



County of Fairfax, Virginia

MEMORANDUM

DATE: JUN 27 2007

TO: Gerald E. Connolly, Chairman
Board of Supervisors

FROM: Anthony H. Griffin *AHG*
County Executive

SUBJECT: Green Building Incentives for the Private Sector

This memo is in response to your April 12, 2007 inquiry requesting an investigation of the potential for Fairfax County to use green building incentives that are used by Arlington County to encourage private sector green building construction projects through its site plan process. Specifically, you referenced Arlington County's use of density bonuses and a "green building fund." The Department of Planning and Zoning (DPZ), the Department of Public Works and Environmental Services (DPWES), and the Fairfax County Environmental Coordinator have prepared this response.

This memorandum briefly summarizes Arlington County's approach to these issues and identifies considerations associated with various approaches to density/intensity incentives and with the green building fund idea. Staff feels that there is the potential to pursue a number of approaches related to these ideas but that the nature of the issues associated with these ideas and the interest that has been expressed in implementation issues by the Planning Commission's Environment Committee suggests that it may be appropriate to refer these ideas to the Planning Commission for review and recommendation. We are interested in meeting with you to get your perspective and guidance regarding how we should proceed and are in the process of scheduling such a meeting.

Arlington County's Green Building Incentive Program

Arlington County adopted a pilot green building incentive program in October, 1999 and expanded this program in 2003. The green building incentive program allows for the consideration of bonus development intensities and additional building heights for development projects that include commitments to the attainment of specific levels of certification under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®) program. The incentive program applies only to development projects that go through Arlington County's special exception/site plan process (see below) and to some projects that require "use permits" (e.g., schools). Bonus intensities generally up to .15 to .35

Floor Area Ratio (FAR) and additional building heights of up to three stories can be considered, depending on the level of LEED certification that the applicant commits to achieve (a .15 FAR bonus for basic certification, .25 for certification at the silver level, and .35 for certification at the gold or platinum level). Arlington County's Web site suggests that higher bonuses are possible for gold or platinum level development, but there have not yet been any commitments to these levels of LEED certification and Arlington County staff does not consider the awarding of density bonuses above .35 FAR to be likely. Arlington County's Web site also suggests that intensity bonuses of up to .50 FAR are possible in Rosslyn within the bounds of FAR and height limitations in this area (10.0 and 300 feet, respectively).

Arlington County's Zoning Ordinance provides the Arlington County Board with the broad discretion within the site plan process to "modify the uses permitted and use regulations." The FAR bonus thresholds are not specified in the Zoning Ordinance but are instead applied through this broad discretion. LEED certification does not guarantee additional intensities or building heights; rather, the Arlington County Board can consider approving such bonuses on a case-by-case basis during its site plan review process. Other factors related to site-specific conditions and community reviews are also considered during this process. Since the green building program's inception in 1999, seven development projects have been awarded bonus intensity as a result of green building design. A number of other projects with requests for bonus intensity are currently undergoing review. All projects for which bonus densities are awarded must attain the requisite level of certification by the U.S. Green Building Council.

In order to support attainment of LEED certification commitments made in exchange for bonus densities, Arlington County requires developers entering the green building density bonus program to post an additional bond based on the value of the additional density. The amount of the additional bond is based on a rental value per square foot as determined by the County's Department of Real Estate Assessment. Arlington County staff has indicated to us that this rate varies from \$24 per square foot to \$40 per square foot within Metrorail corridors. While Arlington County staff reviews LEED implementation reports that are submitted at several stages of the development process subsequent to the site plan process, and while staff attempts to ensure that LEED commitments are honored and seeks replacement LEED credits for any green building components that the developer is unable to provide, the certification status of a building is not determined by the U.S. Green Building Council until after construction is complete. Therefore, there is a potential for a building for which a specific LEED commitment has been made to fail to satisfy this commitment. In such cases, all or part of the additional bond is forfeited. In this manner, Arlington County seeks to ensure that developers will not benefit financially from commitments to LEED that are not honored. Arlington County has not yet experienced a default on a green building-related bond.

Arlington County also imposes conditions on all site plan projects (not just those that are pursuing bonus densities) that require a \$0.03 per square foot contribution to its Green Building Fund, which is used to provide education, outreach and training on green building issues. The \$0.03 per square foot contribution is separate from any additional green building bond that is posted and is linked to the total square footage of the building and not just the "bonus" square footage that may be awarded through the site plan process. Arlington County

staff has indicated that the \$0.03 per square foot figure was established as a rough equivalent of registration and certification costs associated with the U.S. Green Building Council's LEED certification process. The condition includes a provision for a refund of this contribution for any project attaining LEED certification within one year of issuance of an occupancy permit. Arlington County does not use revenue generated by the Green Building Fund to support staff positions because it does not consider this fund to be a dependable enough source of revenue. Rather, Arlington County uses this fund to support training, outreach, publications, and seminars and workshops relating to green building practices. Arlington County staff estimates that there is currently a balance of roughly \$40,000 in its Green Building Fund. Because the Green Building Fund contribution had originally been linked to the granting of certificates of occupancy, there are many projects under way for which contributions have not yet been made. Arlington County staff anticipates that there will be a significant influx of money into the fund as these projects are granted certificates of occupancy.

Arlington County also requires all site plan projects, including those for which density bonuses are not being pursued, to have a LEED-accredited professional on the development team as well as the submission of LEED checklists for all site plan projects. The site plan conditions typically require reports from the LEED-accredited professional at various stages of the development process. Other site plan conditions that are typically imposed include: incorporation of specified numbers of LEED credits (where LEED certification is not being pursued); the provision of construction waste management plans to reduce landfill disposal of debris; and the provision of ENERGY STAR[®] appliances and equipment for multifamily residential projects.

Arlington County has one LEED-accredited environmental planner who dedicates 60% of her 30 hour per week position to the green building program. She reviews all site plan applications for LEED-related issues and negotiates with site plan development teams regarding these issues. She also reviews permit submittals and associated LEED implementation reports that are submitted subsequent to site plan approval. Arlington County also has a "Green Home Choice" program that supports voluntary efforts to incorporate green building practices into single family home construction; one half-time position is dedicated to this effort. Additional incremental support is provided to the residential program by a dedicated building permit plan reviewer and a designated green building site inspector, both of whom perform these specialized plan review and inspection activities as part of their day-to-day responsibilities.

It is important to recognize that Arlington County's site plan process is quite different from Fairfax County's site plan process. Arlington County's site plan process is a special exception process that is similar to Fairfax County's special exception process. It is not applicable to by-right development proposals. According to Arlington County's Web site, the site plan process is intended to allow for the consideration of more flexibility in development form, use, and density than what is permitted by right. The site plan option is only available in certain zoning districts and is typically applied for hotel, residential, office and mixed-use developments in high density zoning districts, typically within Metro Station corridors. All site plan projects are subject to public hearings before Arlington County's Planning Commission and Board of Supervisors. Historically, Arlington County has considered roughly a dozen new site plan

projects each year. However, the volume of site plan proposals has increased recently—Arlington County staff has indicated that about a dozen site plan proposals are being evaluated at this time and will be considered by the Board of Supervisors within the next six months.

Potential Application of Development Density/Intensity Bonuses in Fairfax County

Staff has drafted an amendment to the Policy Plan that would, among other things, provide policy support for green building practices and for incentives for green building certification using approaches such as LEED and ENERGY STAR. The draft amendment and staff report are being reviewed informally by the Planning Commission's Environment Committee in advance of a more formal amendment process. The Plan Amendment as drafted would not establish green building incentives but would set the stage for case-by-case negotiations for proffered commitments to green building design as well as a consideration of whether density/intensity incentives for green building practices should be incorporated, perhaps as conditions that would be linked to Plan options for increased densities, intensities and/or building heights, within future Area Plan amendments. Staff anticipates that, over the next year, Area Plan amendments will be considered for Tysons Corner and for several revitalization areas (Annandale, Springfield, and Bailey's Crossroads) and that there will be opportunities to tailor green building incentives within these areas through site and area-specific Plan density option text. The development of parcel and area-specific Plan text in this manner would allow for the green building incentive idea to be considered within the broader context of planned development intensities and associated implications on transportation, public facility, utility, housing, park/recreation and environmental systems.

The approach outlined above has the benefit of allowing green building incentives to be considered within the specific land use context of each area where this idea would be applied. The clear drawback of this approach is that it would not be comprehensive in scope— incentives for green building design would be developed on a piecemeal basis through the consideration of site or area-specific Plan Amendments and would not be developed for areas that would not otherwise be subject to Plan Amendment proposals. If it is the Board's desire to pursue a more comprehensive approach, the following ideas could be considered:

(1) General linkage to Plan density/intensity options

Through this approach, the Policy Plan would be amended to establish a broad linkage between commitments to green building design and/or energy conservation and eligibility for high density/intensity Comprehensive Plan options. This linkage could be established for the County's transit station areas and mixed use centers (thereby paralleling Arlington County's general application of its green building incentive program to its higher density areas) or could be established Countywide. Through this approach, there would not be any "bonus" densities or intensities provided for green building design/energy conservation commitments. Rather, green building design/energy conservation commitments would become an expectation for attainment of the highest (or even, perhaps, intermediate) Comprehensive Plan option in areas

where this policy would be applied. Considerations associated with this approach include the following:

- The appropriate threshold(s) of green building design commitments (i.e., what rating system(s) would be appropriate and what level(s) of performance should be linked to the density/intensity options).
- Whether application of this concept should be limited to the County's transit station areas and mixed use centers or whether it should apply more broadly.
- Residential vs. nonresidential application.
- Enforcement mechanisms (e.g., whether or not the establishment of a green building bond/surety would be appropriate, and, if so, mechanisms for establishing appropriate bond amounts and allocation of forfeited funds).
- The extent to which verification of implementation of green building practices would be needed, and associated verification mechanisms and staff resource implications.
- The extent to which the green building design expectation may dissuade developers from pursuing the high density/intensity Comprehensive Plan options and the extent to which this may work against other Comprehensive Plan objectives.

(2) The Arlington County approach applying Policy Plan guidance

Through this approach, the County would establish, through Policy Plan guidance, a maximum possible density/intensity bonus (beyond the planned densities/intensities for a property that are specified within the Area Plan text or on the Plan map) that could be considered on a case-by-case basis through the zoning process. The Policy Plan guidance would need to specify the maximum bonuses that could be considered as well as the general circumstances that could allow for consideration of awarding "bonus" density/intensity. Considerations associated with this approach include the following:

- The appropriate threshold(s) of green building design commitments (i.e., what rating system(s) would be appropriate).
- The ability of bonus densities to be accommodated within existing zoning districts.
- The magnitude of appropriate density/intensity bonuses, recognizing that the incentive would need to be substantial enough to encourage its application but that, when applied to large sites, even what might seem to be small increases in FAR could have substantial implications.
- Potential implications of density/intensity bonuses on land use compatibility, traffic congestion, utilities, public facilities, housing, park/recreation and environmental systems.
- Implications of density bonuses for green buildings in addition to density bonuses for other benefits (e.g., affordable housing)—what could be the cumulative implications of these bonuses?
- Expectations that may develop for the case-by-case awarding of "bonus" density during the zoning process.

- Residential vs. nonresidential application.
- Enforcement mechanisms (e.g., whether or not the establishment of a green building bond/surety would be appropriate, and, if so, mechanisms for establishing appropriate bond amounts and allocation of forfeited funds).
- The extent to which verification of implementation of green building practices would be needed, and associated verification mechanisms and staff resource implications.

(3) The Arlington County approach applying a new Special Exception procedure.

Through this approach, the County would establish new Special Exception (SE) options within select zoning districts that would allow the Board of Supervisors to grant, on a case-by-case basis, additional density/intensity through Special Exception approval. Considerations associated with this approach include the following:

- The specific zoning districts within which an SE process for green building density/intensity would be pursued.
- The appropriate threshold(s) of green building design commitments (i.e., what rating system(s) would be appropriate).
- The magnitude of appropriate density/intensity bonuses, recognizing that the incentive would need to be substantial enough to encourage its application but that, when applied to large sites, even what might seem to be small increases in FAR could have substantial implications.
- Implications of density bonuses for green buildings in addition to density bonuses for other benefits (e.g., affordable housing)—what could be the cumulative implications of these bonuses?
- Potential implications of density/intensity bonuses on land use compatibility, traffic congestion, utilities, public facilities, housing, park/recreation and environmental systems.
- Expectations that may develop for the case-by-case awarding of “bonus” density during the zoning process.
- Potential impacts to staff, Planning Commission, and Board of Supervisors with respect to case loads.
- Enforcement mechanisms (e.g., whether or not the establishment of a green building bond/surety would be appropriate, and, if so, mechanisms for establishing appropriate bond amounts and allocation of forfeited funds).
- The extent to which verification of implementation of green building practices would be needed, and associated verification mechanisms and staff resource implications.

Each of the above approaches would establish the zoning process as the mechanism through which the green building incentive concept would be implemented. Consistent with Arlington County’s approach, the incentive would not be applicable to by-right development.

Potential Application of a Green Building Fund in Fairfax County

Arlington County's green building fund requirement provides both an incentive to pursuit of certification through the LEED program and revenue to support green building efforts (through education, outreach and training). By establishing a contribution level that is generally consistent with administrative registration and certification costs associated with the LEED program, and by refunding this contribution to any developer who attains LEED certification for his or her project, Arlington County has removed a disincentive to the pursuit of LEED certification and has ensured that project sponsors that choose not to pursue LEED certification will still be contributing to its green building efforts. There are, however, a number of issues that would need to be considered before establishing a similar fund in Fairfax County, particularly in relation to the lack of a dedicated green building program in the County.

When Arlington County established its Green Building Fund, a green building program with dedicated resources was already in place. While Fairfax County has actively pursued green building design for most County projects, the County does not have a green building office or dedicated staff. Therefore, it is not clear who would administer revenues from a green building fund and how such revenues would be spent. An alternate approach may be to explore the idea of establishing a policy through which monetary contributions would be sought, through proffers and development conditions associated with zoning applications, to support Environmental Improvement Program projects much in the manner that Arlington County applies its Green Building Fund contributions—contributions could be refunded if green building certification is attained. Staff would anticipate that such a policy could be established through Policy Plan text. There is an established fund for EIP projects; to date, allocations to this fund have been limited to funds provided by the Board of Supervisors through budget decisions. There may or may not be the potential to augment this funding through private sector contributions linked to a green building incentive program. There are a number of questions/considerations associated with this idea, including the following:

- Does the County possess the legal authority to pursue this idea?
- Would funds need to be expended for efforts relating to green buildings, or could they be applied more broadly to EIP projects? If the former, staff resources needed to administer/expend the funds would be a consideration.
- If there are no legal limitations regarding how the new EIP funds could be spent, should the County establish priorities/limitations for expenditure of these funds? How would decisions on fund expenditures be made?
- What would be an appropriate contribution request? Is Arlington County's \$0.03 per square foot an appropriate figure?
- What would be an appropriate length of time to establish as the refund eligibility period?
- What would be the appropriate threshold(s) of green building design and/or energy conservation performance that would be linked to a refund of the contribution?
- Should the green building/EIP fund idea be applied throughout the County or just in transit station areas and mixed use centers (i.e., Arlington County's approach)?
- Should there be any minimum square footage thresholds below which contributions would not be sought?

- Should application be limited to nonresidential and certain multifamily residential applications?

Recommendations

As noted above, staff is currently proceeding with a Policy Plan amendment that would, among other things, provide broad policy support for green building practices and that would support the idea of establishing incentives for certification under LEED, ENERGY STAR, or other similar programs. The Planning Commission's Environment Committee is reviewing a draft of this Plan Amendment, and it is anticipated that the draft will be revised per this review. Staff recommends that this effort continue and not be delayed by broader questions associated with the details of a green building incentive program. Staff views adoption of a Policy Plan amendment as a first step to consideration of broader efforts and feels that the amendment has been crafted broadly enough to support any of a number of approaches to implementation.

The establishment of a more aggressive density/intensity based green building incentive program and the establishment of a green building (and/or EIP) fund contribution policy both raise a number of legal and policy questions. In staff's view, these ideas would benefit from a review by the Planning Commission's Environment Committee, and we would note that the Committee has expressed an interest in mechanisms through which the Policy Plan guidance regarding green buildings would be implemented. We therefore recommend that the options and considerations identified above be referred to the Planning Commission for review and recommendation. The Planning Commission may wish to invite a broader group of stakeholders into its review process.

Finally, unless and until guidance on broader green building incentive efforts is developed, staff recommends that, as Area Plan amendments are considered in transit station areas and mixed use centers, consideration should be given to incorporating incentives to green building design into parcel and area-specific Plan options.

Again, we are interested in discussing these ideas with you further and are in the process of scheduling a meeting.

Thank you for your attention.

AHG:NHK

cc: ✓ Robert A. Stalzer, Deputy County Executive
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