning code is a surface parking lot. To prevent backyards from being turned into parking lots, the Town may want to consider setbacks for parking areas in the rear yard or other measures.

It is possible that the Town's existing regulations on these topics could dissuade the owner of a property eligible for a floating zone from seeking several of the possible types of floating zones; for example, the Town's limitations on impervious surfaces in the front yard and driveway width and extensive on-street parking would likely make it difficult to operate a heavily trafficked commercial business on a lot with a commercial floating zone.

It is also possible that the Town could develop separate and different, perhaps more stringent, sets of regulations that would apply to specific floating zone types (see Mitigation below).

The Town's authority does not extend to controlling the uses allowed on a property (e.g., a day care center, a law office, a 7-11 store) or the "type" of building constructed on that property.

Which County regulations governing floating zone development on properties that abut/confront R-60 properties are relevant to development within the Town?

If a multi-family residential or CR floating zone development abuts or confronts an R-60 property, then the compatibility standards of Section 4.1.8 impact the required setbacks and height of the floating zone development.

- 1) Setbacks - If the floating zone property shares a side or rear property line with a property zoned R-60, then the compatibility standards of Section 4.1.8.A.2 require that the setback on the shared side or rear property line be a minimum of 1.5 times the minimum setback required for the detached house on the abutting property. The front and side street setbacks are not affected. The Town should ascertain whether the Town's rear and side setbacks for the abutting R-60 property would be used and whether it has the authority to possibly increase the 1.5 factor or to implement a factor for front and side street setbacks.
- 2) Height - If the floating zone development abuts or confronts an R-60 property, then Section 4.1.8.B stipulates that the height of a building cannot "protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the abutting zone at the setback line determined by Section 4.1.8.A". Because Town regulations limit building heights to 32 feet within the Town, the height compatibility standards generally will not impact floating zone development within the Town. However, because the standards specify that the 45 degree plane starts at the setback line of the shared property line, if that setback line were higher or lower topographically than the abutting property, this standard could impact building height

For commercial floating zone development above a certain size, public benefit points and purchase of BLTs may be required. The public benefit point requirements are minimal and would be easy to achieve. Purchase of BLTs would be off-putting for a small development.

Possible scenarios for floating zone development in the Town

The LUC thinks that the small size of most lots on the Town's edge and their substantial cost makes the risk of floating zones being extensively applied to Town properties low at this time. However, forthcoming changes to the Bethesda Sector Plan and construction of the Purple Line may catalyze floating zone development along the Town's edges, particularly along its western edge (e.g., 46th St.). Redevelopment of the 4-H Center property under a floating zone could occur if the 4-H decides to relocate or re-purpose its campus.

Several possible scenarios for application of floating zones in the Town were identified:

- 1) **Application of a commercial floating zone to a single lot.** A property owner might seek to do this so as to expand the uses allowed on the property. Existing houses could then be re-purposed for use by businesses, such as law firms, real estate offices, settlement attorneys, veterinarians, etc. Rear yards of these properties could be converted to surface parking lots.
- 2) **Application of a Residential Townhouse or Residential Apartment floating zone to a single lot or to multiple lots.** Application of a more intensive residential floating zone would allow single-family houses to be replaced with townhouses, condominiums, or apartments.

This scenario is not considered to be particularly likely at this time because of the build-out of new residential buildings in Bethesda expected to occur under the new Bethesda Sector Plan, the need to assemble several properties to make this feasible, and the Town's building restrictions. However, this scenario may become more likely as development pressures in Bethesda increase or if a set of adjacent properties could be assembled. This scenario would be feasible on a single lot, particularly on the larger sloping lots on Elm St. and Oakridge Lane, it probably would not be sufficiently profitable to make the effort to get a floating zone assigned worthwhile. Currently, it is more profitable for a developer to buy a property and replace the original house with a new one than to replace it with multi-family housing, and even less profitable to purchase a lot with a new house and replace that new house with multi-family housing.

If several adjacent lots could be acquired, which conceivably could happen over time as it has elsewhere in Bethesda, then they could be "assembled" and a larger project might then be attractive to a developer. Indeed, a developer who was interested in constructing a mixed use development on the 4500 block of Elm St. did approach some Elm St. residents in 2015 about buying their properties. In Chevy Chase View (Section 10), developer Nova-Habitat purchased a group of single-family homes along Kensington Parkway and has received a floating zone approval to replace these homes with 16 townhouses.

- 3) **Application of a CR Town or CR floating zone to a single lot or to multiple lots.** Application of these floating zones would allow single-family houses to be replaced with a variety of building types that could then be used for residential or commercial purposes. One possibility might be construction of a set of

“townhouses” that are used as offices for professionals (dentists, doctors, lawyers, etc.).

This scenario is considered to be more likely than others at this time and expected to become more likely as development pressures in Bethesda increase or if a set of adjacent properties could be assembled.

- 4) **Application of a Residential-Townhouse, Residential-Apartment, CR-Town or CR floating zone to the 4-H Center property or some portion of that property.** The 4-H center property is the largest property in the Town. If the 4-H Center decided to relocate or to repurpose part of their campus, the size of this property would make application of a floating zone very attractive to a developer. Any such redevelopment on this property could substantively impact many Town residents.

Some years ago the Town tried to have the 4-H property adopted into the County’s Open Space program, which would have limited what could be done on the property and given the Town more control over any redevelopment. We have learned that, unknown to the Town, the Open Space Designation request was held back by a County Council member (we could not find out which one). As a result, the matter never progressed through the County Council and the property never received "open space" designation.

Another development scenario for the Town

If a business buys a single property on the Town’s edge and wants to operate in the existing house, it might apply for a conditional use permit from the County and not attempt to obtain a floating zone. This process is much simpler than acquiring a floating zone and seems more likely to be the approach that would be used.

Use of existing houses (particularly along the western edge of the Town and along Elm St.) for commercial purposes is considered to be quite likely in the near future, because it enables businesses to acquire appealing office space at a relatively low price in a very convenient location. Implementation of the Bethesda Sector Plan, which will rezone Arlington Road and other properties for more intensive development, will force businesses now located there to find other locations.

This scenario would prevent “floating zone creep” and would limit the uses that could occur on the property. However, such a scenario would still have potential negative impacts on the character of the street. Use of the rear yard as a surface parking lot would remain a potential issue under this scenario.

Committee Recommendations to

- 1). The LUC recommends that the Town Council engage in a process to inform Town residents about floating zone development and to solicit residents’ opinions about floating zone development within the Town. Any Town efforts to control floating zone

development in the Town should be informed by residents' views on such development.

To that end, the LUC recommends including information about and discussion of floating zone development in a larger meeting focused on the Bethesda Sector Plan. We make this recommendation because of the relationship between the Bethesda Sector Plan and floating zone development. Also, we believe that a meeting updating residents on the Bethesda Sector Plan will attract a larger audience than a meeting solely focused on floating zones.

- 2) After receiving public input, the Town Council should decide what general position to take regarding floating zone development in the Town. Options include:
 - a. Do nothing to interfere with floating zone development within the Town.
 - b. Adopt building regulations to limit the impacts of floating zone development on R-60 properties within the Town.
 - c. Adopt building regulations to control the characteristics and other attributes of a floating zone property, so that the development is as compatible as possible with the single-family residential character of the surrounding neighborhood;
 - d. Take steps to discourage use of floating zones in the Town and preserve the Town's nearly exclusively single-family residential character.
- 3) Explore mitigation strategies to minimize the potential impacts of floating zones on Town residents.
 - a) Explore the authority of the Town to adopt different building regulations (i.e.: setback, height, density, number of units per acre, screening, parking, outdoor lighting, signage, etc.) for the various types of floating zone development than those used by the Town for R-60 development. The County has different regulations depending on the type of zoning. The Town should explore if it has the authority to do this too. Such regulation could be used to protect Town R-60 properties adjacent to floating zone development. For example, the County has setbacks for surface parking lots that apply in some zones. Could the Town have such setbacks that apply only to properties with a multi-family or commercial floating zone? Could the Town implement setbacks for rear yard surface parking that would not interfere with existing driveways and garages for homes?
 - b) Explore the Town's taxing authority over floating zone development. The Town already assesses properties with business uses at a higher rate.
- 4) Create a process to monitor floating zone development activity throughout the County, and particularly in the areas around the Town. The Town needs to be in-the-loop regarding new floating zone applications throughout the County, because these could establish new precedents that may impact the Town.

- 5) The Town should consider petitioning the Planning Board and County Council to retain the R-60 zoning for the greenways (and any other pieces of properties along the Town's border). If the proposed greenways on the east side of properties adjacent to the Town, such as the County parking lots #10 and #24, which are currently zoned R-60 retained their R-60 zoning, then the properties in the Town that confront them would not be eligible for floating zones. This would reduce the pressures on the Town of floating zone encroachment.

Town of Chevy Chase Current Zoning



