

Basics of Land Use Law

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The Power to Zone

- Land use and zoning authority is derived from the “police powers” given to counties and municipalities under Maryland laws
- “Police power”: The power to establish laws in furtherance of the public health, safety, and welfare
- State and Federal law impact local zoning
 - Critical Area, growth tiers, priority funding, express preemption (medical cannabis), ADA, FHA, RLUIPA

Powers That Are Granted

- The specific powers granted depend on what type of County
- And, whether a specific County or municipality has taken advantage of their authority under State law to adopt certain legislation

Types of Powers

- Land use/planning
- Zoning
- Subdivision
- Adequate public facilities (APF)
- Affordable housing
- Historic preservation
- Planning for streets and roads
- Others

PLANNING VS. ZONING

What is Planning?

- County and city planners create policies to encourage development that will serve the needs of the public in the future
- Broad
- Long-term
- Guides land use
- Typically is advisory and does not have the force of law

What is Zoning?

- “Zoning is local government regulation of the use of land . . . and of buildings and structures . . . in accordance with a general plan.”
 - *Rathkopf’s the Law of Zoning and Planning*
- Property specific
- Included in the County/City Code text
- Binding, not merely advisory

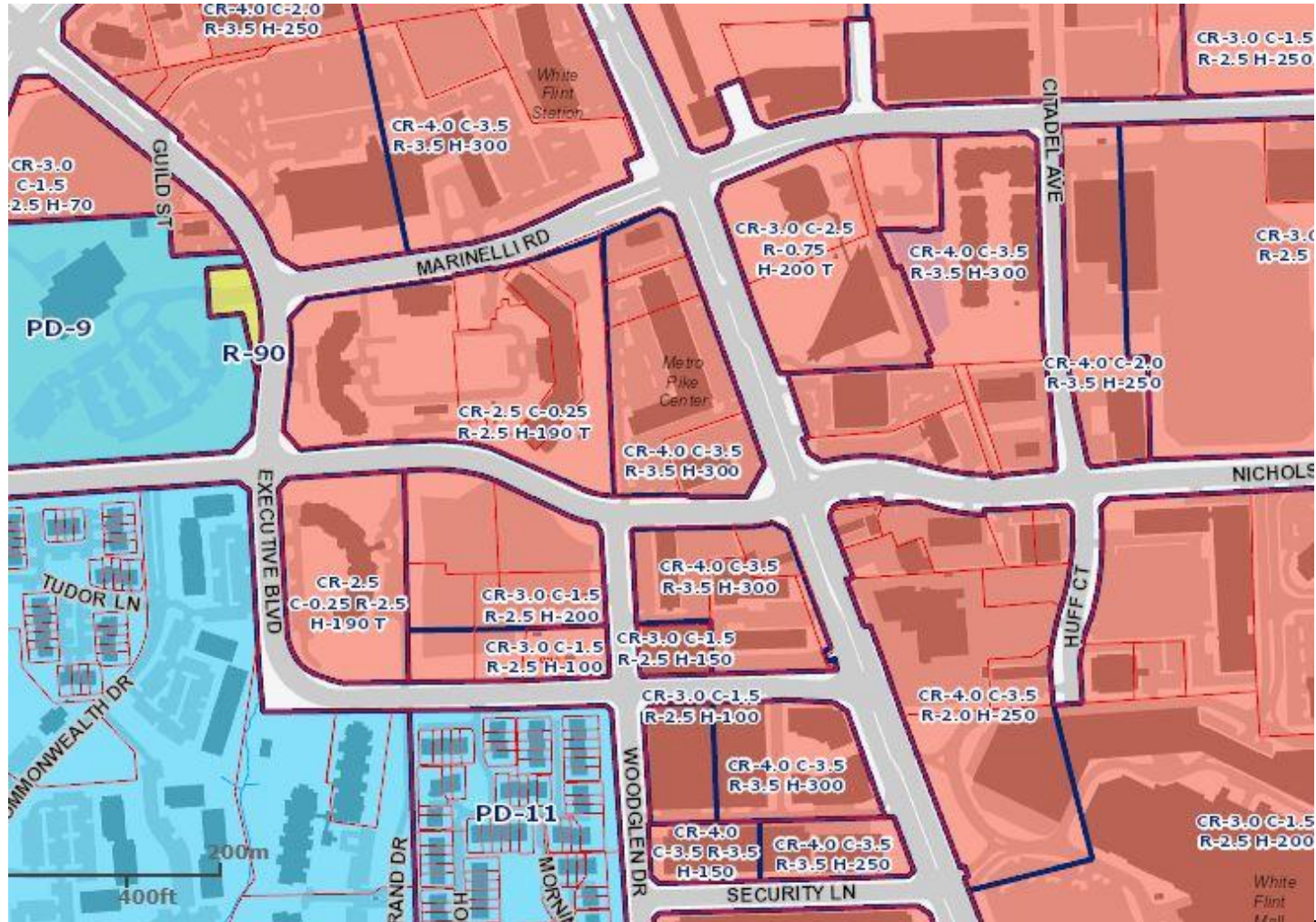
Types of Land Use/Planning Actions

- General plan
- Master plans
- Sector plans
- Functional plans (e.g., transportation, environmental, bicycle, parks, historic preservation)

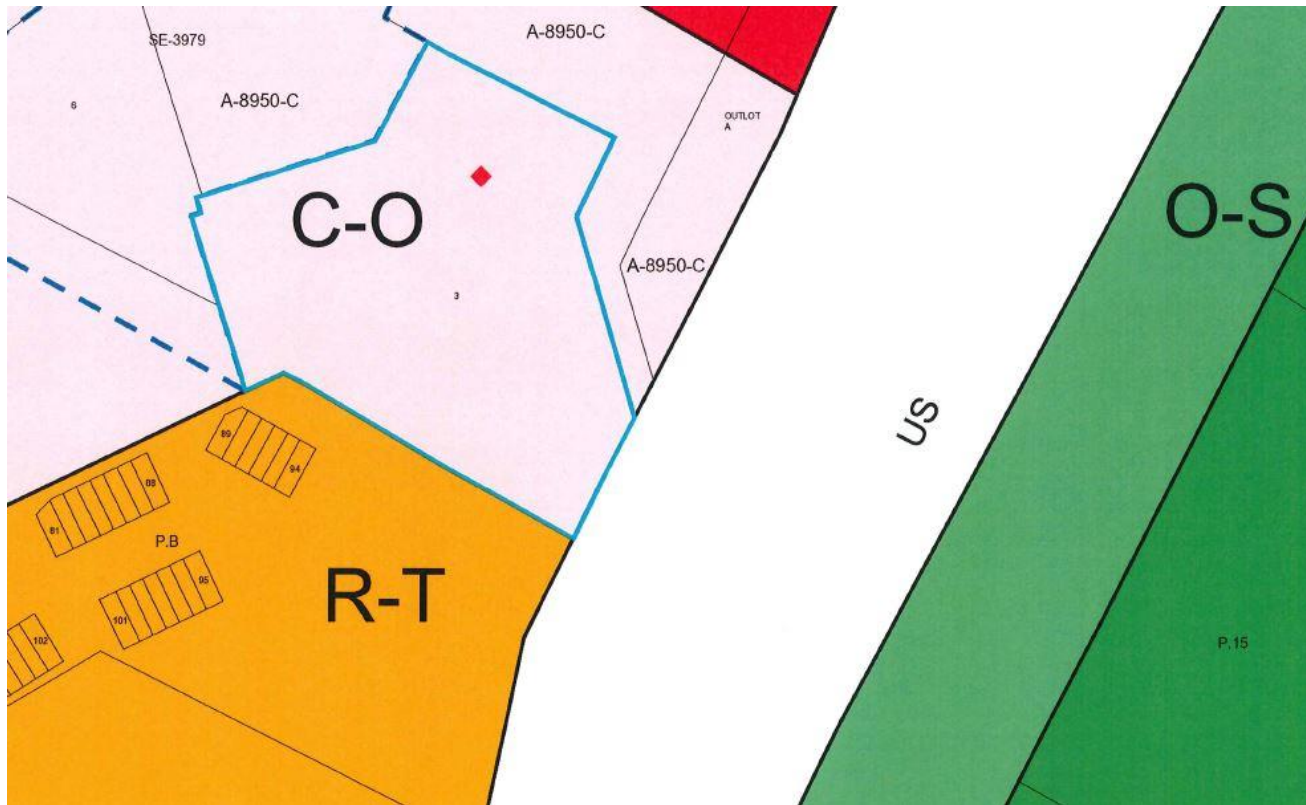
Types of Zoning Actions

- Zoning/rezoning
 - Comprehensive
 - Piecemeal
 - “Change or mistake rule”
 - Floating
 - Satisfy the purpose clause
- Special exception/conditional use
- Variance

Sample Montgomery County Zoning Map



Sample Prince George's County Zoning Map



Local Zoning Regulations

- Use tables
 - Permitted, limited, conditional/special exception

USE OR USE GROUP	Definitions and Standards	Ag AR	Rural Residential			Residential												Commercial/Residential			Employment				Industrial			
			R	RC	RNC	Residential Detached						Residential Townhouse			Residential Multi-Unit			CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH	
			RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10													
Recreation and Entertainment Facility, Major (Capacity over 1,000 Persons)	3.5.10.H						C												C	P		C	C	C		C	C	
Shooting Range (Indoor)	3.5.10.I																					C				C	C	C
Shooting Range (Outdoor)	3.5.10.J	C	C	C																								
RETAIL SALES AND SERVICE	3.5.11																											
Combination Retail	3.5.11.A																		C	C		C	C					
Retail/Service Establishment (Up to 5,000 SF)	3.5.11.B																		L	P	P	P	P	L	L	L	L	L
Retail/Service Establishment (5,001 - 15,000 SF)	3.5.11.B																		L	L	P	P	P	P	L	L	L	L
Retail/Service Establishment (15,001 - 50,000 SF)	3.5.11.B																		L	P	P	P	P	L	L	L	L	L
Retail/Service Establishment (50,001 - 85,000 SF)	3.5.11.B																			L	L	P	P			L	L	L
Retail/Service Establishment (85,001-120,000 SF)	3.5.11.B																			L	L	L	L			L	L	L
Retail/Service Establishment (120,001 SF and Over)	3.5.11.B																			L	L	C	C			L	L	L
Rural Antique Shop	3.5.11.C	C	C	C	C	C		C	C																			
Rural Country Market	3.5.11.D	C	C	C	C	C	C	C	C																			
VEHICLE/EQUIPMENT SALES AND RENTAL	3.5.12																											
Heavy Vehicle Sales and Rental	3.5.12.A																							L			P	P
Light Vehicle Sales and Rental (Indoor)	3.5.12.B																			L	P	P			L	P	P	

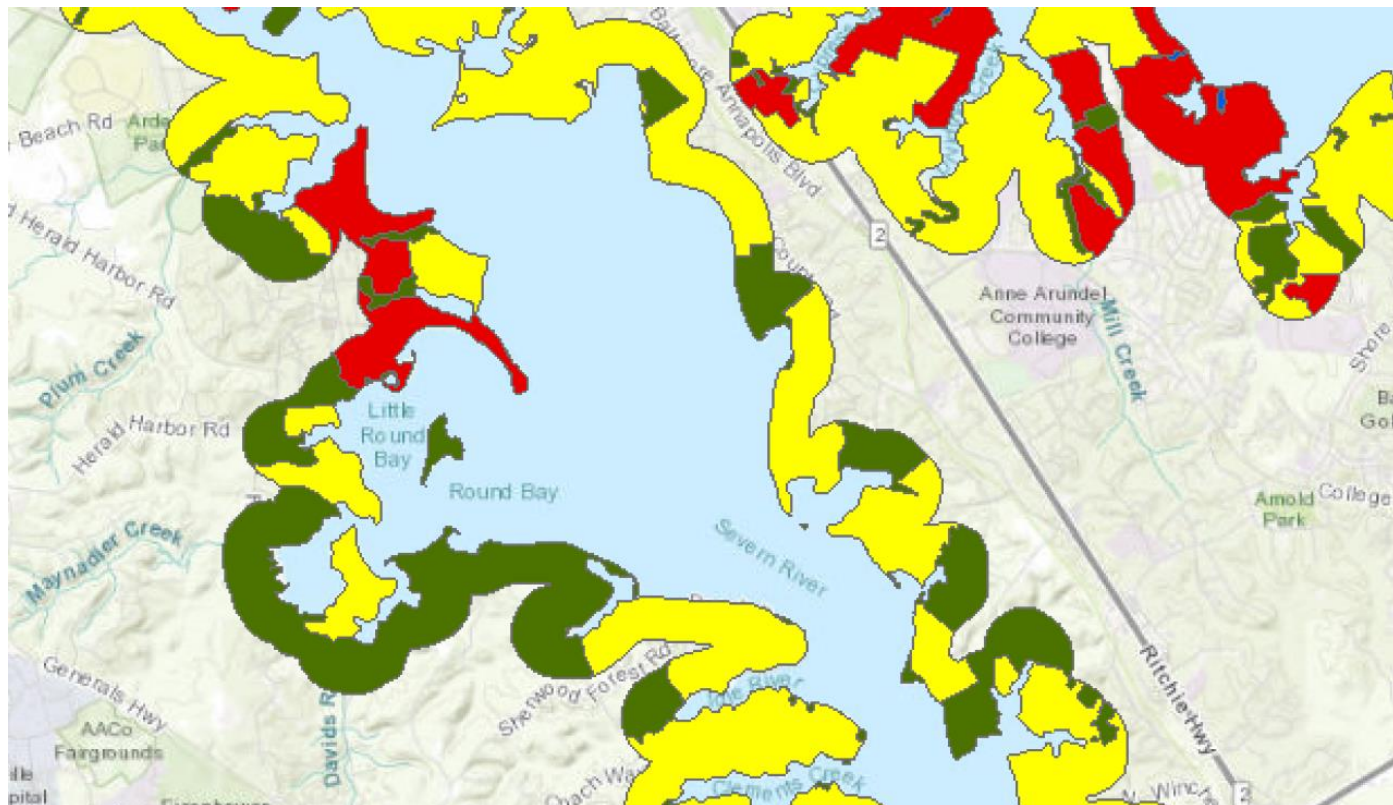
Local Zoning Regulations

- Each use is limited by bulk regulations

B. R-10 Zone, Standard Method Development Standards

1. Site	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone	Duplex - Side	Duplex - Over	Town-house	Apartment
Site Area (min)					
Site	2,000 SF	2,000 SF	2,000 SF	n/a	n/a
Site per unit	n/a	n/a	n/a	1,000 SF	1,000 SF
Open Space (min)					
Common open space (% of site) (See Section 6.3.5)	n/a	n/a	n/a	30%	40%
Site Coverage (max)					
Site coverage	n/a	n/a	n/a	20%	12%
Specification for Open Space and Site Coverage					
a. In a development with townhouse or apartment building types, open space and site coverage are calculated based on the area of the site minus any area for detached house and duplex lots.					
2. Lot and Density					
Lot (min)					
Lot area	2,000 SF	1,000 SF	2,000 SF	800 SF	20,000 SF
Lot width at front building line	25'	12.5'	25'	n/a	100'
Lot width at front lot line	10'	10'	10'	n/a	n/a
Frontage on street or open space	Required				
Density (max)					
Density (units/acre)	43.50	43.50	43.50	43.50	43.50
Coverage (max)					
Lot	90%	90%	90%	n/a	n/a

Overlay Zones



Special Exception/Conditional Use

- Definition: A grant of a specific use that would not be appropriate generally or without restriction and must be based upon certain findings
- Examples (generally speaking): Hospitals, larger assisted living facilities, home occupations, larger day care centers, golf courses, most commercial uses in residential zones

Special Exception/Conditional Use, cont.

- May only be approved if certain findings are made by a “Hearing Examiner”
 - Satisfies requirements of the zone
 - Complies with the master plan
 - Will not adversely affect the character of the neighborhood
 - Is compatible with the neighborhood
 - Will be served by adequate public facilities

Variances

- Definition: A modification of density, bulk, or area requirements
- Examples: Front/side/rear setbacks, lot coverage, height
- Legal standard
 - Unusual or extraordinary situations or conditions exist
 - Not the result of actions by the applicant;
 - Minimum necessary to overcome the practical difficulties
 - Does not impair the master plan
 - Not adverse to the use and enjoyment of abutting or confronting properties

Rezoning

- Change or mistake rule
 - A substantial change in the character of the neighborhood since the original zoning or comprehensive rezoning, or that a mistake was made by the District Council when it applied the existing zoning
- Floating zone
 - Zones that “float” and can land if certain compatibility, character, and master plan conformance findings can be made

Subdivision

- The division or assemblage of a lot, tract or parcel of land into one or more lots, plots, sites, tracts, parcels or other divisions for the purpose, whether immediate or future, of sale or building development
- Resubdivision
- In general cannot build a building across lot lines

Standard Method vs. Optional Method Development

- In some zones, there are two methods of development
 - One is more “by-right”
 - But, in order to achieve maximum density and height under zoning, you may need to go through some additional review processes
 - “Discretionary” approvals

“Discretionary” Approvals

- Concept/Sketch/Project /Site Plans
 - Satisfies applicable previous approvals
 - Erosion, sediment control, stormwater management, and forest conservation requirements
 - Safe, well-integrated parking, circulation patterns, building massing, open spaces and site amenities
 - Substantially conforms with recommendations of the master plan and any applicable design guidelines
 - Served by adequate public facilities including schools, police/fire protection, water, sanitary sewer, public roads, and storm drainage
 - Compatible with existing/approved adjacent development

A Little Bit on Judicial Review

- Try not to get there in the first place
- Working with the community and neighbors
 - Outreach early and often
 - More information is better than less
 - Unless you're already in court, don't show up to a community meeting as a team of dark suits!

Private Firms & Land Use Law

- Counseling, planning, structuring, and negotiating for private real estate transaction
- Advising as to compliance with the applicable land use controls
- Advocacy with respect to a private land use initiative requiring public agency action
- Negotiating with or mediating among the stakeholders in a public land use decision
- Negotiating and preparation of the documentation required in connection with all of these activities
- Advocacy in litigation challenging a public land use decision