

**Equitable Growth White Paper**  
**Prepared by We The People\***

**I. Master Plan – Introduction**

**A. What is the history?**

1. In 1967, Baltimore County government adopted the Urban Rural Demarcation Line (“URDL”), which identified the areas of the county that could be serviced by city water and sewer. These areas constitute one third of county land.
2. This was an early form of smart growth, in that it limited which areas of the county could be developed. At the same time, this policy increased the importance of land use and zoning decisions made within the URDL, because most development was going to take place – and most county residents were going to live – within the URDL. Today, 90% of Baltimore County residents live inside the URDL.
3. While the URDL was a long-sighted policy, it was not enough to simply restrict development to certain areas of the county. For growth to be smart and beneficial to all, it needs to be well-planned and consistent with a holistic vision of growth that is produced by a vigorous, collaborative and extensive planning process. That is the very reason why the state requires a master plan.
4. Despite the heightened importance of growth planning, the county (through the county council) has regularly made decisions in a way that is (a) on-demand, ad-hoc and project-by-project, and (b) often political, parochial and emotional. This has been contrary to the various master plans adopted by the county since the first one was adopted in 1975, but the law has allowed the county to do this.
5. Granted, the county did try a “town center” approach to development, which was supposed to create attractive, mixed-use communities with a suite of amenities. However, this approach was subject to the same flaws and circumvention. As a result, the centers became low-density sprawl with little sense of place or connectivity, and with little ability to anchor future growth.
6. For some time, the effects of this ad-hoc decision-making were not widely felt. Perhaps the primary reason for this was because the county still had greenfields within the URDL (which are less expensive and time-consuming to develop). So, the county felt comfortable building farther out from the city, instead of forcing growth in town centers and reinvesting in older communities.
7. This, in turn, accelerated the disinvestment of those older communities known as “first-tier suburbs,” which are the suburbs immediately surrounding the city built after World War II, such as Lansdowne, Woodlawn, Middle River, Essex and

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Dundalk. On average, these suburbs contain much smaller homes, and lack access to basic amenities.

8. The county has continued this ad-hoc approach to development to this day (e.g., Ownings Mill, where three mixed-use developments are in close proximity and compete with one another to some degree). However, the problem now is that the county has run out of greenspace and is left with infill development and redevelopment, which is harder and more expensive to do.

**B. What are the challenges?** The issue has reached a breaking point, and the effects have been profound, as follows:

1. *Lack of open space:* 65% of residences lack access to adequate open space within a quarter mile, or walking distance, of their homes. Further, according to [walkscore.com](https://www.walkscore.com/), none of the county's 16 inner suburbs are considered walkable and only 4 of the 16 are considered "somewhat walkable."
2. *Pollution:* All but one of the 14 county watersheds are polluted by nitrogen, phosphorous and/or sediment, and are considered "impaired" by the state. This means that the water's quality is too low to support its intended use. Current practices are not keeping pace with population and development.
3. *Housing shortage:* There is a critical shortage of housing in the county, including housing that is affordable to working families.
4. *Existing housing is old:* The median age of housing stock in the county is 48 years, compared to 39 years nationally. Almost half of homes were built prior to 1970.
5. *Declining suburbs:* Overlooked older suburbs (built after World War II) have continued to decline, reducing the amount of viable housing stock.
6. *Increased housing costs:* As supply dwindled, housing costs increased, reaching a decade high for the Baltimore region in March 2021.
7. *More ALICE households:* ALICE (Asset Limited, Income Constrained, Employed) measures the true amount of poverty in a given area. The number of ALICE households in Maryland increased by 57% from 2007 to 2018 as a direct result of increased housing costs.
8. *History of discrimination:* The county entered into a 2016 HUD settlement agreement that evidenced the county's long history of racial discrimination in housing. The county is not on pace to meet its obligations to build affordable homes for low-income African Americans.

9. *Population loss*: It is projected that the county will register a population loss since the last census, as residents move elsewhere for opportunity.

10. *Outdated, bad laws and regulations*: Existing laws and regulations are out of date, and provide ways to circumvent master planning and development review.

- C. **What is the overall goal?** Use the Master Plan 2030 process to create an actionable “equitable growth” strategy that helps address the above challenges, by building consensus on future development and preventing highly charged project-level conflicts down the road.

In view of the Master Plan 2030 process and the pandemic recovery, now is the time for all stakeholders (residents, advocates and developers) to discuss how to reinvest with this goal in mind: *create a predictable and transparent development process so that the county can reinvent the suburbs and create attractive, livable and sustainable complete communities with decent, affordable housing options for all.*

With such a development process in place, the county will be better positioned to guide growth and thereby expand opportunities. This is critical if the county is to improve the green network and the quality of the outdoors, improve housing options for all, improve public education and overcrowding, improve connectivity and transit choices, improve competitiveness and the ability to attract and retain jobs, improve access to amenities, and (perhaps most importantly) improve equity.

- D. **Why should this white paper carry any weight?** Because it sets forth tangible solutions that have general agreement among multiple stakeholder groups, including land use advocates, housing advocates and the development community.

- E. **What are the solutions?** They can be summarized as follows:

1. *Master Plan as a Controlling Document, with Proper Sequencing of Land Use Tools*: The county should transform the Master Plan from an aspirational document that can be ignored by decision-makers (including councilmembers) at their discretion into a controlling document that governs future map amendments. This includes changing the sequencing of the Comprehensive Zoning Map Process (“CZMP”) so that it occurs shortly after adoption of the Master Plan.
2. *By-Right Development*: If the Master Plan was the product of a vigorous, collaborative and extensive process – and it was now controlling – it makes sense to revisit and expand the use of by-right development so that fewer projects require a special (and political) discretionary approval process. That is because the Master Plan should have already addressed the site-specific considerations weighing against a by-right allowance, and the community can be confident that what will be built will be appropriate.

3. *Mixed-Use Development*: With its abundance of underinvested first-tier suburbs – which do not have the amenities of complete communities and are unconnected to one another – Baltimore County is poised to reap significant benefits from well-planned, mixed-used developments. The county must make it easier to develop high-quality projects.
4. *Green Network*: The county should establish a Green Network so that it can improve the connectivity among green hubs, and thereby make the most of the open space, parks, trails and greenways that currently exist.
5. *Simpler, Better Zoning Laws, Regulations and Processes*:
  - a) Wholesale review of zoning laws, regulations and processes to simplify them where possible.
  - b) Reform or replace the “planned unit development” or “PUD” process, which is the primary tool to develop mixed-use projects (including limits on density increases).
  - c) Require zoning bills to have a 90-day period of review and comment by the Planning Department and the Planning Board, after which the council may proceed with a vote.
  - d) Require zoning amendments to have a 30-day review period (council cannot propose such amendments and vote on them at the same meeting).
6. *Updated Community Plans*: The county should allocate resources as necessary to help communities update their local development plans, which should flow up into the councilmanic plans, which should flow up into the Master Plan. These local plans have legal significance and are referenced by the zoning law.

## II. **Master Plan – Solutions in Detail**

### A. **Master Plan as a Controlling Document, and Proper Sequencing of Land Use Tools**

1. The county should transform the Master Plan from an aspirational document that can be ignored by decision-makers (including councilmembers) at their discretion into a controlling document that governs future map amendments, whether it is during the CZMP, the cycle zoning process or the out-of-cycle zoning process.
  - a) State law provides that zoning map amendments must be consistent with a master’s plan zoning recommendations.

#### (1) Court of Special Appeals opinion:

[T]he Court of Appeals held [in its *Terrapin Run* opinion] that local master plans were not mandatory in nature, and that the General Assembly never intended to “impose absolute requirements on

local governments in their practices involving their local land use programs.” The General Assembly’s response to the *Terrapin Run* decision was swift and decisive. During the next legislative session, the General Assembly enacted the “Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009 [‘SGSDA’],” which in uncodified, preliminary language, stated the legislature’s intent to overturn the ruling in [*Terrapin Run*]. [The preliminary language continued:] The General Assembly [was] concerned that a broader interpretation of [*Terrapin Run*] could undermine the importance of making land use decisions that are consistent with the comprehensive plan.

*Carroll County Planning v. Silverman Companies, LLC*, 2015 WL 5920256, at \*4 (Md. App. 2015) (certain quotation marks and citations omitted).

- b) Notwithstanding the foregoing, the county council continues to make zoning map decisions that the county government advises are not consistent with the Master Plan.
- c) A primary reason for this is because the majority of such zoning map decisions pertain to properties within the URDL and the majority of properties within the URDL are “Priority Funding Areas” (“PFAs”) that are not subject to the same rules. Specifically, the SGSDA provides that actions taken in PFAs need not be consistent with comprehensive plans with regard to land uses and densities or intensities. See Md. Code, Land Use Art., § 1-304.
- d) However, the reality is that “[o]nly a small proportion of land in PFAs is suitable for high-density, transit-oriented, walkable, mixed-use communities envisioned in state smart growth policies. Much of it contains existing buildings that remain profitable, even if they are not the highest and best uses of the land. It may require substantial increases in density to justify demolition and redevelopment.” Royce Hanson, *Consistency with Comprehensive Plans: Does Maryland Law Mean What It Says, or Say What It Means?*, 6 U. Balt. J. Land & Dev. 119, 135 (Spring 2017) (emphasis added).

## 2. Possible Solutions

- a) Change the sequence for the CZMP, such that it occurs shortly after the adoption of the Master Plan. This would allow the county to build on the momentum of the Master Plan process to actually effect change to the zoning map. For example, the county could develop a new Master Plan at Year 0 and then undergo the CZMP, and then the county could simply

update the Master Plan at Year 5 and undergo another CZMP at that time.<sup>1</sup> In this way, the Master Plan would truly be a “living document” from which other decisions flowed.

- (1) The Master Plan gives direction, the CZMP provides authorization, and the Sewer and Water Master Plan enables implementation. Each should follow and be the consequence of the former.
  - (2) Due to inconsistencies of the various Charter and Code requirements, the sequence and timing of decisions too often puts the process out of sync.
  - (3) Decisions where to grant Sewer and Water are made in the year or two before the quadrennial CZMP is undertaken. And while the CZMP schedule sometimes overlaps with the process for developing a new Master Plan process, the CZMP is still guided by the soon-to-be outdated, previous Master Plan.
  - (4) Hanson, *Consistency with Comprehensive Plans*, at 133 (stating that “if a jurisdiction adopts a comprehensive plan but does not follow up with a sectional map amendment,” this may “perversely create obstacles rather than facilitate well-planned and orderly development and redevelopment,” all in contravention of the SGSDA);
- b) Consider whether the county can be more nuanced in its proffered designation of Priority Funding Areas as submitted to the state.
- c) Consider whether the standard for PFAs set by state law (Land Use Art., § 1-304) represents a floor, not a ceiling, such that local governments can enact legislation that requires actions taken in PFAs to be consistent with their master plans.
- d) Even if the answer to the foregoing is that local governments cannot enact such legislation, it appears that state law allows local governments to require that subdivisions (inside or outside of PFAs) be consistent with master plans, inasmuch as the preemption doctrine should not reasonably apply there. Consider whether the county can promote consistency by using local subdivision regulations together with a Master Plan that provides specifics on density and intensity. Hanson, *Consistency with Comprehensive Plans*, at 145-46; *see also* as follows:

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<sup>1</sup> The timing of the sequence of events should be studied to determine what is most workable. That is to say, either the county could change the Master Plan process so that it occurs once every 8 years (so the CZMP does not need to change), or the county could change the CZMP so that it occurs once every 5 years (so the Master Plan process does not need to change).

- (1) “While zoning laws define the uses that are permitted in a particular zoning district, i.e., the R.C. 5 and R.C. 2 zones, subdivision regulations inform how, when, and under what circumstances a particular tract may be developed.” *People’s Counsel for Baltimore County v. Surina*, 400 Md. 662, 689 (2007) (citation omitted).
  - (2) “[W]here the subdivision regulations provide that a subdivision must be compatible with the county master plan and the proposed plat shows a greater density than called for in the master plan, the subdivision may be rejected although the zoning ordinance permits the density proposed.” *People’s Counsel for Baltimore County v. Surina*, 400 Md. 662, 689 (2007) (quoting Arden H. Rathkopf and Daren A. Rathkopf, 5 *The Law of Zoning & Planning*, § 90:24 (4th ed. 2005))
- e) It would be difficult to change the process by which zoning map decisions are made. That is to say, state law provides that comprehensive zoning map amendments are legislative in nature. As such, courts will afford a significant degree of deference to the legislating body making such decisions, asking only whether the decision had a reasonable basis, or instead was illegal or ultra vires. This is why the county council has the ultimate say on zoning map decisions during the CZMP. This power could only be changed by a modification of state law. However, there are three things to note, as follows:
- (1) Many of the changes suggested above would make it harder for the county council to make zoning map decisions that are inconsistent with the Master Plan, without exposing itself to meritorious legal challenge.
  - (2) A review of Maryland caselaw suggests that Maryland courts have not answered the question of whether councilmanic courtesy may be unlawful in that it does not represent a “reasonable basis” for making a zoning map decision.
  - (3) The county council delegates its decision-making authority to the board of appeals with respect to zoning map decisions made during the cycle and out-of-cycle zoning processes. Consider whether it is possible for the county council to delegate its decision-making during the CZMP to the board of appeals, at least in some instances.
3. Final note: It is recommended that the Master Plan begin with a detailed assessment of human trends (such as changes in population, ethnicity, income, education, employment and so on), and sustainability trends (such as land consumption, land protection and access to open space). Only with a clear understanding of current trends, and which ones need to be reversed, can a Master

Plan be logically derived.<sup>2</sup>

## B. By-Right Development

1. If the Master Plan was the product of a vigorous, collaborative and extensive process – and it was now controlling – it makes sense to revisit and expand the use of by-right development so that fewer projects require a special (and political) discretionary approval process. That is because the Master Plan should have already addressed the site-specific considerations weighing against a by-right allowance, and the community can be confident that what will be built will be appropriate. This will reduce costs for homebuyers and others, which is critical because the only type of development left in the URDL is harder and more expensive to do (infill development and redevelopment).
  - a) As a word of background, each zone on the zoning map specifies what projects may be built by right and by special exception. “By-right” projects are the preferred projects for that zone and thus do not need to proceed through a special discretionary approval process (like the kind required for special exceptions).
  - b) This will reduce (i) the number of project-level conflicts, which can be decided more on influence and parochial interest than sound, holistic planning, (ii) the ability of opponents to delay worthy projects into the grave simply by drawing matters out, and (iii) the cost of projects, which can make housing more affordable for more people.
  - c) This should increase (i) the amount of middle housing, in part, because developers know all of the requirements before they start the design process (making the process less risky), and (ii) predictability in the application of land development regulations and thereby fidelity to the Master Plan.
2. Consider how the category of uses permitted by right may be expanded, *provided* that a thorough and controlling Master Plan is adopted by the county (through the county council).

## C. Mixed-Use Development

1. With its abundance of underinvested first-tier suburbs – which do not have the

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<sup>2</sup> Note that the County Code states expressly that “all development of land” shall conform to the Master Plan. B.C.C. § 32-4-102, “*Development Policies*”); see also *HNS Development, LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 455 (2012). Unfortunately, this does not solve the issue, for it is one thing to say that development decisions have to conform to the Master Plan, but it is quite another to say that zoning map amendments have to so conform.



amenities of complete communities and are unconnected to one another – Baltimore County is poised to reap significant benefits from well-planned mixed-used developments. The county must make it easier to develop high quality projects.

2. Such developments are integral to a strategy that (i) produces more housing that is affordable, and (ii) emphasizes reinvestment in older communities over moving mobile residents out of such older communities (which forces these residents to leave their social structure and deprives communities of “social capital”).
  - a) Developers proposing a mixed-use development in the county must usually proceed through the PUD process. The supposed advantage of a PUD is that the developer may be able to obtain a more streamlined review if such developer submits an enhanced (more detailed) plan showing that the project will use the site efficiently, is compatible within the community and demonstrates a high degree of design quality.
  - b) In practice, from an anecdotal perspective, developers have said the PUD process is not efficient, and land use advocates have said that it is not effective (in that it does not produce meaningful public benefits and amenities, among other things). Still others have said that it can be abused, e.g., a councilmember introducing and withdrawing the same proposed PUD on multiple occasions.

### 3. Possible Solutions

- a) Consider introducing another process by which a mixed-use development may be approved, including as of right.
  - (1) This could be as straightforward as fully adopting the concept of transect zoning in the Master Plan and CZMP, as first set forth in Master Plan 2020, which should reduce the need for a special review process such as a PUD.
  - (2) Idaho uses a mixed-use zoning code that sets forth in detail the permissible uses of land within that zone. The state (i) breaks down the uses between community and neighborhood zones (with community zones supporting larger projects), and (ii) proactively identifies and rezones land for such use. With this level of specificity, Idaho law allows development by right (i.e., without the need for a rezoning or special discretionary approval process such as a PUD).
- b) Consider the extent to which it is possible to enable other avenues for PUDs to be introduced; as of now, a PUD may only be considered by the county if

it is (i) introduced by a councilmember, (ii) determined that such PUD would achieve a development of a “substantially higher quality” than a conventional development, and (iii) approved by the council writ large. The impact of politics, and the use of this highly subjective standard, make it difficult to ensure that worthwhile projects are at least considered by the county.

- c) To the extent the county intends to continue using PUDs, the county should consider convening a task force to evaluate the process and propose recommendations so that a PUD cannot supersede the CZMP (e.g., produce density far in excess of what is contemplated by the CZMP).
4. Density bonuses. Before concluding, it is worth mentioning the role that could be played by density bonuses, which are used more widely by other jurisdictions. Density bonuses are typically used to increase the legally permissible density of housing for projects where the developer agrees to make certain units in the project affordable. However, other iterations will likewise increase the legally permissible density of housing but only in certain areas, such as those with relatively high incomes, concentration of jobs or access to public transit. *See, e.g.,* Kriston Capps, *Denser Housing Is Gaining Traction on America’s East Coast*, Bloomberg CityLab (Jan. 3, 2020). This latter approach could be used to further promote mixed-use and middle housing.

#### **D. Green Network**

1. The county should establish a Green Network so that it can improve the connectivity among green hubs, and thereby make the most of the open space, parks, trails and greenways that currently exist.
  - a) The lack of publicly accessible, networked open space for walking and recreation has been an issue in Baltimore County for more than a decade. Today, 65% of county residences lack access to adequate open space within a quarter mile, or walking distance, of their homes. Adequate open space means a useable area of at least 1,000 square feet, as set forth in the county’s Adequate Public Facilities Ordinance.
  - b) While the county should continue efforts to acquire open space for public use (to address the dearth of such space within the URDL), it should also ensure that existing open space is networked to promote access and maximize all benefits.
  - c) This includes economic benefits. Recently, Howard County announced that it allotted \$1.5 million in state funding to rehabilitate the Savage Trail and to create a spur of the Patapsco Regional Greenway connecting Elkridge to the

Guinness Brewery. Baltimore County likewise needs to use green infrastructure to promote access to assets (and experiences) like Guinness.

## 2. Possible Solutions

a) In this instance, the solutions have been ably set forth by NeighborSpace and include the following:

- (1) planning (for a Green Network),
- (2) adequate funding to acquire land for trails and pocket parks,
- (3) enforcement of current law, including requiring mitigation in place of private open space, updating the schedule of fees that supports land acquisition and improvement, and requiring a feasibility showing before permitting developers to pay a waiver fee, and
- (4) reexamining the mitigation standard (for example, a developer was able to provide \$340,000 in amenities to two adjacent neighborhoods that are not in high social need areas, i.e., areas where there is a deficit of open space or a prevalence of multi-family housing and/or vulnerable populations).

b) For more, see <https://www.neighborspacebaltimorecounty.org/2021/02/21/why-you-need-a-car-to-take-a-walk-a-plea-for-your-help/>

## E. Simpler, Better Zoning Laws, Regulations and Processes

1. The county needs to not only simplify but also improve its zoning laws, regulations and processes

a) The county zoning laws, regulations and processes are myriad and complicated. The consequences of this are multi-fold, as follows: (i) less participation in the process because it is very difficult for the average citizen to get involved in a meaningful way, including determining what can and cannot be built, (ii) restricted participation to those that have years of experience and expertise, the resources to engage attorneys, or both, and (iii) increased costs of projects, including the cost of housing.

b) Furthermore, the county should commit to reducing processing time for all issues, whether ministerial or discretionary. This is what Montgomery County did, which “eliminated its record plat application backlog and reduced processing times from 20-30 weeks to 8-12 weeks; developed ordinances requiring preliminary plans and site plans to be reviewed within 120 days (down from a year or more); and issued an executive order requiring building permits to be issued in 30 days or less (down from 8-12

weeks).” Shane Philips, *The Affordable City: Strategies for Putting Housing Within Reach (and Keeping It there)*, at 100 (Island Press 2020).

## 2. Possible Solutions

- a) The county should perform a wholesale review of zoning laws, regulations and processes in order to simplify them where possible. The county should consider convening a task force to evaluate such laws, regulations and processes, and prepare recommendations as to what to remove or modify. At bottom, regulations should only regulate what is necessary and should not include unnecessary or obsolete standards or procedures.
  - b) As noted above, the county should consider convening a task force to evaluate the process and propose recommendations so that a PUD cannot supersede the CZMP (e.g., produce density far in excess of what is contemplated by the CZMP).
  - c) The county should require that zoning bills be subject to a 90-day period of review and comment by the Planning Department and the Planning Board, after which the council may proceed with a vote.
  - d) The county should require that zoning amendments be subject to a 30-day review period (council cannot propose such amendments and vote on them at the same meeting).
3. Ultimately, there are established ways to change zoning in the county, including through the CZMP, cycle zoning and out-of-cycle zoning, and through PUDs to a degree. It should not be the case that a councilmember can, without notice and comment, change zoning overnight, whether by (i) spot-zoning for a specific project, and (ii) introducing general legislation with criteria so specific that it only applies to one project.

## F. Updated Community Plans

1. The county should allocate resources as necessary to help communities update their local development plans, which should flow up into the councilmanic plans, which should flow up into the Master Plan. These local plans have legal significance and are referenced by the zoning law.
2. Some of the community plans are decades old. See, e.g., Hereford Community Plan, dated as of May 6, 1991.