

MEMORANDUM

DATE: MARCH 4, 2025

TO: VICE CHAIR MCMAHON AND MEMBERS OF THE PLANNING COMMISSION

FROM: KARL W. MORITZ, DIRECTOR *Karl W. Moritz*
DEPARTMENT OF PLANNING & ZONING

SUBJECT: DOCKET ITEM #9 – CDD #2023-00003, CDD#21 AMENDMENT:
A. INTERPRETATION OF BASE DENSITY AND THE UNDERLYING ZONE IN A CDD, AND,
B. STAFF RESPONSE TO OPEN SPACE QUESTIONS RELATED TO CDD #2023-00003

A. INTERPRETATION OF BASE DENSITY AND THE UNDERLYING ZONE IN A CDD

Summary

Staff is changing our interpretation of the Zoning Ordinance regarding the ability of a property owner within a CDD to use the underlying zone even after the CDD has been activated. As a result, the Adams Neighborhood does have some base residential density, contrary to a table in the AlexWest Small Area Plan. We are proposing edits that simply amend Condition 37 to cite the Zoning Ordinance, rather than specific tables in the Small Area Plan.

Additionally, staff is proposing to delete Condition 38 because that language is already contained in the City's adopted Housing Contribution Policy and does not need to be added as a condition.

Background

Subsequent to publication of the CDD #2023-00003 staff report, Staff met with local land use attorneys, at their request, regarding interpretation of Zoning Ordinance Sec 5-608 and applicant rights to use of the underlying zone, once a Coordinated Development District (CDD) has been activated.

Staff has previously held that once a Coordinated Development District has been activated, i.e. buildings have been constructed per CDD zoning, that the underlying zoning is no longer an option for new construction within the CDD. Based on a determination reached with the land use attorneys and the City Attorney, we agree that the underlying zone remains as an option.

Specifically, our interpretation was that if a CDD zoning provides for a specific type of land use (e.g., office), then an application proceeding under the underlying zoning—rather than the CDD—for instance, residential or another land use, would “preclude development consistent with the

conceptual design plan.” The CDD zoning and the conceptual design plan specify particular uses - not just roads and other infrastructure.

However, the land use attorneys pointed out that Section 5-608 explicitly contemplates that “uses”, as shown in Table 1 of the zoning ordinance, can be developed on parcels already zoned into a CDD “notwithstanding” other limitations in the ordinance. As a result, if a residential use is permitted by the underlying zone, but not the CDD, a property owner retains rights to proceed with residential development as long as doing so doesn’t preclude development according to the CDD.

5-608 - Alternative development permitted.

Notwithstanding the provisions of sections 5-602 and 5-603, the land in a CDD district may be used and developed pursuant to the density, height, use and other applicable zone regulations provided for use and development within each district, without CDD special use permit approval, as shown in Table 1.

Therefore, Staff recommends the following updates to the report:

Affordable Housing

Any increase in ~~residential~~ density in the Adams Neighborhood would be subject to the 10 percent affordability requirement, ~~because all of it is a net increase over what is allowed currently.~~

And to amend Condition 37 and remove Condition 38:

37. **CONDITION AMENDED BY STAFF** Applicants shall provide 10% of any development above the base ~~residential~~ floor area/FAR, up to the maximum floor area/FAR **per section 5-600** ~~as depicted in Tables 8.4, 8.5, 8.8, 8.10, and 8.11 of the AlexWest Small Area Plan,~~ as on-site committed affordable housing, or in amount consistent with City affordable housing contribution policies, regulations, and procedures in effect at the time of DSP/DSUP submission, whichever is greater. (Housing)
38. **CONDITION DELETED BY STAFF** ~~An applicant may request an exception to modify the required mandatory contribution rates described above. In no case, shall the provision of affordable housing be modified to be lower than 5% of the increase in residential development. An exception seeking a reduction may be considered on a case-by-case basis for:~~
- ~~i. For sale projects. Factors to be considered may include the size and type of the project (condominiums and single-family detached and attached residential development) and the level of the additional density requested;~~
 - ~~ii. Redevelopment projects that have current income-generating uses. Factors to be considered may include the size, nature, estimated revenue and operations of the business(es); the proposed use(s); and the level of additional density requested; and~~
 - ~~iii. Projects in which the developer can demonstrate, through a third-party review, that financial or market conditions have changed~~

~~since the effective date of this policy in an unforeseen, unique or unknowable manner, external to the developer's control, and which would negatively impact the economics of the development and make it infeasible, if the mandatory affordable housing contribution were required to be provided in full.~~

- ~~a. Requests for an exception modifying the Affordable Housing Contribution requirement, along with a narrative explaining why such a request is justified, must be submitted no later than at the time of the Concept 2 submission. The request for exception shall not take into account ordinary or industry standard factors. The City shall select an independent expert to review the request and relevant financial documents pursuant to a scope of work established by the City, however, the applicant requesting the modification shall pay for the costs of the third party review and shall provide its proforma financials for the project (as well as other documentation deemed necessary by the consultant to support the developer's assumptions). The findings and conclusions of the third party review will be shared with City Council as part of its overall consideration of the matter. However, the findings and conclusion of the third party review shall not be binding on City Council's determination whether to grant the modification.~~

B. STAFF RESPONSE TO OPEN SPACES QUESTIONS RELATED TO CDD #2023-00003

1. AlexWest SAP Recommendation 7.B.43 and proposed CDD Condition J.24.c exclude "...required open space reflected in the AlexWest Small Area Plan" from required on-site open space.

Q: Is this established SAP and CDD practice?

A: The treatment of open spaces varies by Small Area Plan (SAP), with the practice of four recent plans noted below in order of adoption. When reviewing CDDs, Staff determine the requirements based on the relevant SAP. As such, the CDD #2023-00003 concept plan amendment is implementing the open space recommendation of the AlexWest plan. This recommendation from 2024 is consistent with the 2012 Beauregard plan recommendation, i.e., each development block would need to provide additional open space beyond the minimum required public open space for each neighborhood (see *Beauregard* rec. 4.40 and *AlexWest* rec. 43).

While the per block open space requirement has *increased* from 15 to 25% in the Adams Neighborhood, the public open space requirement has *decreased* from 3.09 acres to approximately 2.86 acres. The per block increase coincides with a change in the plan's land use recommendations from exclusively non-residential in the Beauregard plan to mixed-use, likely predominantly residential, in the AlexWest plan. However, the 25% requirement is still less than the 35% requirement for other mixed-use zoning districts (CRMU-L, -M, -H) to acknowledge the required public open space for each neighborhood.

Moreover, the AlexWest Plan removed substantial monetary developer contributions (for a variety of projects including parks and open space) that were in the Beauregard Plan in favor of in-kind contributions such as land dedications. For example, the previous developer contribution rate for the 1900 N Beauregard project (docketed for the April Planning Commission hearing) would have been over \$2 million. Assuming three similar buildings for the remaining Adams neighborhood sites controlled by Monday Properties, the contributions would have been an additional \$6 million. The increase in open space requirements must be viewed in the context that other developer requirements were reduced.

Treatment of Open Space in Recent Plans:

- **Arlandria-Chirilagua plan**, adopted in 2022, requires 11 public open spaces within development blocks ranging from 0.1 to 1.7-acres, with an additional 20% open space required per block with multi-unit residential use. Those sites already providing on-site publicly accessible open space receive a 1-for-1 credit toward their 20% requirement (*Arlandria-Chirilagua* rec. 45). Unlike the Beauregard and AlexWest plans, this plan does not anticipate new entirely open space blocks.
- **Eisenhower East plan**, adopted in 2020, requires publicly accessible open spaces within development blocks (per Figure 3B) with an additional 25% open space required per block with a residential use. Those blocks already providing publicly accessible open space per Figure 3B receive a 1-for-1 credit toward their 25% requirement (*Eisenhower East* rec 16). Unlike the Beauregard and AlexWest plans, this plan does not anticipate new entirely open space blocks.
- **North Potomac Yard plan**, adopted in 2017, requires 9-acres of new public parks and open spaces (Figure 4.8). At least 15% of the North Potomac Yard plan area is required to be provided as at-grade open space, with an additional 25% open space required to be provided either at- or above-grade with development blocks (*North Potomac Yard* rec. 4.41). Like the Beauregard and AlexWest plans, this plan specifies new blocks entirely dedicated to parks/open space.
- **Eisenhower West plan**, adopted in 2015, calls for at least one public space or plaza within each Eisenhower West neighborhood plus 25 to 30% open space per block. The plan wide goal is to have one-third of the required open space to be located at-grade on each block, with the balance provided through above-grade open space and contributions toward the required public open spaces (*Eisenhower West* recs. 4.3, New Parks and Green Spaces, 1 and 5). Like the preceding plans, this plan recommends a mix of new entirely open space blocks and publicly accessible open spaces within development blocks.

Q: If it is typical, are the Adams and Upland Park applicants in error when they represent otherwise?

A: The applicant errs by comparing the treatment of open space in CDDs from other SAPs, when the correct approach is to compare the treatment of CDDs within an SAP. The Staff recommendation for this CDD21 amendment is consistent with the AlexWest SAP open space recommendations and how Staff would review applications for CDDs in other new or existing AlexWest CDD zoning districts. In addition, developments in other parts of the city (e.g., Oakville and Old Town North) have provided or are required to dedicate comparable percentages of land to public purposes (open space and roadways, primarily).

Q: If it is not typical, does it not add a potentially significant degree of difficulty to achieving the new 25% onsite open space requirement?

A: The treatment of the open space requirement is typical for the Beauregard and AlexWest plans. The AlexWest plan did adjust the specific per block and required public open space for each neighborhood consistent with the revised land use recommendations. Redevelopment proposals for individual blocks may request modifications consistent with the [§ 11-416\(A\)\(1\)](#) requirements.

2. The Staff Report discussion of the new 25% requirement on p. 10 indicates that “Staff recognize the increase in required open space may result in some projects requesting an open space modification” and “...consideration will continue to be given for proposals that are unable to meet the requirement.” (S. Koenig)

Q: What characteristics of a proposal would staff consider appropriate for recommending an open space modification? Is an inability to maximize FAR among them?

A: § 11-416(A)(1) states that the Planning Commission may modify the open and usable space requirements if the Commission “determines that such modification is necessary or desirable to good site development, that specific and identified features of the site design make up for those impacts otherwise protected by the regulations for which the modification is sought, and that such modification will not be detrimental to neighboring property or to the public health, safety and welfare.” Furthering the goals of the forthcoming AlexWest Design Standards would be an appropriate justification for an open space modification provided that demonstrating strict compliance with the open space requirements could prevent an applicant from meeting the goals of the standards. In-kind improvements to implement parks on the dedicated public land can also be a factor. Staff would not consider an inability to maximize FAR as a primary justification for a modification to the open space requirements, unless a design with a higher FAR achieves better site development or design than a lower FAR proposal that can meet the open space requirements.

1900 N Beauregard St. (DSUP #2024-10011) is a special circumstance, as the applicant submitted the preliminary plan prior to the City Council adopting the AlexWest plan.¹ As a result, Staff reviewed the submission against the Beauregard plan’s open space requirements, including the 15% requirement for on-site open space. Future applications within the Adams neighborhood would be subject to the AlexWest requirements and applicant will be able to request open space modifications if/as needed.

3. I would like to understand more about the 25% open space requirement and how it compares to the Beauregard Plan (which may have still had office use as the zoning designation?). (H. Lennihan)

A: The Beauregard and AlexWest plans are consistent in specifying that each development block would need to provide additional open space beyond the minimum required public open space for each neighborhood (see *Beauregard* rec. 4.40 and *AlexWest* rec. 43). Following adoption of the Beauregard plan, the CDD #2021-00003 application established the additional per block open space requirements for each CDD21 neighborhood, ranging from 15 to 20%, with the Adams Neighborhood having a 15% open space requirement. The Beauregard plan also set a minimum public open space requirement of 3.09 acres for the Adams Neighborhood. The AlexWest plan

modified these Adams Neighborhood requirements by *decreasing* the minimum public open space to 124,500 SF (approx. 2.86 acres) and *increasing* the additional per block open space to 25% (see *AlexWest* rec. 43).

Staff views the higher per block open space requirement as appropriate in response to community feedback during the AlexWest planning process and the change in plan's land use recommendations from exclusively non-residential in the Adams Neighborhood² to mixed-use, likely predominantly residential. In the City's other mixed-used zoning districts (CRMU-L, -M, and -H) the minimum per block open space requirement is *higher* at 35%. However, Staff recommended, and the City Council adopted the lower 25% requirement to acknowledge the required public open space that each neighborhood will provide per the AlexWest plan recommendations.