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MEMORANDUM

To: Council Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Date: February 14, 2022

Subject: Bill No. 21-22 – Subdivision and Development and Zoning – Cluster Development

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law at the request of Councilwoman Fiedler for use by members of the Anne Arundel County Council during consideration of Bill No. 21-22. The summary is intended to explain the purposes and legal effects of the bill.

Background. A “cluster development” is one in which dwellings are concentrated closer together than traditional subdivisions to preserve natural features and open space.

Purpose. The purpose of Bill No. 21-22 is to revise the requirements in Articles 17 and 18 related to cluster development, and allow a cluster development as a conditional use in the RA through R5 districts. It adds conditional use requirements that work to ensure that the intent of cluster development will be met, which is to preserve open space, natural features and environmentally sensitive areas.

Bill provisions.

Subsection **17-1-101(16)** is new and sets forth the definition of “cluster development”. The existing definition in § 18-1-101(31) is repealed in the Ordinance.

Subsection **17-2-101(b)(15)** is new and establishes a grandfathering clause, providing that certain applications associated with a cluster development filed before the effective date of Bill No. 21-22 shall be governed by the law that existed prior to the effective date.

Subsection **17-2-108(a)** is revised for clarity. The Code provisions that are not authorized to be approved for modifications are currently listed in subsection (a). Those exceptions are deleted

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

from subsection (a) and moved to new subsection (b), where they are itemized in paragraphs (1) and (2). Subsection (b)(3) creates a new exception, providing that a modification to the open space requirements for cluster developments may not be approved.

Sections 17-3-502(b) and 17-3-505 are revised to remove existing provisions pertaining to cluster developments, because the Ordinance creates new provisions for cluster developments. Section 17-8-205(4) is revised to clarify that cluster development in the intensely developed area (“IDA”) of the critical area shall be in accordance with Articles 17 and 18.

A new row is added in the Residential District Use chart in § 18-4-106 for a “cluster development”, establishing it as a conditional use in the RA, RLD, R1, R2, and R5 zones. In the row for “Dwellings, duplex and semi-detached”, the use is removed for both the R2 and R5 zones. Bill No. 21-22 still allows both dwelling types in a cluster development. The only condition in the existing Code is that the dwellings be in a cluster development.¹ With this Bill, instead of the dwelling-type being listed separately as a special exception or conditional use, they will be allowed as part of a cluster development under the Bill.

Identical changes are made to each of the bulk regulation §§ 18-4-301, 18-4-401, 18-4-501, 18-4-601, and 18-4-701, to indicate that the regulations apply “except for cluster development”, and all provisions in the charts related to cluster developments are deleted. The new conditions for cluster developments, as discussed below, contain the applicable bulk regulations.

Section 18-10-115 is new and establishes the conditional requirements for a cluster development. **Subsection (1)** provides that single family dwellings are allowed in cluster developments in the RA, RLD, R1, R2, and R5 zones; and duplex and semi-detached dwellings are allowed in cluster developments in R2 and R5. **Subsection (2)** requires the protection of environmentally sensitive areas and permanent conservation of open space and natural features.

Subsection (3) sets forth the bulk regulations for each relevant zone, and **Subsection (4)** provides that residential density may not exceed the density of the district in which the development is located.

Subsection (5) requires that open space shall meet the greater of the open space requirement in § 17-6-111 or an area equal to the reduction in lot sizes below the minimum lot size for non-cluster developments. **Subsection (6)** prohibits streets, parking areas, and similar features in open space.

Subsection (7) sets forth conditions for recreation areas, stormwater management areas and similar features. **Subsection (8)** provides that certain easements may not be placed on individual lots.

Subsection (9) requires a platted open space buffer of at least 50 feet in depth along all boundary lines adjacent to non-cluster single-family residential development, with an exception.

¹ The Ordinance also repeals §§ 18-10-122 and 18-11-123, which set forth the conditional and special exception requirements for “dwellings, duplex and semi-detached”.

Subsection (10) requires the developer to provide documentation showing that the screening and design treatments protect the pattern of residential development adjacent to the cluster development.

Subsection (11) requires the developer to provide and record a declaration governing maintenance and control of certain areas. The declaration must require the establishment of a homeowners' or similar association before any lot is sold and the association shall have the power and authority to maintain exercise and control over the common areas and compel contributions from residents of the development.

Section 4. provides that references to “the effective date of Bill 21-22” be replaced with the actual date on which the Ordinance takes effect.

Section 5. provides that the Bill is effective 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.