

Incentive Zoning Research & Analysis



Prince William County
Comprehensive Plan Update
August 12, 2022

Prepared by EPR, PC

Contents

Table of Contents

Introduction	2
Definition of Incentive Zoning.....	2
State Enabling Legislation	2
Survey of Peer Communities	2
Background	2
Arlington County.....	3
Loudoun County:	3
City of Suffolk:.....	4
Albemarle County:.....	4
Montgomery County, MD	5
Summary Findings.....	5
Considerations in Implementing Incentive Zoning for Prince William County.....	5
Issues and Considerations.....	5
Conclusions	6
APPENDIX A. Copy of State Code Provisions	7
§ 15.2-2201. Definitions.....	7
§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.	7

Incentive Zoning Research & Analysis

Introduction

As part of Prince William County's Comprehensive Plan update process, the County Board of Supervisors adopted a resolution¹ to initiate amendments to the Zoning Ordinance to create an Affordable Dwelling Unit Ordinance (ADU). In support of that initiative, EPR, PC has been asked to conduct a variety of research and analysis tasks to explore strategic options for addressing the critical need for affordable housing in the County. This paper explores the mechanism of Incentive Zoning, its legal basis, examples of its implementation in peer communities and potential implications for its deployment to incentivize the provision of affordable housing units in Prince William County.

Definition of Incentive Zoning

Incentive zoning is an established and time-tested mechanism within zoning that generally permits developers to receive benefits to their project in exchange for benefits to the community. It can be used for a wide variety of community purposes, such as obtaining donations of land for public purposes, provision of open space, design enhancements or the provision of affordable housing. Incentives to the developer can include higher density, reduced setbacks, increased height and bulk for buildings or parking reductions, for example. Since its emergence in the 1950s, this has become a very common tool to implement plans and policies through zoning. It has been estimated that at least one-half of all cities and towns that have zoning ordinances include bonus provisions in one form or another.²

Incentive zoning has been used extensively as part of inclusionary zoning. Inclusionary housing programs and ordinances, including voluntary or mandatory density bonuses for affordable housing, first appeared in the 1960s as a policy response to exclusionary zoning practices by local governments. Several states, including Connecticut, Florida and Maryland have enacted enabling legislation that specifically calls out incentive zoning as a mechanism to encourage affordable housing.

State Enabling Legislation

Sec. 15.2-2286³ under the Virginia State Code allows localities to adopt Incentive Zoning. "Incentive Zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses services, or amenities desired by the County. Once the incentives are established in the zoning ordinance, the increase in density would be a by-right option for the developer subject to provision of any additional requirements identified by the County. Appendix A. below contains the exact language of the State legislation for Incentive Zoning.

Survey of Peer Communities

Background

As part of the research, EPR, PC reviewed a number of peer localities that have adopted Incentive Zoning approaches to encourage the provision of affordable housing in various zoning districts. While Incentive Zoning is fairly common in zoning ordinances throughout the Commonwealth, it is used for a wide variety of different public purposes as described above. Some localities have used it specifically as a way of encouraging the provision of affordable housing and a few of the key examples of this practice have been researched and briefly summarized below. This is by no means an exhaustive survey of all localities in Virginia but it represents some of the top well-known examples of this practice for comparison purposes for Prince William County.

¹ Res. No. 21-424, adopted July 13, 2021 by the Prince William County Board of Supervisors

² Incentive Zoning: Meeting Urban Design and Affordable Housing Objectives, Marya Morris, APA Planning Advisory Service Report Number 494

³ <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2286/#:~:text=Land%20and%20Zoning-,%C2%A7%2015.2%2D2286..to%20pay%20delinquent%20taxes%3B%20penalties.>

Arlington County

<https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/38/2019/10/ACZO.pdf>

Arlington County addresses affordable housing in a variety of ways to make full use of its legislative authority under the State Code for requiring and incentivizing affordable housing provision. The County has an affordable dwelling unit ordinance in its zoning code, pursuant to § 15.2-2304 in the State Code. Under this ordinance, developers may choose whether to provide a cash contribution or to provide affordable units according to a set formula.

The County also uses Incentive Zoning through a number of incentive provisions to encourage the voluntary provision of affordable units:

- In special zoning districts throughout the county (such as Columbia Pike, Rosslyn and Nauck) bonus density or height may be achieved through special provisions by contributing more on-site affordable units than the base affordable housing requirement.
- For the Columbia Pike Neighborhoods Special Revitalization District, developers can optionally choose to provide more affordable housing units than the base-level requirements in exchange for a parking reduction.
- The County Board may also approve additional height and/or residential density for both market-rate and low or moderate income housing where a proposed project dedicates land for public purposes including the provision of affordable housing.

Loudoun County:

www.loudoun.gov/DocumentCenter/View/146645/ARTICLE4-and-RT-28-Corridor-Zoning

Loudoun County makes extensive use of Incentive Zoning, for example, in its Planned Development districts. In general, for these districts, an “Alternative Method” of development for each Planned Development and Optional Overlay zoning district is allowed to permit an increase in FAR, lot coverage, and other elements by applying “Incentive Elements” for a variety of categories. The FAR bonuses range from 0.15 to 0.5 increases, while the lot coverage increases range from 5% to 15%.

The categories for which incentives are given include:

- Filing an election to waive the existing 1972, 1993 or Revised 1993 Zoning Ordinance
- Transfer of Existing Industrial Property
- Lot Assembly
- Sustainability
- Structured Parking
- Unmet Housing Needs

The last category allows a 0.1 FAR increase if *“The application provides more very-low income housing units (0 up to 30% of PMSA) than are otherwise required by Section 4-2410.”* Section 4-210 states that *“All proposals for an Office Center Alternative Method shall provide at least 12% of the proposal’s total dwelling units on-site to address unmet housing needs.”* The income tiers for meeting the Unmet Housing Needs category are as shown in the following table:

Income Tier	% of Total Units	% of Total Units (Rental Only Projects)
0 up to 30%	2	2
Above 30% up to 60%	5	10
Above 60 up to 80%	3 (For Sale Only)	-
Above 80 -100%	2 (For Sale Only)	-

City of Suffolk:

https://library.municode.com/va/suffolk/codes/unified_development_ordinance?nodeId=SUFFOLK_UNIFIED_DEVELOPMENT_ORDINANCE_ART4ZO

Suffolk has adopted a specific Incentive Zoning provision in their zoning ordinance (SEC. 31-409. - Incentive Zoning.). Density bonuses are permitted in association with a conditional use permit. The incentives range from 130% to 140% increases over the base density.⁴ Criteria are given for achieving each incentive under several different categories:

- Public park land dedication
- Open space dedication
- Retirement housing
- Redevelopment
- Traditional Neighborhood Development
- Cluster or Hamlet
- Agricultural Preservation or critical areas

Note also that Suffolk has an affordable dwelling unit ordinance in accordance with the State Code § 15.2-2305 provisions that is separate from its Incentive Zoning ordinance.

Albemarle County:

https://library.municode.com/va/albemarle_county/codes/code_of_ordinances?nodeId=CH18ZO_ARTIIDIIRE_S18RE-1

Albemarle County uses Incentive Zoning within several different sections of its zoning ordinance, and specifically includes affordable housing provisions as one of its density bonus factors. Density increases for bonus factors are capped at a maximum of 50% and bonus factors may be applied at the time of subdivision or site development plan approval. Specific examples are included below.⁵

R-15 District

The County's R-15 district has a 15 du/acre "conventional" density and a 20 du/acre "bonus" density provision. The bonus density can be achieved through providing the following features in the development:

- Environmental standards
- Development standards
- Affordable Housing

An Affordable Housing density bonus factor of 30% is permitted, *"If at least one-half of the additional housing units allowed by this density bonus are developed as affordable housing units,"* or *"If at least 30 percent of the number of units achievable under gross density-standard level are developed as low or moderate cost units."*

In addition, there are a number of other requirements for this option, including requirements that units be affordable according to Federal or State definitions, that they remain affordable for 10 years and they be restricted to *"those households with incomes at or below 80 percent of the area median income for for-sale units and at or below 60 percent of the area median income for rental units."*

Village Residential District:

The county Village Residential district allow a base density of 0.7 units to the acre. With bonus provisions, that density can be increased to 1.05 units to the acre. The Affordable Dwelling Unit bonus provisions and requirements are the same as for the other districts, including the R-15 district, except for the density bonus which is specific to a given zoning district.

⁴ Note that these increases are phrased as "Percent of Total Permitted Dwelling Units." Therefore, they can also be considered as density increases of 30%-40%.

⁵ Note that the County's incentive zoning provisions apply to multiple zoning districts and are contained in a separate section of the ordinance (Section 2.4). R-15 is the highest intensity residential district in the County.

Montgomery County, MD

The Montgomery County, Maryland, affordable housing program is regarded by many as the most successful one of its kind in the country. Although not strictly a pure incentive zoning program, it is included here for comparison purposes. Montgomery County's program, under Maryland State enabling legislation, is actually mandatory rather than voluntary but it does include bonus density in exchange for providing affordable housing. Since 1974, the county's Moderately Priced Dwelling Unit (MPDU) program, which combines mandatory set-asides and density bonuses, has produced more than 16,500 dwelling units. By contrast, states that have mandated affordable housing programs such as New Jersey and California have achieved approximately twice that number, but for the whole state rather than a single county.⁶

The program requires that 12.5 to 15 percent of all housing units in residential developments of 50 units or more be priced affordably. In exchange, developers are allowed to build up to 22 percent more units than the zoning would otherwise permit. The program serves both moderate income homebuyers and renters and low-income renters. In the first category, moderate-income households (i.e., those whose incomes are 65 percent of the median for the county) are able to purchase or rent housing at a below-market rate. The units that are sold are price-controlled for 10 years

Summary Findings

The above brief survey of peer community practices revealed a reasonable amount of diversity of practices in using Incentive Zoning to achieve affordable housing goals. Even though this paper looked at only a limited number of communities, these are generally representative of the best practices in Virginia and a few common themes can be identified:

- Incentive Zoning is typically not always a stand-alone practice but has been used in addition to other affordable housing zoning mechanisms as permitted by State Code. For example, Arlington County and the city of Suffolk make full use of State Code provisions § 15.2-2304 and § 15.2-2305 to create either mandatory or voluntary affordable housing ordinances elsewhere in their codes, separate from their Incentive Zoning provisions.
- Incentive Zoning is more often applied to specific zoning districts rather than as a blanket approach to every zoning district. Suffolk has a separate section of their ordinance devoted to Incentive Zoning, but the density bonuses are customized to each zoning district, and the other localities reviewed also customize the bonuses and incentives by zoning district.
- The primary incentive used to encourage affordable housing is an increase in base density within a zoning district, although Arlington County also provides reduced parking ratios as an incentive.
- The bonus densities in the localities surveyed revealed fairly modest increases, ranging from 5% to 40% increases in density. Research was not done to see how effective these density incentives have been in stimulating more affordable housing. However, Arlington County cites a number of recent successful projects that have provided affordable housing by taking advantage of the bonus density provisions in various districts.⁷ In addition, Stafford County has conducted a survey of developers asking them what kind of density bonuses would be needed to incentivize them for the provision of affordable housing.⁸

Considerations in Implementing Incentive Zoning for Prince William County.

Issues and Considerations

One of the key considerations in any type of density incentive program is the market value of those density incentives. In other words, is there sufficient value in the additional density provisions to offset the additional costs incurred from providing below-market-rate housing units? It should be noted that this consideration can vary considerably according to local market conditions. Each locality as well as different areas within a locality can have very different market appetites for higher density housing. Therefore, it is important to understand local market dynamics when calibrating density incentives to encourage specific development practices.

⁶ Incentive Zoning: Meeting Urban Design and Affordable Housing Objectives, Marya Morris, APA Planning Advisory Service Report Number 494

⁷ <https://www.arlingtonva.us/Government/Programs/Housing/Affordable-Housing/Development>

⁸ <http://plancomm.stafford.va.us/2021/03242021/Item7.pdf>

One of the strongest factors that works against density incentives is the provision of “free” density in a zoning ordinance. Free density means that the ordinance already has more than enough density to meet or exceed market demand as of right so that there would be limited utility in offering additional density as a bonus. For example, if local market dynamics suggest that 20 units to the acre is the practical maximum that developers typically build to, there is not much incentive to build affordable housing in order to get a density bonus up to 30 units to the acre.

While EPR did not do a complete analysis of Prince William County’s zoning ordinance with respect to by right and bonus density, there do appear to be significant provisions for relatively high densities and intensities in some existing County zoning districts. For example, the Technology Overlay District (TeOD) has several high density subdistricts permitted within it, such as the Town Center Mixed Use, which has a maximum building height of 125 feet and a maximum Floor Area Ratio of 1.25 FAR, which are relatively high for a suburban market. In addition, the Redevelopment Overlay District (ROD), already has incentive zoning provisions to encourage redevelopment such as floor area ratios, lot coverage, and height increases by as much as 25 percent.

Conclusions

In conclusion, Incentive Zoning, which is already employed by Prince William County for certain incentive purposes within specific zoning districts, can be an effective tool to encourage voluntary provision of affordable housing. However, deploying this tool even further to promote affordable housing needs to be done with a very strategic approach. An analysis should be made of the market for additional bonus density in different zoning districts and locations throughout the County. Based on that analysis, an increment of bonus density can be applied that will be a true incentive to promote the development of affordable units in exchange for bonus density. Rather than a broad brush to be applied across all zoning districts, Incentive Zoning should be strategically targeted to those districts where bonus density is most useful and where there is the greatest likelihood for providing affordable housing in exchange for bonus density.

It should also be kept in mind that incentive zoning is only one tool in a potential toolkit to stimulate the construction of affordable dwelling units in the county. As a recap of available tools, the County may want to consider any or all of the following mechanisms that have been used by Virginia localities and that are enabled by the State Code to encourage the provision of more affordable housing in the future:

1. Affordable Dwelling Unit Ordinance - requires a percentage of new development to include affordable housing units. This ordinance is specifically enabled for Prince William County under § 15.2-2305 and § 15.2-2305.1 and is addressed in more detail in a separate paper prepared by EPR. PC.
2. Proffer Guidelines – forgiving or reducing cash proffers and development related fees for affordable housing units
3. Incentive Zoning- density bonuses for developments that include a pre-determined number of Affordable Housing Units
4. Direct funding - dedicating a proportion of property taxes to address funding of Affordable Housing
5. Partnerships - Participate in partnerships with business community and other stakeholders to establish a non-profit entity to purchase and manage sale of affordable housing units, potentially with the use of County-Owned surplus land to contribute to the development of affordable housing units

APPENDIX A. Copy of State Code Provisions

§ 15.2-2201. Definitions.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

10. For the administration of incentive zoning as defined in § 15.2-2201.