

Managing Maryland's Growth

Models and Guidelines

Flexible and Innovative Zoning Series:

Overlay Zones

- *Resource Protection Models*
- *Growth Area Models*

***This document may not reflect current law
and practice and may be inconsistent
with current regulations.***

The Maryland Economic Growth,
Resource Protection, and Planning Act of 1992

The Maryland Office of Planning

State of Maryland

Parris N. Glendening, *Governor*

Maryland Office of Planning

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INTRODUCTION

This booklet is one of the *Flexible and Innovative Zoning Series* of Models and Guidelines prepared by the Maryland Office of Planning. Models and Guidelines are produced by the Office to provide technical assistance and information to local governments about the Economic Growth, Resource Protection, and Planning Act of 1992 (the Planning Act). (A list of available publications appears on the inside rear cover.)

The Planning Act requires that local governments encourage flexible and innovative land use techniques to accommodate growth in suitable areas, while protecting the environment, and to protect rural resources and sensitive areas. Flexible and innovative techniques alter some of the short-comings of traditional (i.e., *euclidean*) zoning. For example, traditional zoning often equates “density” with “minimum lot size,” and requires that both standards be met. This results in a loss of development potential, for example, where environmentally sensitive areas cannot be disturbed. Traditional zoning can also discourage creative site design. Traditional zoning places priority on the separation of land uses, making it difficult to create functional neighborhoods, but easy to produce repetitively-designed “bedroom” development. Traditional zoning places little focus on project design and subdivision character, and is cumbersome for creating whole communities.

This series of booklets will address alternatives to traditional zoning as a means of avoiding some of its rigid qualities. Some of these alternatives are of recent origin, although many have been in use for 20 years or more. Maryland’s local jurisdictions have been among the first and foremost practitioners of zoning innovation. However, traditional zoning and development practices are still prevalent.

Flexible and innovative techniques can have a significant role in meeting the goals of the Planning Act. This series of booklets examines the relationship between these techniques and the Planning Act, promotes an understanding of basic concepts, and shares ideas and information with Maryland’s planning community. This booklet examines the use of “**overlay zones**” in achieving some of the goals of the Planning Act.

Several overlay zone models are featured, including examples for protection of various natural and man-made features, and examples for development in planned growth areas.

OVERLAY ZONES

Overlay Zone Defined

An overlay is a zone that is placed on the zoning map “over” traditional zoning districts. Overlay zoning was born of the necessity to add an additional dimension of land use control to the zoning map for some special public purpose that does not coincide with the boundaries of current zoning. Overlay zoning has been in use since the 1960’s, although its application to a wide array of public interests, particularly protection of environmentally sensitive areas, historic sites, Chesapeake Bay Critical Areas, and viewshed protection, are of more recent origin.

Lands affected by an overlay zone are subject to the rules of the underlying zone, as well as the rules of the overlay zone. The practical effect of the overlay regulations varies with practice: the overlay may result in modifying or eliminating existing regulations, or it may introduce regulations in an entirely new subject area. When drafting overlay regulations, planners need to address potential conflicts or problems of interpretation that may arise between the underlying and overlying zones. A simple approach is to add a general clause to the ordinance stating that “in the case of conflict among regulations, the stricter standard shall apply.”

The illustration below points out the efficiency of the overlay method. It shows an area comprising several euclidean zoning categories, where the goal is to add land use controls to protect a Historic District. The overlay

Overlay Zones and the Planning Act of 1992

regulations aim at protecting the character and architecture of the buildings in the Town's historic area. The underlying zone continues to apply, and controls other matters, such as land use, density, and lot coverage. If not for the overlay technique, the local government would be faced with more complex, but not more effective, zoning options. For example, it could create numerous new traditional zoning categories, each of which contains the rules of the particular underlying zone and the rules of the overlay zone. With the overlay method, however, only one new zoning category is needed.

Land included within an overlay should share characteristics which qualify it, in common, for special treatment, and which distinguish it from adjacent land that is not included in the overlay.

Overlay zones can be used to achieve several of the goals of the new Planning Act. For example, the Act calls for protection of environmentally "sensitive areas" from the adverse impacts of development. Sensitive areas include streams and their buffers, 100-year floodplains, steep slopes, and habitats of threatened and endangered species; local governments may designate other types. Using an overlay zone for sensitive areas protection is one of the most popular applications of the overlay technique.

The Act also calls for protection of rural resources, such as farmland, forests, and mineral resources. Overlay zoning can play a role in this effort by, for example, delineating areas where rural cluster development would be required so as to preserve rural character and minimize impacts on the loss of productive soils. The use of overlay zones for mineral resource protection is another example.

The Act calls for channeling new growth and development to areas designated in the local Comprehensive Plan. In this context, overlay zoning is becoming a popular tool to encourage transit-oriented development, to designate "receiving areas" under a local transferable development rights program, and to facilitate revitalization. Overlay zones are sometimes used to add special controls, design requirements, and developer incentives in growth areas, including business districts and historic districts.

Overlay Zoning Models

First, and in accordance with good planning practices and principles, a foundation should be set forth in the adopted Comprehensive Plan, in terms of goals, objectives, and policies, for the various public purposes that might be served by an overlay zone.

Following are excerpts of overlay zones from local ordinances; *commentary appears in italics*. The excerpts include the "purpose" statements and, in some cases, highlight the regulations, of various overlay zones in Maryland. The samples show the imaginative ways in which the concept has been applied by Maryland's planning community and are intended to share information and ideas about overlay zoning. Judging from the examples that follow, the overlay zone has broad potential.

Chesapeake Bay Critical Area Overlay Zones

The Critical Area law requires land management and land use practices according to three "categories" of Critical Areas: Resource Conservation Area (RCA), Limited Development Area (LDA), and Intensively Developed Area (IDA). A number of counties and municipalities adopted the three Critical Area mapping categories as overlay zones, thus giving effect to Critical Area regulations. The advantage of the overlay method is that the underlying zoning, which is based on a Comprehensive Plan, remains in effect to the degree that it doesn't conflict with Critical Area law or regulations, and can be useful if "growth allocation" is obtained for the property. (Growth allocation is a tool that permits, with limits and conditions, a change in the mapping category on a particular property.) Following is the purpose clause from Calvert County's Critical Area Overlay Zone.

Calvert County: Critical Area District Overlay

4-6.01 Purpose.

This district is created to:

- A. minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances that have run off from surrounding lands
- B. conserve fish, wildlife and plant habitat; and
- C. establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

Historic Overlay Zone

4-6.02 District Boundaries

The Critical Area Districts consists of:

- A. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands; and
- B. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides.

[The substantive regulations of this Critical Area Overlay are based on official Critical Area "Criteria." For details, readers should consult Sections 8-1801 through 1816, Natural Resources Article of the Annotated Code of Maryland, and COMAR 14.15.01 through 14.15.11.]

Overlays for historic districts are fairly common. Typically, property falling within the overlay is subject to review by a Historic District Commission for architecture, construction materials, screening, and site design considerations. Following are the purpose clauses for Historic Overlays in Talbot, Harford, and Washington Counties.

Talbot County: Historic District Overlay

(a) Statement of Purpose

It is the purpose hereof to provide ... for the preservation of structures in the County which have historic value together with their appurtenances and environmental settings in order to: 1) safeguard the heritage of the County by preserving the areas therein which reflect elements of its cultural, social, economic, political, or architectural or archaeological history; 2) foster rural and civic beauty; 3) promote the preservation, and where permitted and appropriate, the use of historic districts for the education, welfare, and pleasure of the residents of the County; and 4) strengthen the local economy.

Harford County: Historic District Overlay

§267.59. Purposes

- A. The purpose ... is to provide Harford County with the standards necessary to allow the preservation of historic structures and sites in the County.
- B. It is hereby declared by Harford County, Maryland, that it is the public policy that the protection, enhancement, perpetuation and use of structures and sites of special character or historical interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The further purpose ... is to:
 - (1) Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts that represent or reflect elements of the County's cultural, social, economic, political and architectural history.
 - (2) Safeguard the county's historic and cultural heritage as embodied and reflected in such landmarks and historic districts.
 - (3) Stabilize and improve property value.
 - (4) Foster civic pride in the beauty and noble accomplishments of the past.
 - (5) Protect and enhance the County's attractions to residents, tourists and visitors and serve as a support and stimulus to business and industry.
 - (6) Strengthen the economy of the County.
 - (7) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the County.

Washington County: "AO" Antietam Overlay District

Section 20A.0. Purpose

The purpose of the Antietam Overlay District is to provide mechanisms for the protection of significant historic structures and land areas by requiring development and land subdivision to occur in a manner that 1) preserves the existing quality of the viewshed of the Antietam Battlefield, and 2) ensures that development of certain lands adjacent to the major roads which provide public access to the Antietam Battlefield (i.e., Maryland Route 34 and 65) is compatible with the agricultural and historic character of the area. The "AO" District is an overlay zone meant to enhance, not substitute, for the existing underlying zoning designation which regulates land use.

Section 20A.1. Regulations

(A) Subdistricts Established and Areas Delineated

1. The Antietam Overlay District is comprised of three subdistricts: The Battlefield Buffer (AO-1), the Approach Zones (AO-2), and the Red Hill Area (AO-3).
2. Lands zoned AO-1 (Battlefield Buffer) and AO-3 (Red Hill Area) are situated within the Battlefield Foreground and Red Hill Middleground, respectively, of the Antietam Viewshed, as determined by the National Park Service and documented in its April, 1988 technical study entitled *Analysis of the Visible Landscape: Antietam*. The Boundaries of the AO-1 and AO-3 zones conform to property boundaries except where man-made or natural features provide suitable boundaries.

Lands zoned AO-2 (Approach Zones) are situated within 1000 feet of the centerline of certain road segments, and do not necessarily conform to property boundaries. The length of the AO-2 (Approach Zones) are as shown on the zoning maps.

Section 20A.4. Establishment of "AO" Zone

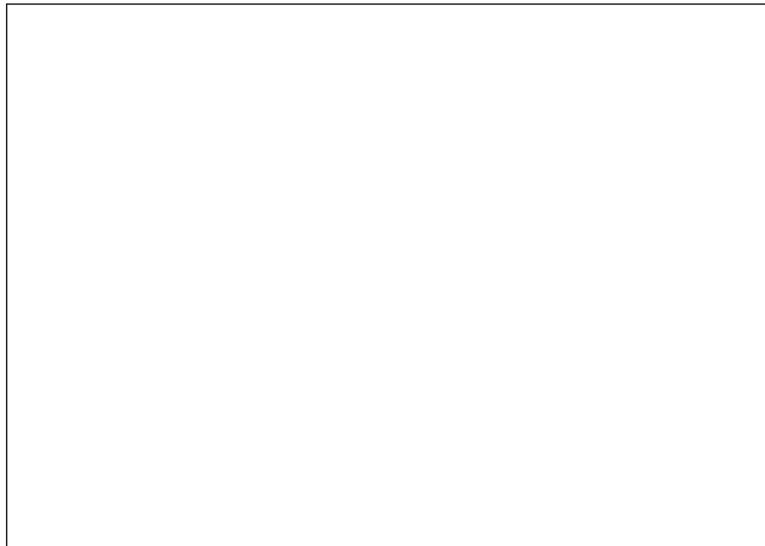
An area may be zoned "AO" by request of the property owner or by comprehensive zoning, and only upon findings of fact by the County Commissioners that:

- A. The area falls within the viewshed of Antietam Battlefield and that the exterior appearance of development in the area has significant potential to diminish the existing quality of the viewshed; or
- B. the area falls within 1000 feet of the centerline of the segment of a major road which provides public access to Antietam Battlefield, and that the exterior appearance of development in the area has significant potential to detrimentally affect the public's use, enjoyment, and appreciation of the Antietam Battlefield, or may otherwise impair the integrity of the Battlefield.

Floodplain Overlay Zone

The use of an overlay zone for protecting floodplains is common. Following are excerpts of Floodplain Overlay Zones from Caroline and Cecil Counties.

Caroline County: Floodplain District



The regulations set forth in this Article, or set forth elsewhere in this Ordinance, are the regulations in the Overlay Floodplain Zoning Districts. The purpose of these zoning districts is to prevent the loss of property and life, to prevent the creation of health and safety hazards, to prevent the disruption of commerce and governmental services and to prevent the extraordinary and unnecessary expenditure of public funds for flood protection and relief by prohibiting or restricting development in the floodplain zoning districts.

The boundaries of the floodplain zoning districts are established as part of the Official Zoning District Maps and shall be overlays to the existing underlying primary and floating zoning districts shown on the Official Zoning District Maps, and as such, the regulations for the floodplain zoning districts shall be supplementary to the underlying zoning district regulations.

Where there happens to be any conflict between the regulations or provisions of the floodplain zoning districts and those of an underlying zoning district, the more restrictive regulations and/or those pertaining to the floodplain zoning districts shall apply.

Cecil County: Floodplain District

1. The purposes of this Part are to protect human life and health, minimize property damage, encourage appropriate construction practices to minimize future damage, protect individuals from unwittingly buying land subject to flood hazards, and to protect water supply, sanitary sewage disposal, and natural drainage. The prevention of unwise development in areas subject to flooding will reduce financial burdens to the community and the State and will prevent future displacement and suffering of its residents. This protection is achieved through the review of all activities proposed within identified floodplain and by the issuance of permits for those activities that comply with the objectives of this Ordinance.
2. Floodplains are an important asset to the community. They perform vital natural functions such as temporary storage of floodwater, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality. These functions are best served if floodplains are kept in their natural state. Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced.
3. The Floodplain district provides a unified, comprehensive approach to floodplain management which addresses these natural floodplain functions and the Federal and State programs concerned with floodplain management. These programs are: the National Flood Insurance Program (44 CFR 59-79); the State's Waterway Construction Permit Program for non-tidal floodplain;

Stream and Buffer Protection Overlay Zone

the State's Tidal and Non-tidal Wetlands Permit Programs; the U.S. Army Corps of Engineers' Section 10 and 404 Permit Programs; and the State's Coastal Zone Management Program. Decisions to alter floodplains, especially floodway and stream channels, should be the result of careful planning processes which evaluate resource conditions and human needs.

The use of an overlay zone for stream and buffer protection is another common purpose. The actual stream buffer overlay zone may or may not be found on the official zoning map, depending on map scale and other practical considerations. Stream buffer overlay zones for small areas, such as a town or hamlet, or for large water features, such as a river, are more readily mapped. Jurisdictions with small area plans may also operate at a scale where mapping is practical. In any case, the dimensions of the overlay zone (whether mapped or not) are described with specificity in the ordinance. In some cases, specific streams and other water bodies are named in the ordinance. In others, the overlay on the map is used for identifying streams and properties affected by the overlay zone, but not for determining actual buffer dimensions. The width of the buffer is usually set at some specified level, or is based on field investigations that take into account slope, soil erodibility, hydrology, and vegetation. Following are excerpts of Stream and Buffer Overlay Zones in Charles and Harford Counties.

Charles County: Resource Protection Zone (RPZ)

Section 167. Statement of Purpose

- (a) The purpose of this zone is to protect stream valley habitat and stream water quality. In particular, the purposes of the zone are to:
- i. preserve floodplains in a natural state;
 - ii. preserve wetlands associated with floodplains;
 - iii. preserve significant habitat areas associated with stream valleys or in other locations;
 - iv. prevent soil erosion and sedimentation by protecting steep slopes associated with stream valleys;
 - v. protect persons and property from environmental hazards such as unstable or highly erodible soils and flooding;
 - vi. filter nutrients, toxins, and sediment from stormwater;
 - vii. protect scenic values;
 - viii. provide recreational opportunities; and,
 - ix. minimize public investment in floodplain stormwater management.

Section 168. Scope

These regulations shall apply to: all proposed development, including projects for which subdivision, site plan, building and grading permits or approvals are necessary; timber harvesting; and, agricultural activities.

Section 169. Application

The Resource Protection Zone (RPZ) shall apply to those County streams or those portions of County streams outside of the Critical Area Zone, including but not limited to: Zekiah Swamp, Gilbert Run, Nanjemoy Creek, Swanson Creek, Indian Creek, Port Tobacco River, Mattawoman Creek, Chicamuxen Creek, Popes Creek, Wards Run, Kerrick Swamp, Mill Run, Beaverdam Creek, Hancock Run, Old Woman's Creek, Poney Branch, and tributaries thereof or of the Potomac River.

Section 170. Resource Protection Zone Delineation

The Resource Protection Zone shall encompass an area based on the outermost combined limits of the existing 100-year floodplain, if present; non-tidal wetlands contiguous with or within 25 feet of the stream channel or 100-year floodplain, if present; and a buffer. Except as permitted in this Ordinance, the land within this zone is to remain in an undisturbed natural state, and the outer edge of this zone shall constitute the limit of clearing and grading.

Harford County: Natural Resources District

- (1) Purpose. The intent of this overlay district is to preserve significant/special environmental features identified herein and to:
 - (a) Provide uniform guidelines for orderly development and use of land within the Natural Resources District to protect the ecology of the area.
 - (b) Protect steep terrain.
 - (c) Protect water quality in streams and rivers.
 - (d) Minimize erosion/siltation and protect essential vegetation.
 - (e) Protect nontidal wetlands.

- (f) Protect persons and property from environment hazards such as erosion, siltation and floodwaters.

Rural Protection Overlay Zone

This overlay is used to control site design and open space designation for subdivision projects located in those parts of the jurisdiction where the policy is protection of rural character and rural open space. Following is an excerpt of Calvert County's Farm Community Overlay. The County uses the overlay to prohibit the transfer of development rights to farm communities (these development rights are channelled, instead, to planned growth areas in the County) and to require cluster development, with 80 percent protected open space. Readers wanting more details about this protection overlay are referred to "Clustering for Resource Protection," Maryland Office of Planning publication 94-10).

Calvert County: Farm Community District Overlay

4-10.01 Purpose. The purpose of this District shall be to:

- A. Encourage the preservation of farmland, forestland and the rural character of the County;
- B. Preserve farming and forestry which remain important industries in the County; and
- C. Direct growth away from areas which may lack adequate roads or access to businesses and services.

4-10.02 District Boundaries

The boundaries of a Farm Community shall be designated on the official Zoning Map of Calvert County. In identifying the Farm Communities, the Board of County Commissioners shall consider the presence of Class I, II, and III soils and Group 1 and 2 soils. The Board shall also consider the presence of Agricultural Preservation Districts and actively farmed areas.

Airport Overlay Zone

This type of overlay zone is used to control land use and density within proximity of local airports. Typically, the boundary of the overlay is based on data related to airport noise levels and safety considerations for runway approach and take-off areas. The overlay may require sound-proofing for development and may prohibit certain land uses and densities within the zone in order to minimize safety risks and noise pollution impacts. The overlay also prohibits certain land

uses and activities that are not compatible with airport operations (for example, tall structures and glaring lights). Following are excerpts of Airport Overlay Zones in Talbot and Wicomico Counties.

Talbot County: Easton Airport Overlay Zone

- (a) In order to prevent the creation or establishment of structures which would constitute hazards or obstructions to aircraft operating to, from or in the vicinity of the Easton Municipal Airport and in order to design developments in such a way as to minimize the adverse effects of airport traffic, the following regulation and guidelines shall be used for development:
- (1) No building, structure, tree or any object of natural growth shall be erected, altered, allowed to grow or be maintained to a height of the approach, horizontal or transitional surfaces above the Easton Municipal Airport indicated on the Airport Approach Zone maps.
 - (2) Subdivision plats and/or site plans, as defined in the Talbot County Subdivision Regulations and this Ordinance, shall be annotated in such a way as to indicate the proximity to an existing airport. Proximity is defined as a two (2) mile area measured from any point on the centerline of the runway(s).

Signage Control Overlay Zone

- (3) Residential structures within this overlay zone shall be constructed to all applicable codes enforced by the County at the time of construction. In addition, the following standards shall be required as a means of achieving a twenty-five (25) db noise reduction. *(This overlay continues on with 14 building code standards that help minimize indoor noise levels.)*

Wicomico County: Airport District

Section 225-71.

- A. Purpose. The purpose of this district is to prevent the creation and establishment of hazards to life and property in the vicinity of any airport, to protect users of the airport and to prevent any unreasonable limitation or impairment on the use and expansion of the airport and the public investment therein.
- B. Specific use restrictions.
 - (1) Uses permitted inherently and by special exception shall be those established for Agricultural-Rural Residential District, except the following uses hereby forbidden within the designated airport turning zone ... *(The ordinance lists 11 prohibited uses including churches, schools, hospitals, apartments, day care centers, nursing homes, and shopping centers. It then continues with performance standards to control electrical interference, explosive materials, smoke, lights, signals, and competing airfields. There are also height restrictions.)*

This overlay is used to control signage in business districts and for Town Center entrances. Following is an excerpt from Calvert County's Business Directional Sign Overlay Zone.

Calvert County: Business Directional Sign Districts

4-5.01 Purpose.

The purpose of this district shall be to provide space for businesses to advertise their locations and to provide space for Town Center entrance signs.

**Transfer of
Development
Rights (TDR)
Overlays**

4-5.03 Administration

A. Business Directional Signs

1. The County Commissioners shall adopt guidelines governing the use of business directional signs, considering the recommendations of the Department of Planning and Zoning and the Planning Commission.
2. All signs within this district shall be erected and maintained by the County or its designee. A schedule of fees shall be developed for businesses that meet the established guidelines and wish to lease sign space.
3. All business directional signs shall conform to a standard format approved by the County Commissioners, considering the recommendations of the Department of Planning and Zoning and the Planning Commission. The standard format shall govern general design, size and lettering of signs...

B. Town Center Entrance Signs

1. The County Commissioners shall adopt guidelines governing the design and financing of Town Center entrance signs considering the recommendations of the Department of Planning and Zoning and the Planning Commission.
2. All signs within this district shall be erected and maintained by the County or its designee.

Overlay zones may be used to designate both sending and receiving areas within a county as part of a TDR program. Following, is Calvert County's "TZD" Overlay, which identifies areas in the County as suitable for receiving development rights from the County's agricultural area. Readers wanting more information about TDR's are referred to "Transferable Development Rights," Maryland Office of Planning publication 95-02.

**Density Exchange
Option Overlay
Zone**

Calvert County: Transfer Zone District Overlay

4-3.01 Purpose

The purpose of a TZD is to serve as a receiving area for lots that are being transferred from prime farm and forest land under the Calvert County Agricultural Preservation Program (see Section 4-2.01) to less productive land within the RUR Zoning District (and in some cases, within other districts). The TZD's include Town Centers and Rural Communities (in the Rural District). The program does not affect the overall permitted density within the County since it merely relocates development away from the most productive land. Thus TZD's help preserve prime farmland and forestland.

This is in concert with the Comprehensive Plan which recommends that residential development be directed to Towns. Therefore, by locating Transfer Zone Districts on less viable farmland, the demand for housing can be satisfied without usurping important productive resources.

This is a specialized overlay transfer zone which permits residential density in certain underlying rural zones to be exchanged between sending and receiving parcels. Following is an excerpt from Howard County's Density Exchange Option Overlay Zone.

Howard County: Density Exchange Option Overlay

A. Purpose

The DEO Overlay District is established to provide landowners in the RC and RR Districts with opportunity and incentive to preserve significant blocks of farmland in the rural area of the county. This district is also intended to encourage the clustering of residential development in areas where the development will not have an adverse impact on farm operations. To accomplish this, the DEO District allows residential density in the RC and RR Districts to be exchanged between parcels. Density exchanges in the District should result in large parcels being preserved in perpetuity, while residential development is directed toward parcels which are able to absorb the additional dwellings.

B. Criteria

Residential density may be exchanged between properties which are eligible to be sending and receiving parcels based on the criteria given below.

1. Sending Parcels

Properties within the DEO Overlay District which meet the following criteria are eligible to be sending parcels:

- a. The underlying zoning shall be RC;
- b. The minimum area shall be 20 contiguous acres for a sending parcel adjacent to an existing Agricultural Land Preservation Easement or preservation parcel and 50 contiguous acres for all other sending parcels;
- c. All parcels or lots to be included in a sending parcel shall be at least 20 acres in size;
- d. The property shall not be subject to any recorded easement or other agreement which restricts its subdivision or development.

A property consisting of one or more contiguous parcels or lots may be eligible to be a sending parcel; however, all lots must be combined into one at the time that the final plat and easement agreement for the sending parcel are recorded.

2. Receiving Parcels - Density Exchange Option

Lots within the DEO Overlay District which meet the following criteria are eligible to be receiving parcels using the density exchange option...

- a. The underlying zoning shall be RC or RR;
- b. The lot shall not be subject to any recorded conservation easement or other agreement which restricts its subdivision or development; and
- c. If the underlying zoning is RC, the lot shall be less than 50 acres in size and adjacent to lots of 10 acres or smaller along at least 60 percent of its perimeter within Howard County. For purposes of this section, lots separated by a utility right-of-way or public street right-of-way, other than a principal arterial highway, shall be considered adjacent. The portion of the lot perimeter adjacent to a principal arterial highway or the Howard County boundary shall not be included in this calculation.

3. Receiving Parcels - Cluster Exchange Option

Lots within the DEO Overlay District which meet the following criteria are eligible to be receiving parcels using the cluster exchange option...

- a. The underlying zoning shall be RCI and
- b. The lot shall not be subject to any recorded conservation easement or other agreement which restricts its subdivision or development.

Residential Conservation Overlay District

Following is an excerpt of a residential overlay zone from the City of Annapolis, intended to preserve the character and design of the City's neighborhoods.

21.69.010 Purpose.

The purpose of the RC residential conservation overlay district is to preserve patterns of design and development in residential neighborhoods characterized by a diversity of styles and to ensure the preserva-

tion of a diversity of land uses, together with the protection of buildings, structures or areas the destruction or alteration of which would disrupt the existing scale and architectural character of the neighborhood. The general purpose includes:

- A. Protection of the architectural massing, composition and styles as well as neighborhood scale and character;
- B. Compatibility of new construction and structural alterations with the existing scale and character of surrounding properties;
- C. Encouragement of existing types of land uses that reflect the mixture and diversity of uses that have historically existed in the community; and,
- D. Preservation of streetscapes. (Ord. 0-50-90 § 1(part))

21.69.020 Applicability.

The provisions of the RC district apply to new construction involving structural additions and new structures in all land as designated by this overlay to the existing underlying district, with the designation RC on the official zoning map. These provisions shall serve to supplement the underlying zoning district regulations in order to support the purpose noted in Section 21.69.010, and shall control in the event of conflict with any underlying zoning district regulation. (Ord. 0-50-90 § 1 (part))

21.69.030 Enforcement.

In the RC district, new construction including new buildings, enlargements to building size or bulk, or structural alterations to existing structures which have an impact upon the street facade shall be reviewed for compliance with this chapter by the department of planning and zoning in accordance with the provisions of Chapter 21.98, Site Design Plan Review; except that this chapter will not apply to new construction, enlargements or structural alterations which occur behind an existing building within the confine of a rearward extension of the side building lines; except that if such addition will impair an adequate supply of light and air to adjacent property, the requirements of Section 21.69.050 (A)(2) shall apply. (Ord. 0-50-90 § 1 (part))

Mineral Resources Overlay Zone

The use of overlay zoning to regulate mineral extraction and processing is a relatively new adaptation of the overlay concept. Following are excerpts from Cecil County's Mineral Extraction Overlay Zone.

Cecil County: Mineral Extraction District B - MEB

Section 216. Purpose

The purpose of the MEB overlay district is to identify areas of the County where mineral extraction may occur by Special Exception.

Section 217. Applicability

1. The MEB overlay designation shall only apply to those areas designated as Mineral Extraction District in the Land Use Plan of the 1990 Cecil County Comprehensive Plan.
2. It is intended that this overlay designation apply to those portions of the Mineral Extraction District where there is a potential for conflict between adjacent current and future land uses and the mineral extraction activity.

Section 218. Permitted Uses, Lot, Yard and Heights Requirements

1. Permitted uses, uses permitted with site plan approval, uses permitted under certain conditions, uses permitted by special exception and uses permitted by special exception under certain conditions in the MEB District shall be those as specified for the underlying zone.
2. Lot, yard and height requirements for uses other than mineral extraction shall be those as specified in the underlying zone.

Highway Corridor Overlay Zone

Another use for overlay zoning is for protection of visual character along designated roads or highways in the jurisdiction. Following is an excerpt from Charles County's Highway Corridor Overlay Zone.

Charles County: Highway Corridor Overlay

Section 146. Purposes

The purpose of this zone is to protect the aesthetic and visual character of land adjacent to major highway corridors and to provide for and promote orderly development. All development proposed within this zone shall be subject to the procedures, standards, and guidelines specified in the following sections in addition to those standards pertaining to the particular base zone in which the development occurs. The following specific purposes will be accomplished through evaluation of whether proposed developments comply with the standards of the Highway Corridor (HC) Zone:

- (a) To encourage and better articulate positive visual experiences along the County's major existing and proposed highways.
- (b) To provide for the continued safe and efficient use of these roadways.
- (c) To maintain natural beauty and scenic, cultural, and historic character of the corridors, particularly distinctive views, vistas, and visual continuity.
- (d) To protect existing greenbelts, natural vegetation, and wildlife habitats along the corridors.
- (e) Prohibit indiscriminate clearing, excessive grading, and clear cutting along the corridors.
- (f) Minimize cut and fill operations by placing emphasis on the retention of natural topography of the corridors.
- (g) Minimize intersection and site access points.

The provisions of the HC Zone and the administrative mechanisms used to implement those provisions will be reviewed annually to ensure that the objectives of the Comprehensive Plan are being achieved.

Section 147. Establishment of Zones

- (a) The Highway Corridor (HC) Zoning shall include all lands within 500 feet on each side of the following rights-of-way:
 - i. U.S. Route 301
 - ii. Maryland State Route 210

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- iii. Maryland State Route 228 from Maryland Route 210 to Bealle Hill Road to U.S. Route 301
 - iv. Maryland State Route 205

- (b) The approximate boundary of this zone shall be shown on the Official Zoning Map and shall be shown as a surveyed line by the applicant on each property subject to review.

Transit Station Area Overlay Zone

This overlay zone is of recent origin. It is used to designate areas suitable for transit-oriented development and redevelopment. The overlay encourages coordinated and integrated development schemes for certain properties within a half-mile distance of existing and planned transit stations. The process usually includes design guidelines and site plan approval.

Prince George's County: Transit District Overlay Zone

Sec. 27-548.02. Introduction

- (a) The Transit District Overlay Zone is intended to insure that the development of land in the vicinity of Metro stations maximizes transit ridership, serves the economic and social goals of the area, and takes advantage of the unique development opportunities which mass transit provides. The T-D-O Zone is a mapped zone which is

superimposed over other zones in a designated area around a Metro station, and which may modify certain requirements for development within those underlying zones. This designated area is called a Transit District. In this zone, a Transit District Development Plan must be approved by the District Council, and all development is subject to the approval by the Planning Board of a Detailed Site Plan. The Transit District Development Plan provides both the requirements for development within a specific Transit District and a flexible forum for joint development between the public and private sectors.

Sec. 27-548.03. Purposes

(a) The specific purposes of the Transit District Overlay Zone are:

- (1) To enhance the development opportunities in the vicinity of transit stations;
- (2) To promote the use of transit facilities;
- (3) To increase the return on investment in a transit system and improve local tax revenues;
- (4) To create a process which coordinates public policy decisions, supports regional and local growth and development strategies, and creates conditions which make joint development possible;
- (5) To create a process which overcomes deficiencies in ordinary planning processes and removes obstacles not addressed in those processes;
- (6) To minimize the costs of extending or expanding public services and facilities, by encouraging appropriate development in the vicinity of transit stations;
- (7) To provide mechanisms to assist in financing public and private costs associated with development;
- (8) To provide for convenient and efficient pedestrian and vehicular access to Metro stations;
- (9) To attract an appropriate mix of land uses;
- (10) To encourage uses which complement and enhance the character of the area;

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- (11) To ensure that developments within the Transit District possess a desirable urban design relationship with one another, the Metro station, and adjoining areas;
 - (12) To provide flexibility in the design and layout of buildings and structures, and to promote a coordinated and integrated development scheme; and
 - (13) To provide a wide range of housing available to all socioeconomic groups.

Sec. 27-548.04. Relationship to other zones.

- (a) The Transit District Overlay Zone shall be placed over other zones on the Zoning Map, and shall modify specific requirements of those underlying zones. Only those requirements of the underlying zones specifically noted in this Subdivision and elsewhere in this Subtitle are modified. All other requirements of the underlying zones are unaffected by the Transit District Overlay Zone.

Sec. 27-548.05. Uses.

- (a) The uses allowed on a lot in a Transit District Overlay Zone shall be the same as those allowed in the underlying zone in which the lot is classified, except as is modified by the Transit District Development Plan.
- (b) The Transit District Development Plan may not allow uses prohibited in the underlying zone, but the Plan may restrict a lot to specific uses or general use types which are allowed in the underlying zone.

Sec. 27-548.06. Regulations.

- (a) Density
 - (1) Development within a Transit District shall not exceed the specified maximum residential density and any floor area ratio (FAR) requirements of the underlying zones, as those requirements would normally be applied if the property were not zoned T-D-O. If an underlying zone has provisions for awarding increased density or FAR above base requirements through furnishing

amenities or benefit features, those provisions shall still apply within the T-D-O Zone and shall be applied when the Transit District Development Plan is approved.

(b) Buildings, landscaping, and other improvements

- (1) The location, size, and lot coverage of all structural improvements, open spaces, and green areas shown on an approved Detailed Site Plan shall constitute the regulations for these improvements within the Transit District. The corresponding regulations of the underlying zones do not apply to property in the T-D-O Zone, unless so specified elsewhere in this Subtitle. Detailed Site Plan approval is not required for television receiving antennas attached to dwellings.
- (2) Landscaping, screening, and buffering of development within the Transit District shall be provided pursuant to the provisions of the Landscape Manual. Additional buffering and screening may be required to satisfy the purposes of the T-D-O Zone and to protect the unique character of the Transit District from adjoining or interior incompatible land uses...

(g) Boundaries of zone

- (1) The boundary of a Transit District Overlay Zone shall encompass an area in proximity to an existing or proposed Metro Station. The area shall be contiguous and shall follow property lines, streets, or permanent and readily identifiable natural features of the landscape. A boundary shall not split an individual property unless there is a clear and compelling reason to do so.

Sec. 27-548.07. Transit District Development Plan.

- (a) Within every Transit District Overlay Zone, a Transit District Development Plan shall be prepared and approved, in accordance with the procedures set forth in Part 3, Division 2, Subdivision 5.
- (b) All approved Transit District Development Plans shall be binding upon the property owners, their successors, assigns, and heirs. The Plan shall control the use and development of all land and structures in a Transit District, and the issuance and validity of all permits within the Transit District.

Section 27.548.08. Site Plan...

(c) Required findings

(1) The findings required by Section 27-285(b) shall not apply to the T-D-O Zone. Instead, the following findings shall be made by the Planning Board when approving a Detailed Site Plan in the T-D-O Zone:

(A) The Transit District Site Plan is in strict conformance with any mandatory requirements of the Transit District Development Plan;

(B) The Transit District Site Plan is consistent with, and reflects the guidelines and criteria for development contained in, the Transit District Development Plan;

(C) The Transit District Site Plan meets all of the requirements of the Transit District Overlay Zone, and applicable regulations of the underlying zones;

(D) The location, size, and design of buildings, signs, other structures, open spaces, landscaping, pedestrian and vehicular circulation systems, and parking and loading areas maximize safety efficiency, and are adequate to meet the purposes of the Transit District Overlay Zone;

(E) Each structure and use, in the manner proposed, is compatible with other structures and uses in the Transit District, and with existing and proposed adjacent development.

(F) If staging is involved, each staged unit of the development includes a proportionate amount of moderately priced dwelling units, unless an alternative method of compliance has been approved.

(d) Validity period

(1) A Transit District Site Plan shall remain valid for a period of six (6) years following the date of its approval.

Solid Waste Overlay Zone



This overlay zone has specialized application for locating solid waste processing and recycling facilities within underlying manufacturing and industrial zones. Following is an excerpt from Howard County's Solid Waste Overlay Zone.

Howard County: Solid Waste Overlay District

A. Purpose

The Solid Waste District is established to provide opportunity for solid waste processing facilities not allowed in other zoning districts and to encourage re-use and recycling of solid waste in lieu of disposal at a landfill. Because of changing technology, it is not possible to identify and adopt specific zoning regulations for all types of solid waste processing uses which may be proposed in Howard County. However, it is essential to provide opportunity to viable, constructive alternatives to disposal of solid waste in landfills. The Solid Waste District permits processing facilities for non-hazardous solid waste which are not covered elsewhere in the Zoning Regulations, while requiring detailed review of each proposal to evaluate its land use impacts and its potential contribution to the County's solid waste management system.

Because many solid waste processing facilities are of a heavy industrial nature, the SW district is an overlay district which may be applied only to land in the M-2 District. The Zoning Board may also apply the SW District to land in the M-1 District, provided there is a compelling reason and the use in the SW District shall be limited to a waste transfer station or material recovery facility.

The SW District ... may be applied if the Zoning Board finds, upon review of a specific proposal and Preliminary Development Plan, that application of the District at a proposed location will meet the requirements established in this section.

CONCLUSION

Overlay zones have potential to address a number of growth management issues under the 1992 Planning Act. Many of the practices in Maryland focus on environmental and resource protection (e.g., stream buffers, floodplains, minerals, and historic sites). Such examples are widespread.

There are several overlay zones geared towards growth areas, as well (e.g., transit districts and TDR receiving areas). However, it seems that much more can be done for growth areas through the overlay zone technique. Several conceptual examples follow:

Overlay Zone for Site Plan Design Options

Such an overlay could operate to apply design guidelines and standards, with a focus on facilitating approval of innovative projects. The design guidelines would be an optional form of regulation that permits the local approving authority much flexibility in relaxing (or eliminating) the rigid setbacks, bulk and height standards, and use separations of the underlying zone. As a trade-off for having less rigidity, the overlay could permit greater community involvement in working with the developer and jurisdiction to arrive at an acceptable site plan for the project.

Overlay Zone for Flexibility in Subdivision Approval

This concept is similar to the Design Option above, but would focus on permitting flexibility during the subdivision approval process for quality and innovative development plans.

Overlay Zone for Planned Unit Development

The PUD Overlay would be applied to larger tracts of land, or to an aggregation of smaller, contiguous properties, to permit mixtures of uses not allowed by the underlying zoning. The focus would be on the creation of sensitively-scaled interdependent land uses that could form sustainable communities.

Overlay Zone for Special Financing

This overlay would be used to qualify certain specific sites for special financing techniques, including tax incentives.

These are but a few of the ways in which the overlay zone technique might be applied in planned growth areas. Readers wanting more information are welcome to visit the library at the Maryland Office of Planning, which houses a thorough collection of planning and zoning literature, as well as ordinances from local governments throughout Maryland.

OTHER PUBLICATIONS AVAILABLE

The Maryland Office of Planning's Series: Managing Maryland's Growth

Models and Guidelines

Procedures for Review of Local Construction Projects;
Review Checklist, Compliance Schedule, Work Program
#92-13

Procedures for State Project Review Under the Planning Act of 1992
#93-02

Preparing a Sensitive Areas Element for the Comprehensive Plan
#93-04

Regulatory Streamlining
#94-02

Achieving "Consistency" Under the Planning Act of 1992
#94-03

Interjurisdictional Coordination
#94-04

Modeling Future Development on the Design Characteristics of
Maryland's Traditional Settlements
#94-05

Clustering for Resource Protection
#94-10

Transferable Development Rights
#95-02

Other Planning Act of 1992 Resource Publications

What You Need to Know About the Planning Act of 1992
#92-07

Economic Growth, Resource Protection, and Planning Commission --
A Membership Guide
#93-07

What is Being Done to Manage Maryland's Growth? (*Brochure*)

Publications may be ordered from the Maryland Office of Planning, 301 West Preston Street, Room 1101, Baltimore, Maryland 21201-2365. Cost is \$2.00 each. (There is no charge for the Brochure.)