AGENDA ITEM #2.5
June 25, 2019

Subject: Resolution to amend the 2016-2020 Subdivision Staging Policy (SSP) in association with blighted/condemned buildings or affordable housing	
Analyst: Glenn Orlin, Deputy Director	**Committee: PHED**
Key words: #condemnedbuildings; affordable housing, condemned buildings	

EXPECTED ATTENDEES

Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Acting Chief, Functional Planning & Policy Division, M-NCPPC
Lisa Govoni, Housing Planner, Research & Special Projects Division, M-NCPPC

COMMITTEE RECOMMENDED CHANGES

The Committee recommended (2-0, Councilmember Jawando absent): Approve the SSP amendment proposed by Councilmembers Rice and Riemer, with the following revisions:

S7.3 [[Blighted/]] Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or [[less]] fewer students in any given impacted school, and:

(1) Replaces or remediates a[[n uninhabited blighted or]] condemned or previously condemned and currently vacant structure located within, abutting or [[adjacent]] confronting a state-designated Opportunity Zone, or
(2) Is a project having more than 50% of affordable housing units for [[families]] households earning 60% of less of [[AMI]] Average Median Income.

Councilmember Friedson concurs with MCCPTA's suggestion that this provision may be used so that a school's enrollment forecast is affected only once per year. Councilmember Riemer does not agree with this limitation. (Councilmember Jawando was polled, and he concurs with Councilmember Friedson.)

This report contains:

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AGENDA ITEM #2.5
June 25, 2019
Action

MEMORANDUM

June 21, 2019

TO: County Council

FROM: Glenn Orlin, Deputy Director

SUBJECT: Resolution to amend the 2016-2020 Subdivision Staging Policy (SSP) in association with blighted/condemned buildings or affordable housing[1]

PURPOSE: Action

PHED Committee recommendation (2-0, Councilmember Jawando absent): Concur with the following amendments to the proposal from Councilmembers Rice and Riemer:

S7.3 [[Blighted/]] Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or [[less]] fewer students in any given impacted school, and;

(1) Replaces or remediates a[[n uninhabited blighted or]] condemned or previously condemned and currently vacant structure located within, abutting or [[adjacent]] confronting a state-designated Opportunity Zone, or

(2) Is a project having more than 50% of affordable housing units for [[families]] households earning 60% of less of [[AMI]] Average Median Income.

Councilmember Friedson concurs with MCCPTA's suggestion that this provision may be used so that a school's enrollment forecast is affected only once per year. Councilmember Riemer does not agree with this limitation. (Councilmember Jawando was polled, and he concurs with Councilmember Friedson.)

The Committee concurs with Part (2) only if it were confirmed that Montgomery Housing Partnership (MHP) may be able to utilize it for one or more of its pending affordable housing developments. If not, the Committee recommends deleting Part (2). Note: MHP reports that there are two developments in moratoria areas that would benefit by Part (2).

[1] Key words: #condemnedbuildings; affordable housing, condemned buildings

The Committee did not concur with Council staff's proposal to sunset this provision on July 1, 2020. It also did not concur with the Planning Board's proposal to expand the Public School Adequacy Test's de minimus rule from a development of up to 3 dwelling units to a development generating 10 or fewer students.

* * *

Councilmembers Rice and Riemer have sponsored an amendment to the 2016-2020 SSP that was introduced on April 23, 2019 to allow a project with housing to be approved in a cluster or individual school service area that is in moratorium, if the project would generate 10 or fewer school students and either:

(1) replaces or remediates an uninhabited blighted or condemned or previously condemned structure within or adjacent to a state-designated Opportunity Zone; or
(2) has more than 50% affordable housing units for families earning 60% or less of area median income.

The memorandum from Councilmember Rice, the Lead Sponsor, is on ©1-2. The proposed resolution is on ©3-4. The public hearing on this amendment was held on June 11, 2019. According to County Code Chapter 33A, the Planning Board and the County Executive are to provide comments to the Council on a proposed SSP amendment within 45 days of its introduction. The Planning Board transmitted its comments on June 7 (the 45th day), while the Executive transmitted his comments on June 20.

Background. Moonlight, Inc., the owners of the property at 850 Sligo Avenue in Silver Spring (the southeast corner of Sligo Avenue and Fenton Street) wish to redevelop a condemned building and replace it with 85 multifamily residential units. The property is in the Blair Cluster, which is currently in moratorium under the SSP's Public School Adequacy Test, and this moratorium will continue through FY20. Moonlight's initial preliminary plan application was for 85 age-restricted (i.e., senior) housing units, and this was approved by the Planning Board this past spring; senior housing units are exempt under the School Test since, obviously, such units do not "generate" students. However, Moonlight now wishes to have the age restriction lifted, and this would trigger a new school adequacy test. The development will fail the test short of Part (1) of the SSP amendment proposed by Councilmembers Rice and Riemer. It should be noted, however, that the Blair Cluster moratorium will be lifted as of July 2020, when the expanded Northwood HS will be within 5 years of completion: the additional capacity at Northwood will substantially relieve overcrowding at Blair and perhaps other neighboring high schools.

Council staff's understanding is that Part (2) of the proposed amendment initially was crafted to address a potential development by MHP, which would also be within the Blair Cluster. However, MHP staff has advised that the development, which is near the 850 Sligo Avenue property, is too large to fit under the 10-student threshold.

In common planning parlance, each of these provisions is a "red-eyed eskimo": a provision so finely crafted that it would apply to only one or two particular developments. While legal, such a provision is not dissimilar from spot zoning, which is not legal. Nevertheless, legislative bodies have crafted such provisions in the past. An example was a Growth Policy provision crafted by then-Councilmember Isiah Leggett two decades ago to allow for the approval of a 6-12 convenience store in Germantown East, which was then in moratorium under the Growth Policy's Transportation Test. The

Council approved the provision, the 6-12 received its subdivision approval, and the provision was excised from the Growth Policy the following year.

Hearing testimony and correspondence. The Planning staff, as described in its June 6 report to the Planning Board (©5-15), supports both parts of the amendment with some technical revisions to Part (1), namely:

- to remove the requirement that the structure be blighted, as there is no objective definition of "blight" in the County Code or regulations by which staff can make such a determination;
- to add to the condition of a "previously condemned" structure that it also be currently vacant; and
- that such a property can abut as well as be adjacent to an Opportunity Zone to be eligible. A property is "adjacent" if it is across a right-of-way of an Opportunity Zone, while one that "abuts" it touches it directly.

The staff also points out the degree to which this exemption would allow for more housing compared to the current SSP. The current SSP exempts developments of 3 *units* or less from the School Test. It was designed for very small single-family developments. According to the most recent student generation rates, 3 single-family units generate a total of 0.6 students, i.e., less than one. On the other hand, allowing developments of 10 *students* would increase the de minimus threshold 17-fold. A multifamily development generating 10 students, depending on its location in the county and whether the development is low-rise or high-rise, would translate to anywhere between 43 and 549 units per development (see ©9).

The Planning Board (©16-17) agrees with the Planning staff's technical revisions to Part (1), but it also recommends that the Council consider a provision by Commissioner Dreyfuss to expand the de minimus from 3 units to 10 students without any of the other conditions. Frankly, if this were enacted, Parts (1) and (2) would be mooted.

At the public hearing the Council also received testimony from Stacy Silber, representing Moonlight (©18-19), Jane Lyons, representing the Coalition for Smarter Growth (©20-21), Beckelech Delelegne, representing Addis Ababa Restaurant (©22), Clear Communications (©23-24), Fenton Café (©25), and resident Kathy Stevens (©26). All support the Rice-Riemer amendment. Ms. Lyons' testimony includes several suggestions as to how to address moratoria more generally (see ©19).

The Montgomery County Council of Parent-Teacher Associations (MCCPTA) has written in support of the amendment as proposed by Councilmembers Rice and Riemer, with two caveats (©27-29). The first is that the exemption apply to only one development per impacted school, so as not to have multiples of 10 students potentially affect the same school. The second is that language be added that the 10-student limit be applied to all the units in a structure, not the additional number of units proposed. For example, if a condemned and vacant building meeting the Part (1) conditions had 20 multifamily units and it were to be replaced by a 50-unit building, the Planning Board would typically calculate this as an increase of 30 units, while MCCPTA would calculate it as 50 units. (Note that this concept would not apply to 850 Sligo Avenue, which was formerly an abandoned office building with surface parking.) MCCPTA opposes the idea raised by Commissioner Dreyfuss, and it recommends that

any wider provision be considered only as part of the quadrennial update of the SSP, which will be acted upon by the Council no later than November 15, 2020.

Stacy Kobrick of Bethesda concurs with the MCCPTA's second caveat, and she also recommends that a development also be reviewed at site plan to determine whether the conditions are still met (©30-31).

MHP reports that Part (2) of the proposed amendment does not quite meet a large enough exemption for its potential affordable housing developments. As noted above, its development near 850 Sligo Avenue would generate 11 students. MHP suggests three options for amending the School Test to allow more of its developments to be approved (©32-33).

Councilmember Hucker (©34-35) proposes revisions to Part (1) that would allow for developments within a half-mile or a mile of an Opportunity Zone to be eligible, amending "previously condemned" to a structure condemned within a certain time period, such as five years, and to limit the projects approved under Parts (1) or (2) to one per year per affected school. He also recommended two technical revisions. Councilmember Rice (©36) has written in opposition to Council staff's proposal to sunset Part (1).

The Executive has now commented that he concurs with Part (1) with the technical revisions but also with a sunset of July 1, 2020, adding the condition that would limit the exemption to only one development per impacted school. He also concurs with the Part (2) exemption. He opposes the Planning Board's recommendation to expand the de minimum threshold from 3 dwelling units to 10 students generated (©37).

The PHED Committee asked which retail/office properties that fall into "condemned/previously condemned" in or adjacent to an Opportunity Zone. There are two:

Address	**School Service Area**	**FY 20 Moratorium**
8411 Georgia Ave.	Sligo Creek ES, Silver Spring International MS, Northwood HS	No
850 Sligo Avenue	East Silver Spring ES, Takoma Park MS, Blair HS	Yes

Councilmember Riemer asked about the properties being removed for the Purple Line and if they were condemned. Planning staff investigated this and couldn't find a condemnation record in the code violation database nor a demolition permit.

Council staff comments and recommendations. Red-eyed eskimos should generally be avoided, as they undermine comprehensively developed and vetted public policy, and basic fairness to those developments that are not favored by the exception. However, the case of 850 Sligo Avenue appears to be an instance where the public good from replacing this condemned building outweighs the potential impact on overcrowding at Blair HS. Council staff agrees with MCCPTA that any broader provision than the Part (1) proposed by Councilmembers Rice and Riemer (with the technical revisions proposed by the Planning staff and Planning Board) should await the full countywide analysis and

community input that will be part of the year-long development of the 2020-2024 SSP. Therefore, *Council staff recommends the following:*

- *Approve the Part (1) provision with the technical revisions proposed by Planning staff and Councilmember Hucker—and to revise the word "adjacent" to "confronting"—but sunset this provision on July 1, 2020.* The provision will not be needed by 850 Sligo Avenue as of July 1, 2020 as the Blair Cluster will be out of moratorium then.
- *Approve the Part (2) provision.* MHP reports that potential developments in Forest Glen (Einstein Cluster) and White Flint (Walter Johnson Cluster) that would benefit:

  Forest Glen Project (Einstein Cluster)
  Location: Georgia Ave. and Belvedere Blvd.
  Existing Units: 72, three story building, low-rise)
  Planned Units: 176, mix of low-rise and high-rise, roughly 124 in 5-story (high -rise) section and 52 in 4-story (low-rise) section
  Existing Student Capacity: 11
  Students Generated by New Project: 14 (8 students for low-rise building and 6 for high-rise)
  Net New Students: 3

  White Flint (Walter Johnson Cluster)
  Location: between Rockville Pike and Nebel Street
  Existing Units: None
  Planned Units: 180 in 6-story building (high-rise)
  Students Generated: 5

- *Add a condition that would limit the exemption to only one development per impacted school, as proposed by MCCPTA.* There is no situation among the known properties where multiple properties using the exemption provisions would affect more than one school. Nevertheless, it is a good principle.
- *Do not approve the Dreyfuss proposal.* Perhaps the de minimus threshold should be revisited, but it should be done only after a comprehensive, countywide analysis with significant community input. The Dreyfuss proposal opens the barn door very, very wide, especially if multiple developments affecting the same school could take advantage of a general 10-student exemption.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

CRAIG RICE
COUNCILMEMBER
DISTRICT 2

MEMORANDUM

To: Council President Nancy Navarro

Council Vice President Sidney Katz

From: Councilmember Craig Rice

Date: April 17, 2019

Re: 2016-2020 Subdivision Staging Policy Amendment, Allocation of Staging Ceiling to Preliminary Plans of Subdivision

I would like to introduce a Subdivision Staging Policy (SSP) Amendment that would give the Planning Board an opportunity to approve a subdivision in a cluster or school service area that is currently in moratorium by taking into consideration improvements made to a distressed community area or advancement of our public policy initiative of increasing affordable housing. Language addition as follows:

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or
(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Montgomery County now has 14 areas designated as Opportunity Zones which encourage investment and redevelopment and help enhance these underserved communities. These are the areas that most likely have blighted and/or condemned structures that plague a community. This SSP amendment would allow the Planning Board to consider the overall community benefits in allowing development in or adjacent to these areas to help spur growth and vitality.

The other part of the SSP speaks to a valued public policy initiative of increasing our inventory of affordable housing throughout the county. This amendment would allow development in a cluster currently over-capacity only if it included greater than 50% of affordable housing units for families

(1)

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earning 60% or less of AMI. We need to ensure our families of greatest need have access to housing throughout Montgomery County.

Moratoriums were put in place for a good reason and I do not want to diminish the purpose they serve. This SSP amendment ensures that any new development would not significantly add to the overburden of capacity of schools in moratorium by enacting a strict limit of (10) or less students that any new development might generate.

Resolution No: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Lead Sponsor Councilmember Rice; Co-Sponsor Councilmember Riemer

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SUBJECT: Amendment to the 2016-2020 Subdivision Staging Policy in association with blighted/condemned buildings or affordable housing

Background

1. On April 17, 2018 the County Council approved Resolution 18-1087, amending the 2016-2020 Subdivision Staging Policy.

2. County Code §33A-15(f) allows either the County Council, County Executive, or the Planning Board to initiate an amendment to the Subdivision Staging Policy.

3. On April 23, 2019, in accordance with §33A-15, the Council introduced proposed technical amendments to amend Resolution 18-1087 in association with blighted/condemned buildings or affordable housing.

4. On June 11, 2019, the County Council held a public hearing on the Draft Amendment to the Subdivision Staging Policy.

5. The Council's Planning, Housing, and Economic Development Committee conducted a worksession on the Draft Amendment to the Subdivision Staging Policy.

6. The Council conducted a worksession on the Draft Amendment to the Subdivision Staging Policy, at which careful consideration was given to the public hearing testimony, updated information, recommended revisions and comments of the County Executive and Planning Board, and the comments and concerns of other interested parties.

Resolution No. _____

Action

The County Council for Montgomery County, Maryland, approves the following Resolution:

The 2016-2020 Subdivision Staging Policy is amended as follows:

* * *

Guidelines for Transportation Facilities

* * *

S Public School Facilities

* * *

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster or school service area, the Planning Board nevertheless may approve a subdivision in that cluster or school service area if the subdivision generates 10 or fewer students in any given impacted school, and:

(1) Replaces or remediates an uninhabited, blighted, condemned, or previously condemned structure located within or adjacent to a state-designed Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% of less of area median income.

* * *

This is a correct copy of Council action.

_____

Megan Davey Limarzi, Clerk of the Council

MCPB
Item No. 5
Date: 06/06/2019

Council Resolution to Amend the 2016-2020 Subdivision Staging Policy

JS Jason Sartori, Acting Chief, Functional Planning and Policy, jason.sartori@montgomeryplanning.org, 301-495-2172
LMG Lisa Govoni, Planner Coordinator, Research and Special Projects, lisa.govoni@montgomeryplanning.org, 301-650-5624
TS Tanya Stern, Deputy Director, tanya.stern@montgomeryplanning.org, 301-495-4508

Completed:05/30/2019

Description

The proposed Council resolution would amend the 2016-2020 Subdivision Staging Policy to allow the Planning Board to approve a residential development application in an area under a moratorium, if the project is estimated to generate ten or fewer school students and either:

(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure within or adjacent to a state-designated Opportunity Zone; or
(2) Has more than 50% affordable housing units for families earning 60% or less of area median income.

Summary

Staff recommends transmitting comments to the County Council in support of the resolution with some modifications. The amendment is estimated to have a limited impact on student enrollment since not many projects will meet the criteria. At the same time, the amendment provides the Planning Board with the opportunity to approve projects that could help advance two worthy goals – eliminating blight within our communities and encouraging the creation of more affordable housing.

Background

Formerly called the Growth Policy, the Subdivision Staging Policy (SSP) seeks to ensure that Montgomery County's infrastructure, particularly schools and transportation, keeps pace with new development. The policy is typically updated on a quadrennial basis to ensure that the best available tools are used to help achieve this goal. County law requires that the next scheduled update be adopted by the County Council by November 15, 2020. Planning staff is preparing for that update effort, and the Planning Board will have numerous opportunities to craft a policy recommendation for the Council's review.

County Code §33A-15(f), however, allows the County Council, County Executive, or the Planning Board to initiate an amendment to the adopted SSP at any time. On April 23, 2019, Councilmembers Craig Rice

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and Hans Riemer sponsored and introduced an amendment to the SSP that would allow residential development applications to be approved by the Planning Board in areas under moratorium if certain conditions existed. County Code further requires that the Planning Board provide any comments to the County Council on the proposed amendment within 45 days of receiving the amendment (i.e., the day of its introduction). June 7, 2019 marks the 45th day.

Currently, the SSP establishes moratoria on the approval of new residential development applications under the following conditions:

- For any of the County's 25 public high school clusters, if projected capacity utilization in five years is greater than 120% cluster-wide at any school level (elementary, middle or high school).
- For any of the County's 134 individual public elementary school service areas (representing individual and paired schools), if the school's projected capacity utilization exceeds 120% and the school's enrollment is projected to be 110 students or more over capacity.
- For any of the County's 40 individual public middle school service areas, if the school's projected capacity utilization exceeds 120% and the school's enrollment is projected to be 180 students or more over capacity.

Under the current FY19 test, there are two cluster service areas and five individual elementary school service areas under moratoria. Under the upcoming FY20 test (the full results of which will be presented to the Planning Board for certification on June 20), there are four cluster service areas and 13 individual elementary school service areas going into moratoria (only eight of these, however, are fully located outside of the four clusters going into moratoria).

There are currently two exceptions that allow the Planning Board to approve a development application in an area under moratorium:

- If the project has a net increase of three or fewer units.
- If all of the project's residential units are age-restricted for seniors.

Proposed Amendment

The proposed amendment, introduced on April 23, 2019 by Councilmembers Riemer and Rice, would establish criteria for a new moratorium exception. Generally, the amendment would allow the Planning Board to approve a project in an area under moratorium if it would produce 10 or fewer students at any school and either replace a blighted structure in or adjacent to an Opportunity Zone, or provide a large share of affordable housing.

Specifically, below is the full text of the proposed amendment, as introduced:

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Detailed Review and Staff Recommendations

The proposed amendment demonstrates the County's need to balance competing policy priorities. There are three existing public policy goals that are impacted by this proposed amendment:

1. *Adequate School Capacity.* One of the primary goals of the SSP is to ensure adequate school capacity exists to accommodate the enrollment impacts of new development on a timely basis. The SSP in part attempts to achieve this goal by placing a moratorium on residential development approvals in areas served by schools that exceed certain enrollment thresholds. By allowing development in areas under moratoria, this proposed amendment presents a small challenge to the SSP's pursuit of this goal. However, limiting the estimated enrollment impact to no more than ten students at any one school ensures that no individual project will have too deleterious an impact on school adequacy. At the same time, because few projects are expected to meet the moratorium exemption criteria, staff does not expect a wave of project approvals that would collectively place an excessive enrollment burden on any one school. **Ultimately, staff believes the enrollment impact limitation in the proposed SSP amendment adequately restrains the potential impairment of the adequate school capacity goal.**

2. *Blight Reduction.* Blighted structures are a detriment to a neighborhood and become a public hazard if left unmitigated. It is clearly in the public interest to rid neighborhoods of blighted or condemned buildings, particularly in economically-distressed communities such as Opportunity Zones. This proposed amendment would allow the replacement or remediation of blighted buildings in such environments, notwithstanding the existence of a residential development moratorium. **Despite the potential impact on school enrollment, staff believes that the proposed SSP amendment supports an important public priority of encouraging reinvestment and revitalization in underserved communities, which can have long-term benefits beyond the timeframe of a moratorium.**

3. *Increased Affordable Housing.* The final goal impacted by the proposed SSP amendment is to increase the availability of affordable housing across the County. The 2017 Rental Housing Study noted an inadequate supply of affordable units, especially for units with deeper affordability levels than are typically reached by moderately priced dwelling units, which are

offered at 70 percent of the area median income (AMI). This amendment would allow the Planning Board to approve projects providing 50 percent or more of its units at 60 percent or less of AMI. Despite evidence that structures with higher rates of affordable housing generate more students,[1] **staff believes this is a worthy tradeoff given the proposed exemption's enrollment impact limitations and the fact that very few projects are likely to meet the affordability criteria.**

Not only does this amendment demonstrate a balanced approach to achieving policy goals, it provides the Planning Board with the opportunity to do the same at the project level. While the amendment would *allow* the Planning Board to approve certain residential projects in areas under moratorium, it does not *require* the Planning Board to do so. With every application that comes before it, the Planning Board can weigh the public interests in pursing more affordable housing or removing a community blight against the adequacy of schools and the project's estimated impacts on enrollment.

The following provides a detailed breakdown of the proposed amendment, section by section, with staff commentary and recommendations in bold.

PART A: Limits on Student Generation

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Student Generation.

As of July 1, 2019, staff will begin using a new set of student generation rates to estimate the enrollment impacts of development applications. These new rates are calculated based on housing stock data and Montgomery County Public Schools enrollment data from September 2018. The details of these updated rates will be presented to the Planning Board along with the FY20 Annual School Test on June 20, 2019.

[1] A quick review of a sample of high-rise structures with large shares of affordable units found that the units in these structures generate approximately 87 percent more students than high-rise units generally across the County. This is hardly surprising, given that the affordable housing policies mostly target families with children.

Using these new rates, staff has calculated the following unit counts to estimate the number of multifamily units that can be built within the ten-student threshold proposed by the amendment:

Region	Multifamily Low-rise	Multifamily High-rise
East Region Blair, Einstein, Kennedy, Northwood, Wheaton, Blake, Paint Branch and Springbrook clusters	43 units	124 units
Southwest Region Bethesda-Chevy Chase, Churchill, Walter Johnson, Richard Montgomery, Rockville, Whitman, and Wootton clusters	73 units	268 units
Upcounty Region Clarksburg, Damascus, Gaithersburg, Magruder, Northwest, Poolesville, Quince Orchard, Seneca Valley, Sherwood, and Watkins Mill clusters	60 units	549 units

It is important to note that we typically assess the net student enrollment impacts with a credit provided for units demolished offsetting the estimated number of students generated by the new residential units. In the case of the demolition of a condemned or previously condemned residential structure that is vacant, the enrollment impact estimate would be based solely on the proposed new residential units.

Staff believes that the ten-student threshold is sufficient mitigation to the potential further over-utilization of schools already in moratorium and therefore recommends that the Planning Board support this particular language in the amendment.

PART B1: Condemned Structures Exception

> S7.3 Blighted/Condemned Buildings or Affordable Housing
>
> If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:
>
> **(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or**
>
> (2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Blighted Structures.

Staff has significant concerns over use of the term "blighted" as a condition of possible project approval by the Planning Board because "blight" is a subjective term, with limited objective guidance or definition

in the County Code. The term "blight" appears several times in the Code, in reference to "blighted plants," "visual blight" or "blighted areas."

Visual blight is defined (County Code §26.2) as:

> Keeping, storing, scattering over, or accumulating any of the following which can be viewed at ground level from a public right-of-way or from neighboring premises:
> (a) rubbish, lumber, packing materials, or building materials;
> (b) abandoned, discarded or unused object or equipment, including any furniture, appliance, can or container, automobile part or equipment;
> (c) abandoned, disabled, dismantled, or unused vehicle or part of a vehicle; or
> (d) pile of dirt, mulch, sand, gravel, concrete, or other similar construction materials.
>
> *Visual blight* also includes any other condition or use of a building or surrounding land which because of its appearance, viewed at ground level from a public right-of-way or from neighboring premises, is likely to reduce the value of nearby property. *Visual blight* does not include building or construction materials intended to be used for any repair or renovation activity for which a building permit was issued and has not expired, and stored for the time reasonably necessary to promptly complete the work for which the permit was issued."

Even if the amendment were revised to reference visual blight, this definition provides some subjectivity since a structure's status as blighted could be based solely on its appearance.

Chapter 56 of the County Code, on Urban Renewal and Community Development, allows the Director of the Department of Housing and Community Affairs to create and administer a Demolition Loan Program that would provide commercial property owners with loans to cover all or part of the cost of demolishing a building and clearing the land under certain conditions, including areas "the Director finds is blighted or threatened with blight."

Further, in the purpose of the Urban Renewal code, there are several references to the "spread of blight" and "blighted areas," which are then defined as areas "in which a majority of buildings have declined in productivity by reason of obsolescence, depreciation or other causes to an extent they no longer justify fundamental repairs and adequate maintenance."

Nevertheless, the term "blighted" continues to provide a measure of subjectivity. In the case of urban renewal efforts, the County Code indicates that the County Council must designate "blighted *areas*" by resolution. However, there is no mechanism currently to officially designate a *structure* as blighted.

Condemned Structures.

Compared to "blighted," "condemned" is more objective. County Code identifies the Department of Housing and Community Affairs (DHCA) as the agency tasked with officially identifying a structure as condemned, whether it is a residential structure or not. Section 26-13 of the County Code provides the standards for condemnation:

(a) Standards for condemnation. The enforcing agency may condemn as unfit for human habitation any individual living unit, dwelling, or dwelling unit or its premises, or as unsafe for human occupancy or use any nonresidential structures or its premises, which:

(1) is entirely or partly so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or the public;

(2) lacks, entirely or party, illumination, ventilation, heating, water supply, or sanitation facilities, as required by this Chapter;

(3) is, because of its general condition, unsanitary or otherwise dangerous to the health or safety of the occupants or the public;

(4) contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid container, or other equipment, on the premises or in the structure which is in disrepair or a condition that the Director finds presents a hazard to the life, health, property, or safety of the occupants or the public;

(5)

(A) is vacant and unoccupied for the purpose for which it was built;

(B) has remained substantially in that condition for at least one year; and

(C) has been cited for 5 or more violations of this Chapter, none of which has resulted in a 'not guilty' finding by a court;

(6) or is a public nuisance.

Because condemnation is an official designation, the condemned status of a structure is something that Planning staff can verify through DHCA staff.

Staff recommends removal of the term "blighted" from the title and text of the amendment.

Previously Condemned Structures.

However, staff has concerns that the phrase "previously condemned" in the proposed amendment is not accompanied by a timeframe for when the structure had been condemned. Previously remediated structures that are currently occupied and serving as a source of naturally affordable housing or commercial space may not necessitate an exception to a moratorium.

But rather than establish a potentially arbitrary timeframe for the term "previously condemned," **staff recommends modifying the amendment to read "previously condemned and currently vacant."**[2]

Adjacency.

Officially, the term "adjacent" refers to properties across a right-of-way. **Staff recommends adding the term "abutting," which refers to properties immediately touching each other.**

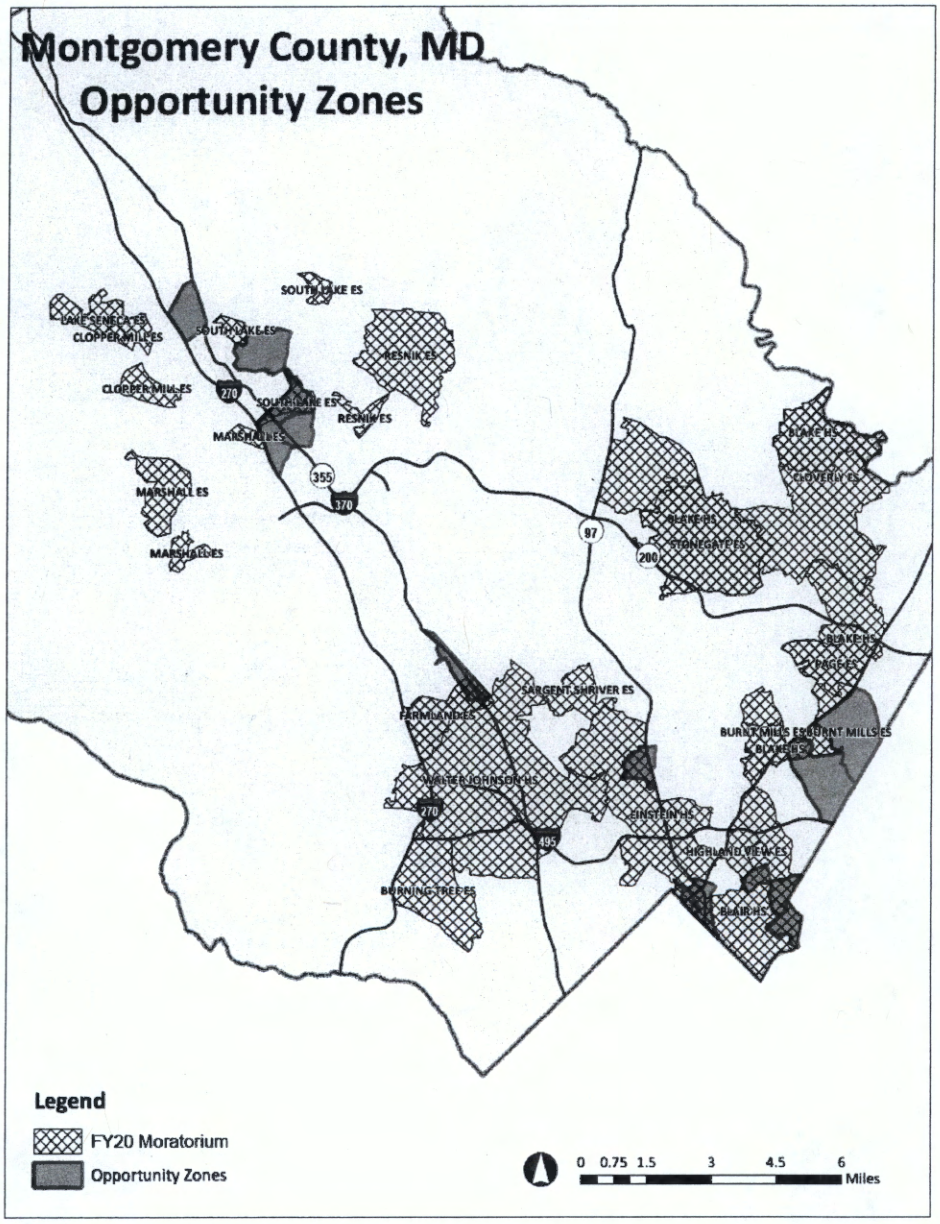
Opportunity Zones.

Opportunity Zones are designated by the Maryland Department of Housing and Community

[2] The amendment, as introduced, suggests the term "uninhabited" be used, but staff believes that implies that the moratorium exception only applies to condemned *residential* properties, whereas "vacant" is inclusive of commercial structures that could also be adaptively reused or completely rebuilt as residential uses.

Development (DHCD) as part of a nationwide effort to provide tax incentives for investment in distressed communities. According to DHCD, a neighborhood qualifies as an Opportunity Zone if it has "an individual poverty rate of at least 20 percent and median family income no greater than 80 percent of the area median."[3]

The following map highlights the location of Montgomery County's has 14 Opportunity Zones, relative to the areas entering a residential development moratorium for FY20:



[3] See https://dhcd.maryland.gov/Pages/OZ/OZ-FAQ.aspx.

Potential Impacts of the Condemned Structures Exception.
A review of the County's Housing Code Violations database revealed a list of 45 condemned structures or units located in or adjacent to an Opportunity Zone (adjacent defined for these purposes as properties located within a 100-foot buffer of an Opportunity Zone). Only 25, however, are in areas that will be in moratorium in FY20. Of the 25 locations, 11 are single family detached homes and two are single family attached homes. Generally, redevelopment of these individual homes would take the shape of a teardown/rebuild project that would result in no net unit change, or a net change that would fall within the existing 3-unit de minimis moratorium exception. Of the remaining, 11 are individual dwelling *units* that have been condemned that are located within multifamily *structures* that are *not* condemned, and therefore do not qualify for the proposed moratorium exception, which only applies to condemned *structures*. That leaves one parcel currently condemned that could benefit from this amendment – 850 Sligo Avenue, which is a former office structure.[4]

Of the 20 condemned properties located in or adjacent to an Opportunity Zone, but *not* located within an FY20 moratorium area, five are single family detached units, 11 are single family attached units, two are individual dwelling units within multifamily structures that are not condemned, and two are individual units within office/retail structures that are not condemned.

Summary of Condemned Properties Located In or Adjacent To an Opportunity Zone.

FY20 Moratorium	Structure or Unit	Use Category	Count	Impacted by Amendment
Yes	Structure	Single Family Detached	11	N
Yes	Structure	Single Family Attached	2	N
Yes	Unit	Multifamily	11	N
Yes	Structure	Office/Retail	1	Y
No	Structure	Single Family Detached	5	N
No	Structure	Single Family Attached	11	N
No	Unit	Multifamily	2	N
No	Unit	Office/Retail	2	N

[4] Five locations were identified as previously condemned and within or adjacent to an Opportunity Zone, but only three are within areas that will be in moratorium in FY20. Of those three locations, one is a single family detached home and two are individual units within multifamily structures. Therefore, currently there are no previously condemned structures that would be impacted by the proposed amendment.

PART B2: Affordable Housing Exception

S7.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Potential Impacts of the Affordable Housing Exception.

Discussions with Area Team staff revealed four potential projects across the County in various stages of the application process that may fall into the category of providing 50 percent of their units affordable to 60 percent of area median income. One, the Forest Glen Apartments, is located in the Einstein cluster, which is scheduled to go into moratorium on July 1. The applicant, Montgomery Housing Partnership, filed for a local map amendment that the Planning Board approved on February 7, 2019. The District Council adopted the local map amendment on April 30, 2019. Documents pertaining to the local map amendment suggest the applicant intends to replace the 72 existing low-rise apartments with 220 high-rise apartments.[5]

The three other potential projects are all in the pre-application stage. Only one of these is located in an area slated for moratorium (the Walter Johnson cluster). Typically, projects requesting this high a share of affordable housing at 60 percent of AMI are rare given the deeper levels of affordability and the higher percentage of affordability set asides. These projects typically involve low income housing tax credit units built by a non-profit developer. Nevertheless, it is impossible to predict how many projects meeting the amendment requirements may come forward in the future.

[5] It is possible this project may not qualify for the exemption once the preliminary plan application is submitted. A binding element of the floating zone plan adopted by the District Council requires the applicant to include a minimum of 20% moderately priced dwelling units (MPDUs) in the project. MPDUs are only required to be affordable to families earning 70 percent of AMI. It is unclear whether the applicant intends to provide additional units affordable to families earning 60 percent of AMI.

Consolidated Amendment Modification Recommendations

The following modifications to the proposed amendment reflect the staff recommendations described above:

S7.3 [[Blighted/]]Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates a[[n uninhabited blighted or]] condemned or previously condemned and currently vacant structure located within, abutting or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Attachment

SSP Amendment Resolution as introduced on April 23, 2019.

MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

June 7, 2019

TO: The County Council for Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Council Resolution to Amend the 2016 Subdivision Staging Policy

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed the Council Resolution to Amend the 2016-2020 Subdivision Staging Policy (SSP) at its regular meeting on June 6, 2019. By a vote of 5:0, the Planning Board provides the following comments on the resolution, which would amend the SSP to allow the Planning Board to approve development applications for residential projects in areas under moratorium, under certain conditions pertaining to blighted/condemned structures, affordable housing, and estimated public school enrollment impacts:

- **The Planning Board supports the amendment language limiting the moratorium exception to projects estimated to generate ten or fewer students at any impacted school.**
  The proposed amendment would limit the estimated enrollment impact of any application approved within an area under moratorium to ten or fewer students at any impacted school. The Planning Board believes this sufficiently limits the impact on schools while pursuing other important policy priorities of revitalizing blighted areas and ensuring an adequate supply of affordable housing in the County. Commissioner Fani-Gonzalez specifically requested that a threshold higher than ten students be considered in light of the increasing number of options available to students for distance learning or specialty programs at alternative school sites.

- **The Planning Board recommends removal of the reference to "blighted" structures from the section title and the text of the amendment.**
  As introduced, the resolution allows for the replacement or remediation of "uninhabited blighted" structures. "Blight" is a subjective term. Furthermore, the County Code does not provide the criteria or the process for a structure to be officially designated as a blight. The Code does, however, identify the criteria and process for a structure to be officially condemned. Therefore, the Planning Board recommends removing any reference to "blighted" structures.

- **The Planning Board recommends modifying the amendment to read "...previously condemned and currently vacant..."**
  The Planning Board also recommends modifying the text of the amendment to ensure that previously condemned structures are currently vacant. This would prevent a potential loophole

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that would otherwise allow redevelopment of previously condemned structures that have been remediated and are currently serving to house residents or businesses.

- **The Planning Board recommends modifying the amendment to include properties *abutting* an Opportunity Zone in addition to those adjacent to and located within an Opportunity Zone.** Technically, "adjacent" only refers to properties that are separated by a right-of-way. Thus, the Planning Board recommends modifying the amendment to qualify properties abutting an Opportunity Zone (allowing properties directly touching an Opportunity Zone).

In total, the Planning Board's recommended modifications to the proposed SSP amendment are identified below:

S7.3 [[Blighted/]]Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or less students in any given impacted school, and:

(1) Replaces or remediates a[[n uninhabited blighted or]] condemned or previously condemned and currently vacant structure located within, abutting or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for families earning 60% or less of AMI.

Furthermore, at Commissioner Dreyfuss' suggestion, the Planning Board recommends that the Council consider universally applying the student impact threshold of ten students or fewer to all applications for residential development within areas under moratorium.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 6, 2019.

Casey Anderson
Chair

CA:JS:aj

Testimony of Stacy P. Silber

In Support of Amendment to 2016-2020 Subdivision Staging Policy
In Association with Blighted/Condemned Buildings or Affordable Housing

June 11, 2019

Good morning. For the record, my name is Stacy Silber, a partner with the law firm of Lerch, Early & Brewer. I am testifying today in favor of the subject Subdivision Staging Plan legislation and on behalf of Moonlight, Inc., the owners of 850 Sligo Avenue. Put simply, this legislation strikes a reasoned balance between facilitating revitalization where needed or allowing deeply affordable development, and managing impacts on area schools. This balancing act is achieved through (1) a finite – 10 student generation cap; and (2) a restricted set of conditions, which thereby controls application. While this legislation doesn't solve the overall moratorium issue in the County, it does provide a reasoned limited approach to address equally important public policies.

The property, known as 850 Sligo Avenue, which was previously condemned, would benefit from this legislation. As background, one of Moonlight's principles lives on Bonifant Street in Silver Spring. He had been observing the continued degradation of the property and decided he wanted to invest locally to revitalize this site with a residential redevelopment. Moonlight acquired 850 Sligo in the spring of 2017. Around this time, the County condemned the property because of the prior owners' lack of maintenance. After acquiring the site, Moonlight took immediate steps to remediate the property, including removing graffiti from the building, replacing broken windows, restoring electricity to the site for security purposes and fencing the site to prevent people from storing vehicles and materials. In addition to the short term

maintenance, over the course of the last two years, Moonlight has invested considerable amount of resources in having consultants design and entitle 850 Sligo Avenue so that it can redevelop as an 85 unit multifamily community. Moonlight worked very closely with its neighbors in the planning of the project and as a result designed a development that mediates between the commercial development along Fenton Street and Sligo Avenue, and the more residential feel along Gist. As a result of these efforts, the surrounding community embraced the redevelopment and revitalization. Moonlight wishes to build what it has now entitled, but it is unable to do so because Blair High School is in moratorium.

There were several investors, prior to Moonlight, who had explored redevelopment of 850 Sligo. All of these efforts failed for various reasons. The adoption of the SSP is critical to ensure this well designed and community embraced redevelopment is able to proceed. Otherwise, we risk the property sitting vacant and blighted for an indefinite period of time.

Because the legislation is very narrow in scope, it helps projects such as 850 Sligo that are small in size, and previously condemned. As such, it provides a well-reasoned balance between limiting impacts on area schools and providing the tools to make way for revitalization of blighted sites.

We respectfully request that the Council support this resolution to amend the 2016-2020 SSP. Thank you.

(19)

Coalition for Smarter Growth
DC • MD • VA

June 7, 2019

Montgomery County Council
Council Office Building
100 Maryland Ave.
Rockville, MD 20850

Resolution to Amend the 2016-2020 Subdivision Staging Policy (Support)

Testimony for June 11, 2019

Jane Lyons, Maryland Advocacy Manager

President Navarro and Councilmembers, thank you for the opportunity to speak today. I am here on behalf of the Coalition for Smarter Growth, the leading organization in the D.C. region advocating for walkable, inclusive, transit-oriented communities. We support current efforts to lessen the negative impacts of the Subdivision Staging Policy's (SPP) housing moratorium and echo the need for affordable housing. However, we ultimately urge the Council to replace the moratorium with policies that better address the County's school construction, housing, and economic development needs.

The 2016 SSP projected that the county would grow by over 200,000 residents between then and 2045, with 14 percent of land absorbing 82 percent of new jobs, 76 percent of new households, and 73 percent of population growth. Preventing new housing, especially mixed-use, mixed-income, transit-oriented, and affordable housing in efficient locations close with good transit, stifles the county's ability to meet the housing needs of current and future residents, as well as to grow the local economy and maintain the county's fiscal health. We can have a county that has both good housing and good schools for all of our residents.

Further, new medium to higher density development has not been a major contributor to student generation. Single-family homes countywide generate almost double the number of students that multi-family homes generate, and single-family home turnover is the primary factor driving school population increases. Finally, school impact taxes paid by new development provide more than the total cost for each projected generated student. Medium to higher density development also provides significant property tax revenue. It does not make sense to punish new development that the county needs for impacts it does not cause.

For these reasons, we ask the Council go further to address the harm that the moratorium brings. Today's resolution is an important first step to mitigating the harmful impact of the moratorium on affordable housing supply. However, the stringent requirements of the resolution are likely to help just one current housing proposal, the transit-oriented 850 Sligo Apartments in Silver Spring. Other important transit-oriented new housing developments, like Strathmore Square, are left in moratorium for at least another year, limiting the number of units that are being approved at this time. We've also heard that the uncertainty and potential limitation on buildout caused by the moratorium can put the private financing of projects like Strathmore Square at risk.

(20)

There are many alternatives to the moratorium for the Council to consider, including:

- **Reinstating school facility payments in overcrowded clusters, while maintaining the current school impact tax.** This would allow development to continue, but impose a slightly higher cost to do so. As clusters and individual schools became more overcrowded, the county could require a corresponding increase in school facility payments.
- **Aligning the timelines of the CIP and annual school test.** While the Capital Improvements Program (CIP) includes projects six years into the future, the annual school test in the SSP only looks at the next five years. This means that even if there is a project in the sixth year of the CIP that would remedy overcrowding, that school or individual cluster could still go into moratorium. To address this, the annual school test should consider projections six years into the future.
- **Taxing teardowns more substantially.** Teardowns do not currently pay impact fees, even though they are new construction and new families moving in can be expected to generate new students. This might also reduce the "mansionization" of our communities, which turns formerly modestly-sized homes into much larger homes, housing a similar household size.
- **Exempting Metro Station Policy Areas from the annual school test.** Building more homes, especially affordable homes, near transit is necessary for a sustainable future. We cannot afford to miss out on opportunities to grow in a more walkable way. Businesses and residents are looking to locate in more transit-oriented communities.
- **Redistricting school boundaries.** Although education policy is not our specialty, we encourage those who are experts to make more substantive recommendations on this topic. Redistricting has the potential to relieve overcrowding, as well as further goals of socioeconomic and racial integration.
- **Reviewing school design standards.** If schools are designed to occupy a smaller footprint by being three stories instead of one, or integrated into mixed-use development, and if playing fields can be shared with recreational centers and parks, then it might be easier to find sites for new schools.
- **Pushing forward the 2020 SSP effective date to June 2020.** The current timeline for the SSP update is November 2020, well after the next annual school test in July 2020. Changes should be made to the SSP by June 2020 to avoid another year of moratorium restricting the housing supply and economic development.

These are our suggestions to consider, but we strongly urge the Planning Department to offer other alternatives to the housing moratorium policy. Montgomery County can have great schools, plentiful housing, and a strong economy, but we must have policies that support that future. We look forward to being a part of these conversations throughout the 2020 SSP process. For now, this resolution is a first step.

Thank you for your time.

###

Addis Ababa Restaurant Testimony
BekelechDelegne
8233 Fenton Street
Silver Spring, Maryland 20910

Good morning President Navarro and Montgomery County Council Members. My name is BekelechDelelegne – thank you for allowing me this opportunity to speak to you today. I own Addis Ababa Restaurant, located at 8233 Fenton Street, and I'm here to testify in support of the proposed Subdivision Staging Policy Amendment.

I have lived in the Silver Spring Community for a very long time. There is good food everywhere, but Addis Ababa is the capital of Ethiopian cuisine. For 35 years, our restaurant has been where people go for the savory flavors that define the Ethiopian experience. We prepare fresh and healthy meals, and use spices imported directly from Ethiopia. We cook everything according to traditional Ethiopian recipes.

Now, I'd like to address why I support this new legislation. Given the location of our restaurant, we are very excited about this new law that would help run-down and unattractive properties get redeveloped with smaller projects.There is one vacant property located very close to Addis Ababa at 850 Sligo Avenue, which is just a 5-minute walk down Fenton Street. That property has been empty for years. It is in need for a public policy to allow for its redevelopment.

This amendment will allow small projects, like the one approved for 850 Sligo Avenue, to provide a wonderful housing option for our customers and our employees. We believe that many of our customers have children who attend schools in our community. I support the limited nature of the law. It creates a good balance between revitalization of run down properties, while only allowing smaller projects to move forward if a school is in moratorium.

Before the current owner, several developers were looking at redeveloping 850 Sligo Avenue. But those deals fell through. We do not want that to happen again. We look forward to the transformation of this long vacant building into a beautiful multifamily building.

I hope that you share my enthusiasm and also support the amendment. This is something that can help redevelopment in Silver Spring and all over Montgomery County. Thank you again for taking the time to hear my testimony this morning.

5

Clear Communications, Inc.

Name: Noah Fissehazion, President
Date: Tuesday, June 11, 2019
Re: Amendment to the 2016-2020 Subdivision Staging Policy

Council President Navarro and Members of the Council, good morning. My name is Noah Fissehazion, and it is my pleasure to be here and testify on behalf of Clear Communications, Inc. in support of the proposed amendment to the current Subdivision Staging Policy.

Clear Communications has been in business since 1999, located in downtown Silver Spring. We have evolved from a Bell Atlantic Wireless Authorized Dealer to Telecom/Technology Contractor. Within the last 15 years we have seen the dramatic transformation of Downtown Silver Spring from a sleepy downtown to a vibrant downtown.

We are quite thrilled about the proposed redevelopment of 850 Sligo Ave, this property has been an eyesore on Fenton Street, it has been abandoned for years and excited to learn that someone with a vision has decided to develop it. Given the location of our business, which is just a block away from the property we have a particular interest in this legislation. I understand that the proposed redevelopment of the site cannot move forward because the local high school is in moratorium. This amendment would permit the redevelopment of the 850 Sligo property, which will provide an incredibly convenient housing option for our existing and future employees.

We are excited to welcome a new multi-family community as our neighbor and look forward to the continued revitalization of downtown Silver Spring. The proposed legislation will help ensure this can happen.

I greatly appreciate your time and consideration of Clear Communications' enthusiastic support for this legislation.

Thank you very much for the opportunity to testify before you today.

Fenton Café

8311 Fenton St.

Silver Spring, MD 20910

(301) 326-1841

Support of SSP Legislation Amendment for Blighted Properties

My name is Goitom Tekie. As a long-time resident of Silver Spring and local business owner, I am very writing to express my support of the SSP amendment.

This legislation is exciting because Fenton Café, my business, is about a 5-minute walk from a vacant property located at 850 Sligo Avenue that would benefit from this legislation. I know that this property has had its challenges, but I was excited to learn that a new multifamily building is coming in the near future. I then learned that although the project produces very few school aged children, it would be stopped because the local high school is in moratorium. The proposed legislation would allow this project to move forward.

To give you a little background about my business -- Fenton Café is a local coffee shop that sells a variety of crepes, sandwiches, smoothies, and of course, coffee. We also provide a cozy seating area where our customers can comfortably gather and enjoy each other's company. We are conveniently located at 8311 Fenton Street, just two blocks away from the intersection of Fenton and Bonifant Street. Many of our customers have children who attend local Montgomery County Public Schools. In fact, I frequently see local students use our space to do homework or engage in group study sessions.

Fenton Café helps to engage the community. A vacant building pulls down the rest of the neighborhood. Allowing limited policies, like the proposed legislation, makes way for revitalization and will help everyone. For all of these reasons, I respectfully ask that you support the amendment to the SSP.

I ask that you support this legislation.

Best regards,
Goitom Tekie
Fenton Cafe

My name is Kathy Stevens and I live at 823 Gist Ave., Silver Spring. I am writing in favor of the resolution to amend the 2016-2020 Subdivision Staging Policy in association with blighted/condemned buildings or affordable housing.

I live less than a block from 850 Sligo Ave., a property that has been blighted and vacant for many years. Not only is this an eyesore in what should be a vibrant part of Downtown Silver Spring, but the vacant property also creates a dark, silent, un-activated entrance to our neighborhood.

My community, a diverse mix of homeowners, apartment dwellers, students and businesses would benefit from this legislation that would allow blighted properties to redevelop.

While other owners have attempted to redevelop the property, they have been unsuccessful. We are pleased that a local developer now owns the property and is willing to reinvest in the community to develop this property. They have worked with the community on the design of the project and the community is in support of the redevelopment. However, with the moratorium at Blair High School, this residential revitalization cannot move forward.

This revitalization is key for our community in terms of how the community looks and feels from a purely aesthetic perspective. But, more importantly, while our community is relatively safe, we do experience some crime on our street, which might be linked to a dark and desolate property being at the entrance to our street. Revitalization is key to the continued safety and security of residents and the continued prosperity of local businesses. There are several local businesses within a two-block radius and Montgomery College students regularly walk and bike by the building, as well. The amendment would allow this building to be redeveloped and benefit multiple constituencies.

This amendment is appropriately narrowly tailored to include a cap on the number of students generated which provides a good balance of controlling school capacity levels and providing a path forward for blighted properties.

As a leader in my community, I have spoken to other neighbors and they are in support of this amendment and the redevelopment of 850 Sligo Ave, and we urge you to support the amendment as an important contribution to the continued well-being of our residential and business neighbors.

PTA
everychild. onevoice.®

The Montgomery County Council of Parent-Teacher Associations

P.O. Box 10754, 500 N. Washington St., Rockville, MD 20849

June 12, 2019

Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Council Resolution to Amend the 2016 Subdivision Staging Policy

Dear President Navarro and Councilmembers:

On behalf of the Montgomery County Council of PTAs (MCCPTA), we submit these comments on Councilmember Rice's Proposed SSP Amendment. Prior to reading the Planning Board's recommendation we were comfortable with the amendment, understanding that it was mainly targeting a particular project on Sligo Avenue (and similar situations), but we have concerns about some of the Planning Board's recommendations, which would dramatically broaden the scope of this otherwise narrowly defined amendment.

The support for—and more notably, the lack of opposition to—this amendment can be attributed largely to the balanced approach that Councilmember Rice took in drafting it. Anything farther reaching should be much more carefully vetted and evaluated. We ask that the Council limit the amendment to its original scope and intent and refine the language to ensure it is achieved.

In this letter we will be referring to Planning Staff's report dated May 30, 2019 and Planning Board's Recommendations dated June 7, 2019. Planning Staff put forth a thoughtful and thorough assessment of the proposed amendment, and aptly championed the "worthy tradeoff given the proposed exemption's enrollment impact limitations." They considered the desires of the community, the need for affordable housing, and the limited impact on schools, and concluded that the mitigation is sufficient. Some of the Planning Board's subsequent recommendations support and improve this intent, while other recommendations undermine the "balance" that so many supporters found compelling.

We oppose changes that would further erode the school adequacy provisions in the SSP and propose that any such deviations from the original intent of the amendment be deferred until the comprehensive review of the SSP next year.

***

"The Planning Board supports the amendment language limiting the moratorium exception to projects estimated to generate ten or fewer students at any impacted schools."

MCCPTA concurs and deems this tradeoff worthwhile and acceptable. We disagree with Commissioner Fani-Gonzalez, who "specifically requested that a threshold higher than the ten students be considered," and we urge the Council to retain language limiting the impact to ten or fewer students. The specialty programs that she cites are being utilized to address capacity (with limited success at the high school level) and a more far-reaching amendment warrants greater analysis and public input. Per the Staff report, "limiting the estimated enrollment impact to no more than ten students at any one school ensures that no individual project will have too deleterious an impact on school adequacy." Along these lines, ***we would support additional language in the amendment that would limit such exceptions to one per school per year***, so as to prevent "deleterious impact" on any single school as a result of multiple approvals of this nature.

"The Planning Board recommends removal of the reference to "blighted" structures from the section title and the text of the amendment."

MCCPTA concurs and supports the less ambiguous language proposed by Planning Staff and Planning Board. We note that "Staff has significant concerns over use of the term 'blighted'" and we too urge that it be stricken from the amendment, and replaced by established, objective language.

"The Planning Board recommends modifying the amendment to read '...previously condemned and currently vacant...'"

MCCPTA concurs and supports language that "prevent[s] a potential loophole that would otherwise allow redevelopment of previously condemned structures that have been remediated and are currently serving to house residents or businesses."

"The Planning Board recommends modifying the amendment to include properties abutting an Opportunity Zone..."

MCCPTA concurs and supports the more inclusive language.

***

Of great concern to us is the last recommendation, "at Commission Dreyfuss' suggestion," that the Council consider "universally applying the student impact threshold... to all applications for residential development within areas under moratorium." **We strongly urge the Council to dismiss this suggestion to consider additional applications at this time.** The building moratorium will be evaluated with the SSP next year, and at that time—with greater consideration of the ramifications and without haste—we can holistically reevaluate and perhaps revamp the school adequacy provisions of the SSP.

Lastly, we would like to highlight Planning Staff's note on page 5 of their report:

> *It is important to note that we typically assess the net student enrollment impacts with a credit provided for units demolished offsetting the estimated number of students generated by the new residential units. In the case of the demolition of a condemned or previously condemned residential structure that is vacant, the enrollment impact estimate would be based only on the proposed new residential units.*

We urge the Council to add language that would count *all* new habitable units toward the student generation estimates, and not just the increase from existing units to total new units. If a building is vacant, then as currently applied we will underestimate the actual and real impact that the excepted project will have on the affected schools. Vacant and/or condemned buildings have no students, and all new habitable units should be accounted for when estimating the impact on schools. This should be clarified in the amendment which is intended to apply in precisely such situations.

Respectfully,
Lynne Harris, MCCPTA President
Laura Stewart, MCCPTA Vice-President, Advocacy
Katya Marin, MCCPTA CIP Committee Chair

Council President Navarro and County Council Members Rice and Riemer,

I write in support of the Subdivision Staging Policy ("SSP") Amendment proposed by Councilmembers Rice and Riemer, with the revisions proposed by Planning Staff and ask the Council to consider two additional provisions in the proposed amendment.

As an initial matter, I would like to address comments by certain Planning Board members. First, Commissioner Fani-Gonzalez's point comment that the threshold be higher than ten students in light of distance school learning and specialty programs at alternative school sites overlooks the fact that elementary and middle schools are also overcrowded. Distance learning and alternate sites are not appropriate options for primary and middle school students, as they may be for high school students. Second, Commissioner Dreyfuss' suggestion that the exception be applied to all applications in areas under moratorium undermines the point of the amendment, which is to minimize the impact on overcrowded schools while promoting residential development in underserved communities that need revitalization.

The Council is responsible for implementing the SSP to ensure that adequate infrastructure will be available to support new development. As MCPS schools continue to face overcrowding and deteriorating facilities, the schools provision of the SSP is a critical tool to modulate development in overcrowded school service areas. At the same time, the County lacks sufficient affordable housing. Promoting development of affordable housing, in particular in underserved communities that need revitalization and reinvestment, is an important policy goal Council should advance. The County should aim to carefully balance these two goals – school adequacy and increasing availability of affordable housing – so as not to prevent new housing from being built. In particular, sites near metro and on vacant or condemned properties are prime opportunities to build housing. The amendment to allow an exception from the moratorium for projects that will have relatively limited impact on schools balances these goals. By limiting the exception to developments that would generate ten students or less, the impact on schools is minimized and therefore does not impede the development of sorely needed affordable housing.

In order to balance these goals, I ask that Council consider adding provisions to prevent the exception from being undermined and to eliminate loopholes.

Proposed Additional Provisions

1. The exception should not apply only to the proposed new residential units. (See Staff Report Part A, page 5.) The amendment should specify that the enrollment impact estimate be based on the total residential units, including units previously approved for the condemned vacant structure. If a structure is vacant, condemned, or previously condemned, there are no students living in the building. The schools will be impacted by all units in the new building, both previously approved and proposed new units. The impact could be significantly more than ten students. This loophole undermines the de minimis impact intended by the proposed exception.

2. Given that projects may change between preliminary plan application, amendments, and site application, it would be prudent to include a requirement that the project is reviewed again prior to site plan approval to confirm that the project still qualifies for the exemption. As Staff noted, projects may be revised in such a way that the exemption may no longer be available. A second review would help to prevent the exception from being circumvented.

I ask that you incorporate Planning Staff's proposed modifications and incorporate provisions to: (1) apply the de minimis exception to all residential units that will result from a project not just the additional proposed units and (2) require a second review at the site plan approval stage to ensure a given project still qualifies for the exception at site plan approval and/or amendment phase.

Thank you for your time and consideration.

Respectfully submitted,
Stacy Kobrick
4552 Windsor Ln
Bethesda, MD

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June 14, 2019

The Honorable Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue Rockville, MD 20850

Dear Council President Navarro:

On behalf of Montgomery Housing Partnership (MHP), please allow me to take this opportunity to provide our thoughts on the resolution to amend the 2016-2020 Subdivision Staging Policy, which would give the Planning Board the authority to approve development in a school cluster that is under moratorium if it addresses a blighted property or the county's affordable housing needs.

At present, we have four projects in our pipeline, representing approximately 720 units of affordable housing, that are impacted by moratoriums and which we would otherwise submit to the Planning Board for preliminary plan approval within the next year. These projects encompass the Northwood, Blair, Einstein and Walter Johnson clusters, all of which will be in moratorium until at least June 30, 2020. Despite the resolution's provision to exempt affordable housing projects from the moratorium, none of our projects would benefit from this policy because all of our projects would generate more than 10 new high school students. Even the smallest project, which is planned to have approximately 70 units, would generate 11 students. Our near-term projects are expected to generate anywhere from 11 to 25 new students. In general, the majority of new multi-family projects within the county feature at least 100 units, so the provision as currently written will not materially increase the supply of affordable housing.

Moratoriums hurt all housing developers and, more broadly, our efforts to increase housing supply, but they have a disproportionate impact on nonprofit developers such as MHP. Moratoriums, even if they only last a year, can result in a project being delayed by several years or, worse yet, being cancelled. Unlike market rate developers, nonprofit developers only get one chance a year to finance their projects. The Low-Income Housing Tax Credits (LIHTC) that we rely on to finance our projects are distributed through a competitive process that the state administers annually, and the moratoriums create a significant obstacle to applying for and receiving the credits.

Montgomery County is already at a competitive disadvantage when it comes to being awarded tax credits due to the high cost of construction in Montgomery County relative to other parts of the state and criteria which favors Baltimore area jurisdictions. The housing moratoriums make us even less competitive by restricting the areas where we can build and by introducing additional risk to an already risk-laden business. What's more, the Maryland Department of Housing and Community Development, which awards the tax credits, is looking for shovel ready projects that have a clear path to construction. Affordable housing developers that are awarded tax

credits are required to bring the project into service within two years of the award. If a developer is unable to meet this deadline, they run the risk of having to forfeit the credits back to the state. Introducing a one or two year delay to a project that receives tax credits would make it difficult, if not impossible, to meet this deadline.

The Council could advance affordable housing during moratoriums by simply increasing the cap on the number of students that are allowed to be generated by a project, but we believe a better solution would be to look at new students generated as a percentage of overall capacity of the school as opposed to a fixed number of students. Adding 10 students to a school with a capacity of 400 students is far different than adding 10 students to a school with a capacity of 3,000. Rather than restricting the number of new students to 10, the Council could permit affordable housing projects to proceed as long as they don't increase enrollment by more than one percent of current capacity. One percent of Einstein High School's capacity would equal 16 new students, which would allow our Forest Glen development to proceed.

Another option would be to allow affordable housing projects to receive subdivision approval as long as the units don't come online until after the fourth year of the six-year moratorium period. This would limit the impact that affordable housing projects have on our schools by minimizing the time that the school is over capacity. Most of our projects are not expected to come online until 2022 or 2023, and it would be shortsighted to hold up badly needed affordable housing on account of the impacts it creates for a single year.

A third option would be to set aside school capacity for affordable housing projects so no project which is meeting a demonstrated need for low income households is prevented from moving forward.

We fully appreciate the concerns regarding adding more students to overcrowded schools. Our residents have children that attend schools that are over capacity like Blair, Einstein and Northwood. That said, the housing crisis demands that we not hit the pause button on expanding the supply of housing. When schools are at capacity, moratoriums may seem like the least bad option to deal with the situation, but in practice, they end up hurting the very people that we're seeking to lift up. For families in need of affordable housing, housing delayed is housing denied. Whether it's through this resolution or the next update to the county's Subdivision Staging Policy, we urge you to seek solutions that better balance concerns regarding school capacity with the dire need for affordable housing.

Thank you for the opportunity to provide our input on the resolution. Please feel free to reach out to me with any follow-up at rgoldman@mhpartners.org or at 301-812-4114.

Sincerely,

Robert Goldman

Robert A. Goldman, ESQ.
President

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

TOM HUCKER
COUNCILMEMBER

PUBLIC SAFETY COMMITTEE
CHAIR, TRANSPORTATION & ENVIRONMENT COMMITTEE

MEMORANDUM

TO: Councilmember Hans Riemer, Chair, PHED Committee
Councilmember Andrew Friedson
Councilmember Will Jawando
Councilmember Craig Rice

FROM: Councilmember Tom Hucker

DATE: June 14, 2019

RE: Resolution to Amend the 2016-2020 Subdivision Staging Policy in association with blighted/condemned buildings or affordable housing

Thank you for considering this resolution, which will have a positive impact on a blighted property and affordable housing development in my district. I am writing to propose three substantive amendments and several technical corrections for the PHED Committee's consideration.

First, I recommend defining "adjacent to a state-designated Opportunity Zone" as within a half-mile or mile of an Opportunity Zone's boundary. Second, I recommend changing "previously condemned" to a structure condemned within a certain time period, such as in the last five years. Lastly, I recommend limiting the number of projects that can go forward under either the blighted or affordable housing exemptions in a given school year to one project from each category.

I also recommend the following technical corrections:

57.3 Blighted/Condemned Buildings or Affordable Housing

If public school capacity is inadequate in any cluster, or school service area, the Planning Board may nevertheless approve a subdivision in that cluster, or school service area if the subdivision generates ten (10) or [[less]] **fewer** students in any given impacted school, and:

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(1) Replaces or remediates an uninhabited blighted or condemned or previously condemned structure located within or adjacent to a state-designated Opportunity Zone, or

(2) Is a project having more than 50% affordable housing units for **[[**families**]] households** earning 60'6 or less of AMI.

I believe that these amendments will help alleviate concerns from community advocates over the impact that this policy change will have on overcrowding in Montgomery County Public Schools. Thank you in advance for considering these amendments.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

CRAIG RICE
COUNCILMEMBER
DISTRICT 2

To: PHED Committee Members

From: Councilmember Craig Rice CR

Date: June 16, 2019

Re: Resolution to Amend the 2016-2020 Subdivision Staging Policy (SSP) in association with blighted/condemned buildings or affordable housing

Unfortunately, I am unable to be at the PHED Committee meeting Monday to personally provide my support for this resolution. This resolution is one that provides a relatively straight-forward solution to a challenging community concern without negatively impacting a school currently in moratorium. It is a balancing act at times to find a solution that meets the needs of a distressed community area and not adversely impact the greater community. This SSP Amendment allows the Planning Board to consider the overall community benefits in permitting development in specific instances to help spur growth and vitality in areas of need.

I do not support Staff's recommendation to sunset the Part (1) provision on July 1, 2020. There does not seem to be a pressing need to do so. While it is highly likely that the Blair Cluster will be out of moratorium by then, any change in this schedule could place an undue burden on any development that preceded due to this resolution.

I am pleased that this SSP Amendment has garnered the support of the Planning Board, Montgomery County Council of PTAs (MCCPTA) and of the district councilmember, Tom Hucker. The amendment helps to provide opportunity to eradicate blight within our communities and encourage creation of affordable housing all with negligible impact on any school in moratorium. A solution that works for the entire community.

(36)

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COMMENTS ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH ON RESOLUTION TO AMEND THE 2016-2020 SUBDIVISION STAGING POLICY (SSP) IN ASSOCIATION WITH CONDEMNED BUILDINGS AND AFFORDABLE HOUSING

June 25, 2019

My name is Timothy Goetzinger and I am here today on behalf of the County Executive in support of the following staff recommendations in the packet:

- Approve the Part (1) provision with the technical revisions proposed by Planning staff, but sunset this provision on July 1, 2020.
- Add the condition to Part (1) that would limit the exemption to only one development per impacted school.
- Approve the Part (2) provision.
  Do not approve the Planning Board proposal to expand the de minimus threshold to 10. Retain the de minimus threshold at 3.

These actions will allow us to recognize the public good that will come from replacing a condemned building with new housing while leaving any further changes for consideration in the full countywide analysis that will be part of the year-long development of the 2020-2024 SSP. I appreciate the thoughtful approach suggested by the resolution's sponsors and by MCCPTA.