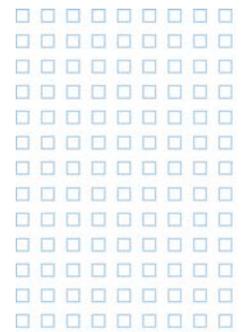




FOUNDATIONS OF OPPORTUNITY



1626 East Jefferson Street
Rockville, MD 20852-4041
PH: 301.998.8100

November 22nd, 2014

Mrs. Diane Schwartz-Jones
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

Re: Proposed Adoption of 2012 IGCC

Dear Mrs. Schwartz-Jones,

While Federal Realty Investment Trust (FRT) is a national company with properties across the country, we have always had a special relationship with Montgomery County, MD. FRT is headquartered in Rockville, and is one of the largest owners and operators of commercial property in the county. In addition, FRT is actively developing new properties in the county, most notably our Pike & Rose project. That project, which recently announced the launch of its second phase, represents an investment of approximately \$500 million, and will generate significant new tax revenue for the county.

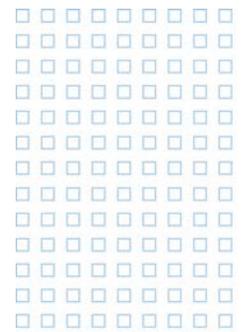
For all of those reasons, FRT has a strong interest in policies and regulations that impact commercial real estate in the county. FRT recognizes the vital role regulation plays in ensuring a safe, sustainable and prosperous environment in the county, and believes the most effective regulations are those that take into account the economic and practical constraints faced by the regulatory community. To that end, we respectfully offer the following comments with regard to the Department of Permitting Services' (DPS) proposed adoption of the 2012 International Green Construction Code for use in regulating construction practices in Montgomery County. It is our hope that these comments will assist DPS in its rulemaking process by providing insight into the potential impact of the IGCC on commercial property development and operations in the county. We look forward to working with you and your staff to implement this proposal, and would be happy to provide more information on any of the issues raised herein.

Sincerely,

Evan Goldman

Vice President – Development
Federal Realty Investment Trust

- **301-General:** We agree with the comments previously provided by the Department of General Services (DGS) and the American Institute of Architects (AIA) that ASHRAE 189.1 should be permitted as an alternative compliance pathway. We believe such an approach is in keeping with industry standards, and will provide needed flexibility for builders operating in the county. If this approach is not possible, we believe additional detail is required to clarify the code-modification process. Presently, DPS' proposal allows project teams to pursue ASHRAE 189.1 compliance through a code-modification process when particular sections of IGCC 2012 and ASHRAE 189.1 are deemed equivalent. This could be a viable approach, but requires more detail regarding how such a process would be implemented and in what situations it would be permitted.

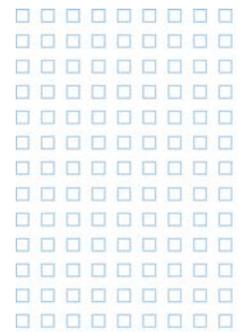


To that end, we request DPS develop a Standard Operating Procedure detailing the process for seeking a code modification. Such a procedure should specify how equivalency will be determined and which sections of each code are eligible for equivalency.

- **406-Building Site Waste Management:** The 75% diversion rate for land-clearing debris and excavated soil called for in the proposed code would be extremely difficult to achieve. For Phase I of Pike & Rose, the excavated soil was too wet and had too much clay to be used for fill. Other land-clearing debris such as trees, shrubs, mulch, etc. cannot be used as fill. As a result, total diversion rate for the project was less than 5%. In our experience, there is no local market for the reuse of these materials, leaving project teams no economically viable means of achieving the 75% diversion rate. Rather than mandating an unachievable target, we believe a more effective solution would be for the county to provide an incentive structure that encourages building site waste diversion. Such a structure would help create a local market for building site waste reuse, which will be necessary for the 75% diversion rate to be achieved countywide.
- **408-Heat Island Mitigation:** For many development projects, and particularly large, mixed-use projects like Pike & Rose, a significant percentage of the site’s “hardscape” areas are comprised of roads and sidewalks. The materials used for these areas are highly regulated. In most cases, such regulations prohibit the use of permeable, pervious and other paving materials described in Section 408 as means of complying with the 50% heat island mitigation threshold. From our conversations with DPS staff, we understand that in situations where conflicting regulation makes compliance infeasible on these portions of a site’s hardscape area, those areas will be excluded from the overall calculation of the 50% threshold. We agree with this approach and believe it will be practically necessary to exclude these areas of a site in order to meet the threshold in Section 408. However, if this is DPS’ intent, we request that it be formalized in the code, or a Standard Operating Procedure or similar document. This would provide predictability for applicants seeking relief under this section. Without such a document, the issue is left wholly to interpretation, which may vary over time and between individuals.
- **507-Building Envelope Moisture Control:** While these type of inspections are not required by current code, FRT routinely conducts similar inspections as a matter of course to protect its own interests. FRT has had no envelope moisture control problems in its buildings. By mandating these inspections, and the increased frequency, paperwork and reporting requirements that formal commissioning or county inspection requires, Section 507 would increase building costs with little or no benefit over current practice. FRT estimates the cost of compliance with this section would be approximately \$60,000 per building. For a project like Pike & Rose, which will contain up to 14 separate buildings, this could result in total added costs of \$840,000. For that reason, we request this section be removed in its entirety.

If DPS does proceed with this provision, we believe the ability to conduct inspections called for under this section must be extended to licensed, third-party professionals, either in lieu of or in addition to DPS inspectors. Furthermore, the specific percentage requirements should be removed and left to the judgment of the developer, design and construction teams.

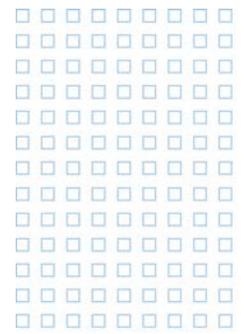
- **602 Modeled Performance Pathway Requirements:** While no provision of the existing or proposed code restricts the ability of tenants to open or close windows during the course of business operations, DPS has recently chosen to interpret modeling requirements in a way that could prohibit or increase the design cost of “operable” windows in



commercial spaces with zero benefit for energy. Increasing the connection to the outdoors is a well-accepted architectural and green building design concept. DPS's adverse interpretation has significant, negative implications for the design and use of retail storefronts, particularly restaurants, and has already resulted in increased costs. In order to remedy this situation, the proposed code should specify that modeling performed under this and related sections of the IGCC should be performed with windows and doors closed.

- **603-Energy Metering, Monitoring and Reporting:** While this section appears to be written for owner occupied buildings or office buildings with a single meter, most of Federal's retail tenants have their own meters and deal directly with the utility. As such, this section would result in a significant new reporting requirement. Further, it may not be possible for FRT to obtain this information. In our experience some tenants are resistant to sharing this type of information with landlord for competitive reasons. For that reason, we recommend removal of this section. If this section cannot be removed, we believe a companion law requiring tenants to comply with the reporting requirements of this section will be necessary, and recommend DPS work with the county's legislative authorities to enact such a law. Furthermore, the reporting should be to the County so it can aggregate and report the data and not to the landlord.
 - *603.2-Energy distribution design requirements and load type isolation in buildings:* This section requires that load types (HVAC, lighting, plugs, process and miscellaneous) be segregated on separate circuits, panels or pipes; and furthermore that space be provided for metering each load type. This would require the smallest tenant to install a separate panel for each of the 5 categories, whereas now they only need one. It would also require that gas water heating and gas for HVAC be piped separately and have space for a meter. We estimate the cost of the 4 additional panels, piping and space would be about \$7,000 for a small tenant and up to \$20,000 for larger tenants. This would provide only the future capability to meter the load type - installing the meters would add an estimated additional \$5,000 per tenant.
 - *603.3-Energy-type metering:* In most FRT properties, each user in the building has separate utility accounts and there is no master meter for a building. We believe the type of metering required under Section 603.3 would not be permitted under any Utility's engineering design standards, which prevent placing any unapproved equipment including a meter "upstream" from the utility's meter in a building.
- **605-Building Envelope Systems:** The shading standards detailed in Section 605.1.1.1 impose significant restrictions on the design of retail storefronts, resulting in higher costs and reducing the county's ability to attract high-quality retail tenants. Compliance with these standards, either through vertical shading devices or dynamic glazing, will reduce retail storefront visibility. This impact will be disproportionately born by storefronts that rely on foot traffic as opposed to auto-oriented retailers, who typically use bright, roadway-scale signs to attract customers.

Though some retailers do choose to incorporate awnings or other shading devices as an aesthetic measure, these standards will effectively mandate their use in every space. As retail focused company with more than 50 years of experience, we know that this measure will have a significant, negative impact on our ability to attract top flight retail tenants, who have a choice of which jurisdiction to locate in. Given the negative impact of this standard, we recommend incorporating an exemption of "street-level" retail facades from compliance. Failing that, DPS should exempt a portion of the façade or incorporate the relevant sections of ASHRAE 189.1, which allows for automated awnings that extend and retract as necessary.



- **608-Building Electrical Power and Lighting Systems:** Federal Realty encourages tenants to keep lights on after business hours to increase safety and attractiveness of retail environment. Many of our mixed use projects have near-continuous operations, and are open to the public 24-hours a day. Lighting requirements in this section would result in an environment that is less safe and less successful. Section 608.4.2 is particularly problematic. Federal Realty, with the assistance and encouragement of Montgomery County, is spending approximately \$500m at Pike & Rose to create a vibrant, 24-hour environment with restaurants, parks, a movie theater and concert venue, and more. A major component of creating this environment is a dynamic, cohesive lighting environment that frames the street. This requirement would significantly diminish that environment by forcing most site lighting to turn off at midnight. At Bethesda Row, the county's most successful retail environment and a major regional destination, this section would require turning off the overhead lights that are such an iconic component of Bethesda Lane. Furthermore, with the technological development of LED and other super-efficient lighting, lighting power is becoming a smaller energy user in the total building energy budget. We request that this section be deleted in its entirety.