

ATTACHMENT 4

October 1, 2008

MEMORANDUM

TO: Sue Edwards, Team Leader, I-270 Corridor
Community-Based Planning Division

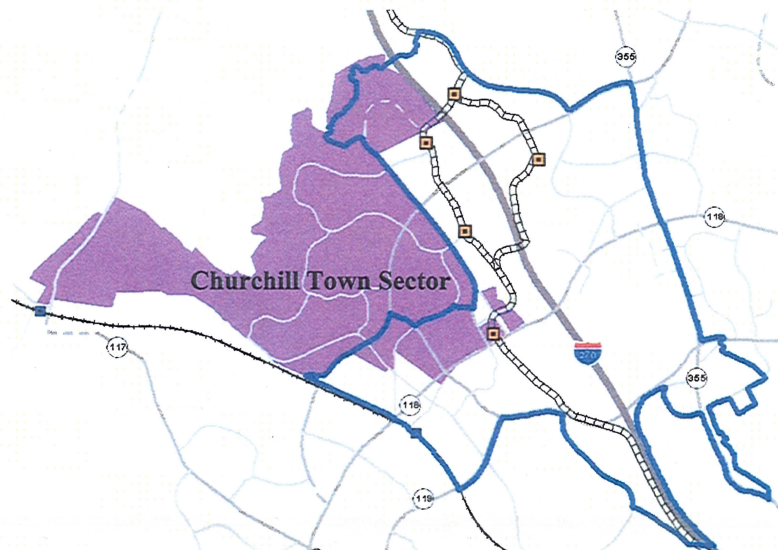
FROM: Leslie Saville, Planner
Community-Based Planning Division (301-495-2194)

SUBJECT: Germantown Master Plan
Background Information on the Churchill Town Sector Area

The Churchill town sector area overlaps with a portion of the Germantown Master Plan Amendment geography. The unique provisions of the town sector zone inform several staff recommendations. This discussion is intended to place those recommendations within the context of the town sector zone and the greater Churchill town sector area.

This memo includes:

- Background on the town sector zone; opportunities and constraints
- Status of the Churchill and Montgomery Village town sector areas
- Previous and current recommendations for the Churchill area
- Potential for zoning text amendments



THE TOWN SECTOR ZONE

The town sector zone was created on May 18, 1965 (C-1522), to facilitate the creation of the New Towns described in the General Plan. As stated in the Zoning Ordinance, "(s)uch towns shall contain... all the residential, commercial, community and industrial facilities needed to make possible a town that is reasonably self-sufficient for all purposes, except major employment and central business district shopping" (Sec. 59-C-7.21. See Attachment A for the full text of the town sector zone). The following are considered "mutually interdependent requirements":

- a. **Self-sufficiency** (to include all desirable and necessary commercial, employment, cultural and recreational facilities)
- b. **Diversity** (to provide a variety of residential structure types, layouts, and rental and purchase prices)
- c. **Density** (to be urban rather than rural in order to facilitate travel and efficient use of public utilities, but with large amounts of open land for recreational and scenic purposes)

- d. **Transportation facilities** (to be sufficient to serve the anticipated total population)
- e. **Public utilities** (to have existing or planned sewer and water)

Application of the zone is only appropriate for land in identified corridor cities.

Many aspects of the town sector zone are unique. All uses authorized in any zone are permitted. There are no FAR limits; calculations are based upon area and population. There are no minimum lot sizes, setbacks or height limits; standards are established at site plan approval. The zone offers great flexibility.

Constraints of the zone include limits on the total area for certain uses and on population: commercial uses are permitted to occupy up to ten percent of the area; industrial and major employment facilities are permitted up to six percent; and not less than ten percent open space is required. A minimum of 1,500 acres is required.

Example, Corridor City A:

<u>Total acres:</u>	<u>1,500</u>
Commercial acres:	150 max.
Industrial/major employment:	90 max.
<u>Open space:</u>	<u>150 min.</u>
Remainder	1,110 (for residential uses, schools, roads, institutions, etc)

Additional constraints include those on population; the overall population is limited to 15 persons per acre based upon the total area of the town sector zone, and is calculated by dwelling types; actual (census) population is not considered. And last, no application for rezoning is to be granted until 50 years after the grant of the town sector zone.

The population calculations and limits are unlike anything found in other zones, and have been under discussion for several years. The factors used for calculating the population for each dwelling type appear below, followed by an example calculation.

Population factors:

One-family detached dwellings	3.7 persons
Townhouses	3.0 persons
Multiple-family dwellings less than 5 stories	3.0 persons
Multiple-family dwellings 5 or more stories	2.0 persons

Example, Corridor City A:

Total acres:	1,500
<u>Total population:</u>	<u>1,500 X 15 = 22,500</u>
One-family detached units:	1,000
<i>One-family detached pop:</i>	<i>1,000 X 3.7 = 3,700</i>
Townhouse units:	5,000
<i>Townhouse pop:</i>	<i>3,000 X 3.0 = 9,000</i>
Multi-family <5 stories, units:	2,000
<i>Multi-family <5 stories, pop:</i>	<i>2,000 X 3.0 = 6,000</i>
Multi-family 5+ stories, units:	1,900
<u><i>Multi-family 5+ stories, pop:</i></u>	<u><i>1,900 X 2.0 = 3,800</i></u>
Total pop:	3,700 + 9,000 + 6,000 + 3,800 = 22,500

The zone includes a provision allowing up to 22 percent moderately priced dwelling units (MPDUs) in excess of the 15 persons per acre maximum; as the provision is written, it is calculated differently than the 22 percent bonus density that is provided in other zones.

The population of the town sector zone must be planned so as not to exceed 15 persons per acre based upon the total area within the town sector zone; except, that such planned population may be increased by an amount equal to the population to be housed in moderately priced dwelling units included in the development plan in accordance with chapter 25A of this Code, as amended, provided that the total increase in population does not exceed 22 percent of the population that would otherwise be permitted (Sec. 59-C-7.25).

This paragraph causes confusion over both the allowed population and the calculation of MPDUs in this zone. Staff interprets the town sector language to mean that all MPDUs up to 22 percent are counted above the allowable 15 persons per acre maximum; this differs from Chapter 25A calculations where the minimum required 12.5 percent MPDUs are included in the total (base) density (an excerpt of Chapter 25A is found in Attachment B). To compare, the table below shows 1,000 base density units and 1,000 market units, both with 12.5 percent MPDUs.

	Market units (87.5% of total units)	MPDUs (12.5% of total units)	Total units (100%)
1,000 base density units	875	125	1,000
1,000 market units	1,000	143	1,143

Adding 12.5 percent (125 units) to the 1,000 market rate units for a total of 1,125 units would appear to be the appropriate way to calculate MPDUs under the town sector language. But Chapter 25A is explicit; 12.5 percent of the total units must be MPDUs. With 125 MPDUs out of 1,125 total units, we have provided only 11.1 percent MPDUs.

In most zones, a market rate bonus density is provided when more than the minimum 12.5 percent MPDUs are provided; the town sector zone does not include this provision. The example below covers the population calculations, the difference in the MPDU base calculations, and the difference in the 22 percent allowed under the town sector zone and the 22 percent bonus density under Chapter 25A.

Example, Corridor City A:

As above, Corridor City A contains 1,500 acres. In this example, all dwelling units are townhouses to simplify population calculations. We will use the town sector zone population maximum to establish the total units, then add the required 12.5 percent MPDUs to establish the total (base) units, which the examples will share:

1,500 acres X 15 persons per acre (PPA) =	22,500 maximum population
Townhouses =	3.0 persons per unit (PPU)
22,500/3.0 =	7,500 market rate townhouses
<u>At 12.5 percent:</u>	8,572 total units
(See MPDU sheet, Attachment C)	7,500 market rate units
	1,072 MPDUs

Again, the above calculation of market and total units will be used for both the town sector and non-town sector calculations below. However, the town sector bonus calculations are based on the 7,500 market rate units, with MPDUs being an additional 22 percent, whereas the non-town sector bonus calculations are based on the 8,572 total population; two pie charts show the breakdown of all units in the calculations.

Town sector 22 percent bonus calculations:

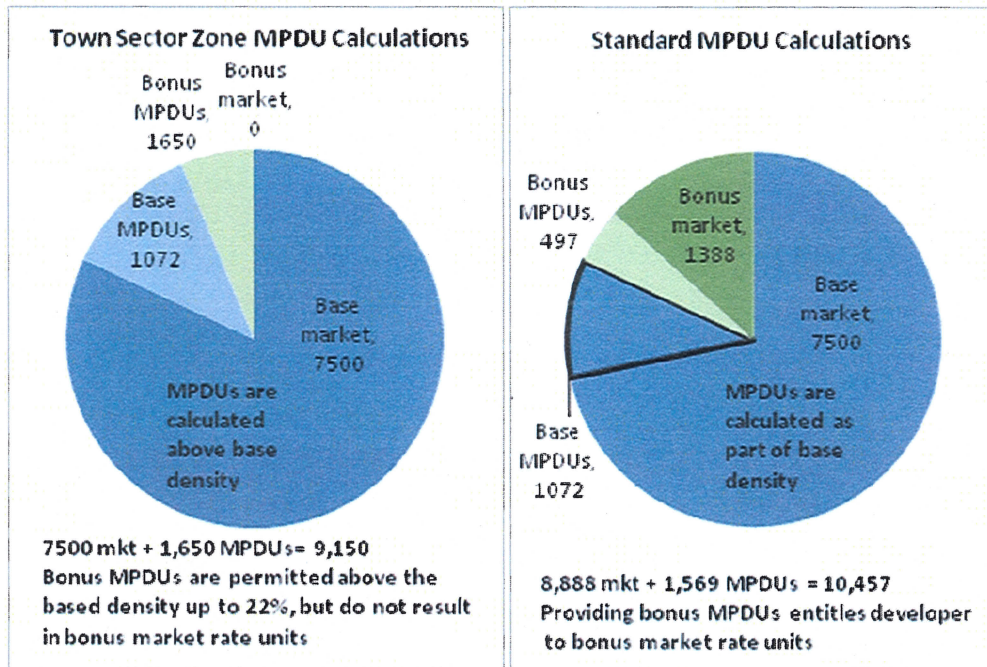
7,500 X 22% =
7,500 + 1,650 =

1,650 maximum MPDUs (above 15 PPA)
9,150 total units

Non-town sector 22 percent bonus density calculations:

(See MPDU sheet, Attachment C)

10,457 total units
8,888 market rate units
1,569 MPDUs



The impacts of the MPDU and bonus density provisions on the number of persons per acre and the units per acre are shown below.

Base population with 12.5 percent MPDUs:

8,572 units X 3.0 PPU =
25,716 pop/1,500 acres =
Density:
8,572 units/1,500 acres =

25,716 total population
17.144 PPA

5.8 units per acre

Town sector population with 22 percent MPDUs:

9,150 units X 3.0 PPU =
27,450 pop/1,500 acres =
Density:
9,150 units/1,500 acres =

27,450 total population
18.3 PPA

6.1 units per acre

Non-town sector population with 22 percent bonus density:

10,457 units X 3.0 PPU =
31,371 pop/1,500 acres =
Density:
10,457 units/1,500 acres =

31,371
20.914

6.97 units per acre

Staff finds that, in comparing the town sector to most other zones, the town sector 22 percent bonus results in:

- a higher number of MPDUs
- a lower number of market and total units
- a lower population per acre, and
- a lower density.

The town sector contains no apparent incentive for providing bonus MPDUs, though projects with bonus MPDUs (in at least one case in excess of 22 percent) have been approved in both Montgomery Village and Churchill. Further discussions about the town sector MPDU provisions appear later in this memo.

TWO TOWN SECTOR COMMUNITIES: MONTGOMERY VILLAGE AND CHURCHILL

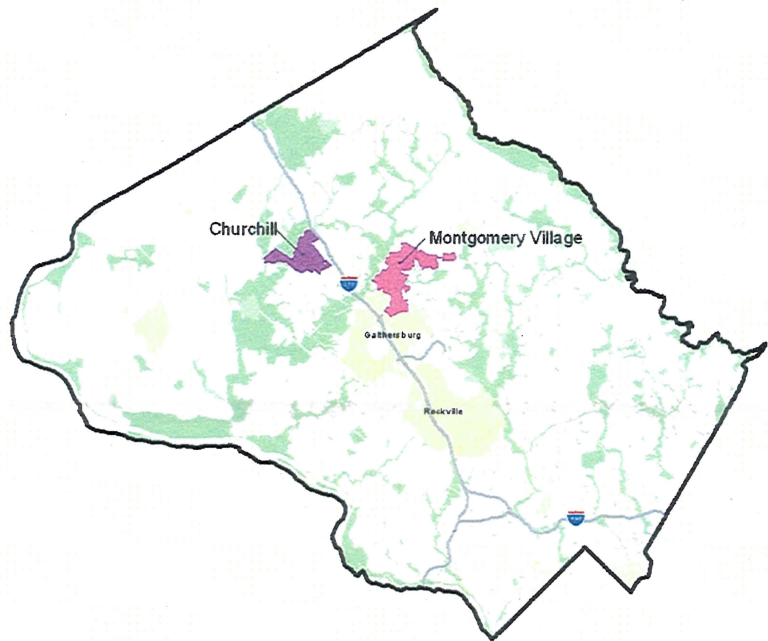
The town sector zone applies to almost 4,000 acres within two areas of the County: Montgomery Village (1965) and Churchill (1968). The two areas are similar in some respects, but differ in others.

Montgomery Village:

- Initial town sector zoning, E-327, approved August 1965
- 2,435 acres
- A mixed residential character
- Partly within the Gaithersburg corridor city; adjacent to commercial and employment areas near MD 355 and I-270
- Developed by one entity
- Represented by the Montgomery Village Foundation

Churchill:

- Initial town sector zoning, F-148, approved October 1968
- 1,554 acres (just slightly above the minimum required)
- A mixed residential-public-commercial character
- In the Germantown corridor city and part of the I-270 employment corridor
- Developed by numerous entities
- Represented by numerous landowners and HOAs



Comparing Zoning Maximums, Montgomery Village and Churchill				
	Acres	Commercial (10% max)	Industrial/Major employment (6% max)	Open space (10% min)
Montgomery Village – existing *	2,434.8	43.1	0	696.8
- Approved, unbuilt		0	0	0
- Percent		1.8%	0.0%	28.6%
- Max allowed (min req)		243.5	146.1	(243.5)
- Remaining (above min)		200.4	146.1	(453.3)
Churchill – existing **	1,554.0	75.8	0	745.2
- Approved, unbuilt		0	75	0
- Percent		4.9%	4.8%	48.0%***
- Max allowed (min req)		155.4	93.2	(155.4)
- Remaining (above min)		79.6	18.2	(356.5)
<i>*From Montgomery Village DPA 02-2, corrected April 7, 2006</i>				
<i>** Staff calculations; several errors found in current and past Churchill DPAs</i>				
<i>***Includes Lake Churchill (17.3% belongs to WSSC)</i>				

Comparing Populations, Montgomery Village and Churchill						
	Market units	Pop	MPDUs	Pop	Total units	Total Pop
Montgomery Village:						
2,434.8 acres X 15 persons per acre = 36,522 total permitted population*						
36,522 – 36,285 = 237 remaining population						
- One-family detached (X 3.7)	2,102	7,778****	0	0	2,102	7,778
- Townhouses (X 3.0)	5,736	17,208	745	2235	6,481	19,443
- Multiple family < 5 stories (X 3.0)	3,387	10,161	26	78	3,413	10,239
- Multiple family 5 or more stories (X 2.0)	569	1,138	32	64	601	1,202
Montgomery Village (total existing, recommended, approved)	11,794	36,285	803	2,377	12,597	38,662
Churchill:						
1554.0 acres X 15 persons per acre = 23,310 total permitted population**						
23,310 – 19,395 = 3,915 remaining population						
- One-family detached (X 3.7)	827	3,060****	0	0	827	3,060
- Townhouses (X 3.0)	2,314	6,942	299	897	2,613	7,839
- Multiple family < 5 stories (X 3.0)	2,697	8,091	241	723	2,938	8,814
- Multiple family 5 or more stories (X 2.0)***	651	1,302	94	188	745	1,490
Churchill (total existing, recommended***, approved)	6,489	19,395	634*****	1,808	7,123	21,203
<i>*Source: MVF and residents calculations; confirmation should made at time of next DPA</i>						
<i>** Source: Staff inventory and HOC GIS data files; confirmation should be made at time of next DPA.</i>						
<i>***1989 Germantown Master Plan and 1992 Town Center Design Study; unbuilt</i>						
<i>****Rounding differences noted from previous calculations</i>						
<i>*****HOC data indicate that about 308 of these units expired between 1985 and July 2008</i>						

The table above, Comparing Zoning Maximums, shows the greater commercial area in Churchill, and the R&D that is approved on the development plan; this reflects Churchill's proximity to the Employment Corridor and Montgomery Village's slight removal from it. Churchill's larger percentage of open area is primarily due to Lake Churchill.

The second table above updates and compares the existing and approved housing types and populations of Montgomery Village and Churchill. The existing population density in both Montgomery Village and Churchill has been debated and examined at length. In 2005 and 2006, Montgomery Village residents did an extensive study of their population and provided it to the community, staff and interested developers. Staff used these corrections in their findings for a proposed mixed-use project (820060400), but the corrections will not appear on a Development Plan until an amendment is made to it (the current Development Plan appears in Attachment D).

In Churchill, staff conducted an inventory of all land uses as part of the Germantown Master Plan update, and found errors in the total acreage, land uses and population; this staff inventory is being used in this report, above and below, but as noted above, they differ from past Development Plans (see the current Development Plan, Attachment E). Staff is including MPDUs as a separate item in this calculation, which was done for the first time by Montgomery Village residents as part of their study, and has not been done for Churchill until now.

Comparing the two communities, staff observes about five percent more single-family detached units and almost 15 percent more townhouses in Montgomery Village than in Churchill, and about 14 percent more low-rise apartments in Churchill. Because none of the recommended high-rise units have been built in Churchill, a comparison is unequal; 4.8 percent exists in Montgomery Village and 10.5 percent has been recommended in Churchill.

CHURCHILL TOWN SECTOR

Part of the Churchill town sector area falls within the current master plan study area, and part falls outside of it (see map, p. 1); the latter part is mostly developed and will continue to be guided by the 1989 Germantown Master Plan. Below, a brief history and summary of the entire Churchill area is followed by detailed information about the town sector properties that fall within the current master plan study area. Calculations for the master plan recommendations currently before the Planning Board are included in the latter section only.

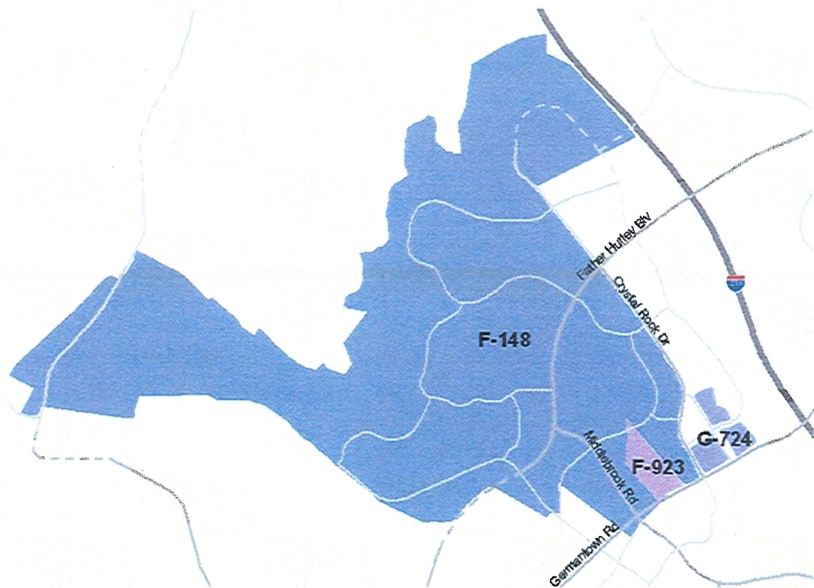
History and Summary

The 1,554.00413-acre Churchill town sector area, shown in the map, right, has been created through three zoning cases:

F-148
October 1968
1,504.0923 acres

F-923
September 1974
25.17183 acres

G-742
October 1997
24.74 acres



As approved in 1968 (F-148), Churchill would include a broad mix of housing types, schools and recreational areas, plus 109 acres of commercial uses, 75 acres of industrial uses, and a 100-acre University Science Center. Under that original approval, Churchill resoundingly met the self-sufficiency goal of the zone, but much of this has never been realized. Some of the details of those zoning cases, along with earlier master plan recommendations (1966 and 1974) and development plan approvals will be included for individual properties, where they are pertinent to current recommendations.

Churchill Town Sector Land Use Mix, 2008						
Land Use	Private owners (acres)	Quasi-public, non-profit	Public owners	Total acres	Percentage	Max % (min %)
Residential	411.204			411.204	26.5%	
<i>Subtotals: SFD</i>	167.624			167.624	10.8%	
<i>SFA</i>	97.195			97.195	6.3%	
<i>MF – low-rise</i>	146.385			146.385	9.4%	
<i>MF – high-rise</i>					0.0%	
Commercial	75.782			75.782	4.9%	10%
Industrial/Major empl.*	75			75	4.8%	6%
Churches		10.998		10.998	0.7%	
Public Uses		7.729	55.321	63.05	4.1%	
<i>Subtotals: Utilities</i>		7.729		7.729	0.5%	
<i>Schools</i>			40.013	40.013	2.6%	
<i>BlackRock Center</i>			1.13	1.13	0.1%	
<i>Upcounty Services Center</i>			5.451	5.451	0.4%	
<i>Library and future park</i>			8.727	8.727	0.6%	
Open Space	233.25	269.409	242.54	745.199	48.0%	10% min
<i>Subtotals: Parks</i>			242.54	242.54	15.6%	
<i>Lake Churchill (WSSC)</i>		269.409		269.409	17.3%	
<i>HOA, pvt rec, open space</i>	233.25			233.25	15.0%	
Major Roads**			172.77113	172.77113	11.1%	
TOTALS	795.236	288.136	470.63213	1,554.00413	100.0%	
*Approved, unbuilt						
** No SDAT information available. Based on total TS acres minus total SDAT and/or GIS acres.						

Today, the Churchill town sector area has a mixed residential, public and commercial character; it includes the Town Center, with shopping, restaurants and offices, plus BlackRock Center for the Arts, the Germantown Library, the Upcounty Services Center, and the Churchill Village residential area, as designated in the 1989 Germantown Master Plan. About 76 of the 109 acres of original commercial uses have been realized, and a 75-acre industrial area now appears as a Research and Development Campus on Churchill's current development plan, though it has not been built. The current land use mix is summarized in the table above.

The table includes details of the acreage of each housing type as a percentage of the area, rather than by unit count. Since its inception, an important goal of the town sector zone has been to provide a mix of dwelling types; Churchill has struggled to attain this mix. The following compares the housing types proposed in 1968 and the housing that exists today.

Comparing Churchill Housing: 1968 and 2008				
	1968 proposal (DUs)	1968 percentage	2008 existing (DUs)	2008 percentage
One-family detached	800	9.8%	827	13.0%
Townhouses	2,500	30.5%	2,613	41.0%
Multiple family < 5 stories	2,300	28.0%	2,938	46.1%
Multiple family 5 or more stories	2,600	31.7%	0	0.0%
Total	8,200	100.0%	6,378	100.1%*
<i>*Rounding results distort total</i>				

Since 1968, developers have elected to build fewer dwelling units than was approved in the original zoning case, and they have built housing types that have a lower density per acre. As a result, there is little remaining land intended for residential use. In addition, to date, none of the 2,600 proposed high-rise multi-family units have been built. Because the population formula assumes a lower population count for high-rise multi-family dwellings, the remaining population is lower than it would have been under the original mix. These market forces have resulted in a lower-than anticipated number of homes and a narrower mix of unit types than envisioned. It is also creating pressure to allow additional housing in areas planned for major employment uses.

Churchill Housing Details: Existing, approved and master planned*						
	Market units	Percentage	MPDUs	Percentage	Total units	Total Percentage
One-family detached	827	11.4%	0	0.0%	827	11.4%
Townhouses	2,314	32.0%	299	4.1%	2,613	36.1%
Multiple family < 5 stories	2,697	37.3%	241	3.3%	2,938	40.6%
Multiple family 5 or more stories**	745	10.3%	107	1.5%	852	11.8%
Total existing, recommended**, approved	6,583	91.1	647***	8.9%	7,230	100.0%
<i>* Source: Staff inventory and HOC GIS data files; confirmation should be made at time of next DPA.</i>						
<i>**Recommended (1989 Germantown Master Plan and 1992 Town Center Design Study) but unbuilt</i>						
<i>***HOC data indicate that about 308 of these units expired between 1985 and July 2008</i>						

The previous table provides further details of types of dwelling units (including MPDUs) that are approved, built or in the 1989 and 1992 Germantown plans, by percentage of unit type. Almost half of the MPDUs shown are no longer controlled.

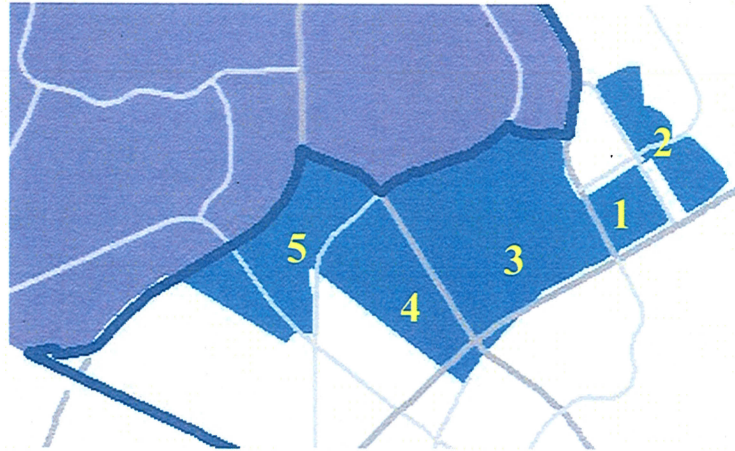
Churchill Town Sector Properties within the Current Germantown Master Plan Study Area

Only a portion of the Churchill area, about 300 acres, is included in the current master plan update. The properties will be described in the order in which they appear in the Draft Plan: the Town Center and West End followed by the North End.

Town Center and West End

Properties in the Town Center and West End were added to the town sector zone in 1968, 1974, and 1997. In 1968, most of this area was designated as the central business district area of the Churchill town sector, encompassing the main commercial uses together with some of the recommended high-rise residential units. The 1974 and 1997 zoning additions have been consistent with this vision, but the construction has been more modest than the vision.

Area 1 (see map, right), is the site of the future Town Center CCT stop. This area, which currently contains a commuter parking lot and several pad sites, is planned for a mix of office, retail and residential uses at 2.0 FAR, with commuter parking moving into a structure on the site. In 1997, at the time of rezoning, a proposal that is similar to the current recommendations was included for review, but not approved. Under the town sector zone limits, this area is expected to remain counted as commercial acreage with 500 units of high-rise market-rate housing, and 12.5 to 22 percent MPDUs.



Area 2, also part of the 1997 zoning application, currently contains a hotel and cinemas with surface parking. Prior to the rezoning, the 1989 master plan recommended this area for employment. As part of the transit area, these two blocks are now recommended for further development of mixed commercial uses, entertainment and housing up to 1.0 FAR with structured parking. As above, the area will remain as commercial acreage, with 100 units of high-rise market-rate housing plus MPDUs.

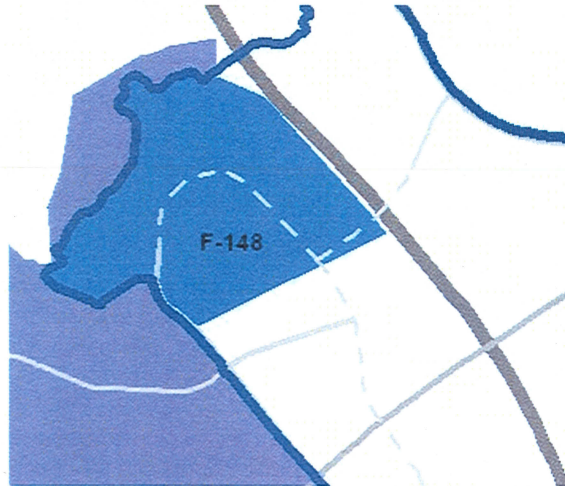
Area 3, part of the 1968 and 1974 zoning approvals, contains the Germantown library, several hundred townhouses and apartments, Safeway, Euromotors and other retail and office uses. In the 1974 Germantown Master Plan, this area was designated as a regional and office commercial area with a library and a common green. A 1997 development plan amendment changed this area to mixed use; current recommendations continue to reflect mixed use. Fewer jobs and high-rise housing units have been developed in this area than have been planned. When the commercial portion of this area redevelops, higher densities, to 1.0 FAR, are recommended. Under the town sector limits, this area remains counted partially as commercial and partially as residential. From past recommendations, 245 high-rise market rate housing units remain, with MPDUs added, as above.

Area 4, included in the 1968 rezoning, contains the Upcounty Services Center, Germantown Commons Shopping Center, several pad sites and across Germantown Road, the Germantown Square Park and part of a car wash. Redevelopment of the shopping center at 0.5 FAR with up to 40 percent housing is recommended. Staff recommends up to 135 low-rise multi-family market-rate units, plus MPDUs, for this area.

Area 5, also part of the 1968 rezoning, contains a church, housing, offices and warehouse commercial uses. The area contains smaller properties and has a limited amount of vacant land. The 16.5 acres of commercial properties are expected to remain as commercial uses; partial redevelopment up to 0.5 FAR has been included in the transportation modeling for the plan. The church and housing is expected to remain. A past approval for 124 market-rate housing units plus MPDUs on the church property has been retained.

North End Property

The Far North Village property was included in the town sector application in 1968, with 75 acres recommended for industrial uses. A 1973 development plan amendment, reflected in the 1974 master plan, changed the uses in this area to residential (179 single-family detached units and 225 townhouses) with a school and a park. Subsequently, DPA 83-3 again changed the 75 acres to a 2.7 million square foot Research and Development Park, but traffic was limited to the prior residential approval. With DPA 89-3, the proposal was modified to permit only 1.3 million square feet of R&D development on 75 acres; this appears on the current development plan. In 1994, about 63 acres of stream valley was dedicated, to become part of Black Hill Regional Park, leaving about 110 acres of property.



Since 1968, the property has not been developed; it currently contains a driving range. Staff continues to recommend that up to 75 acres of the property be developed, and as it is adjacent to both a future transit stop and I-270, considers this an important site for employment in Germantown. This recommendation includes 1.5 million square feet of R&D and major employment, with the potential for that to include a hotel and a limited amount of retail. To allow a broader mix of uses at transit and for compatibility with the adjacent residential community, an allowance for 570 market-rate multi-family units has been added to the site; half should be high-rise and half should be low-rise units.

The remaining approximately 35 acres of this property contains forest identified by Environmental Planning staff for preservation. As the zone states: “it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees” (Purpose, 59-C-7.21). In the event the retention of this forest is in conflict with the additional housing recommendation, high-rise units may be substituted for the recommended low-rise units.

Churchill Housing Details: Adding proposed units to existing units									
	Existing market units	Existing MPDUs	Total existing units	Prop market units	Prop MPDUs (12.5%)*	Total Prop	Ex + prop market units	Ex + prop MPDUs	Ex + prop total
One-family detached	827	0	827				827	0	827
Townhouses	2,314	299	2,613				2,314	299	2,613
Multiple family < 5 stories	2,697	241	2,938	544	78	622	3,241	319	3,560
Multiple family 5 or more stories				1,130	162	1,292	1,130	162	1,292
Total	5,838	540**	6,387	1,674	240	1,914	7,512	780	8,292
<p><i>Note that the 1989 and 1992 recommended units have been moved into the Proposed columns</i></p> <p><i>* RTC MPDU calculator used</i></p> <p><i>** HOC data indicate that about 308 of these units expired between 1985 and July 2008</i></p>									

These recommendations will not change the land use mix shown in the previous table, but they will change the housing and population calculations. The previous table shows the addition of the proposed housing, and its impact to the allowed population.

Staff is not recommending that the full 15 person per acre density be allotted to this area, so a population of 1,325 is projected to remain. This recommendation is based upon two considerations. First, more than 1,200 acres of the Churchill town sector zone is outside of the master plan study area, and an allowance should remain for changes in that outer area. Although that area is mostly developed, staff is concerned about extinguishing all rights to develop in an area that is not included in the current planning effort. Staff considers this circumstance alone to be sufficient to persuade them that the full density should not be assigned to the study area.

Second, staff believes that if more than 12.5 percent MPDUs were provided on a site, the bonus market density provisions of Chapter 25A would not apply because the town sector zone does not reflect this provision. However, a slight amendment to either the town sector zone or Chapter 25A would change this interpretation. If either were to occur, or if staff's understanding is determined to be incorrect, then staff calculates the maximum number of units to be increased by a large enough margin that such a change should be studied and discussed with both interested communities before proceeding:

~ 7,512 market units + 977 MPDUs for a total of 8,721 units.

In that event, the maximum population would then be:

~ 22,703 market population + 2,636 MPDU population for a total population of 25,139.

Proposed Churchill population						
	Market units	Pop	MPDUs	Pop	Total units	Total Pop
Churchill:						
1554.0 acres X 15 persons per acre = 23,310 total permitted population						
23,310 – 21,985 = 1,325 remaining population						
- One-family detached (X 3.7)	827	3,060	0	0	827	3,060
- Townhouses (X 3.0)	2,314	6,942	299	897	2,613	7,839
- Multiple family < 5 stories (X 3.0)	3,241	9,723	319	957	3,560	10,680
- Multiple family 5 or more stories (X 2.0)	1,130	2,260	162	324	1,292	2,584
Churchill (total existing, recommended, approved)	6,489	21,985	780	2,178	8,292	24,163

CONSIDERATION OF AMENDMENTS TO THE TOWN SECTOR ZONE

Several property owners and interested parties have discussed amending the town sector zone, and in reviewing the zone, staff has also considered revisions and clarifications. The following changes have been considered; they appear in the order in which the existing provisions appear in the Zoning Ordinance.

Area requirements (59-C-7.24):

- *Should the town sector zone area minimum of 1,500 acres be changed? (59-C-7.241)* Staff discussed the potential for removing a property from the Churchill town sector zone, which would have reduced the total area below 1,500 acres. This would have reduced the number of zones in transit areas, but would also have reduced the self-sufficiency of the zone. Staff does not recommend reducing the minimum.

- *Should the commercial area maximum of ten percent of the total area be increased? (59-C-7.242)* According to Churchill's last approved development plan, the limit was being approached. However, in reviewing the development plan, several errors were found, and the actual commercial area was determined to be substantially lower than is shown. Staff sees no need for a change to this limit.
- *Should the industrial and major employment area maximum of six percent be increased? (59-C-7.243).* This maximum has already increased; until 1999, the maximum was five percent. There has been no industrial or major employment built in the zone. Should this allowance be removed? Staff supports retaining the use as it supports self-sufficiency in the area.
- *Should the open area minimum of ten percent be changed? (59-C-7.244)* Currently, about 29 percent of the area in Montgomery Village and 48 percent of the area in Churchill is held as open space. In analyzing the Churchill open space, staff notes that only about one-third is held in public parks (15.6 percent); the balance is owned privately (mostly by HOAs) and by WSSC.

To compare to other residential areas, homes are usually restricted by coverage maximums (e.g., 15-40 percent is common) or by green space requirements (e.g., 30-50 percent); the largest developments (above 750 acres) in the Planned Retirement Community (PRC) zone are required to provide 65 percent green area. To compare the town sector zone with other mixed use zones, the TOMX and TMX zones have a 75 percent coverage maximum, and the RMX zones require ten to 20 percent green area within the commercial portion of the site and 20 to 50 percent green area in the residential portion.

Because there is a limited amount of undeveloped land in the town sector zone, a change to the total open space requirement would have minimal impact. The bulk of the open space was designated during the initial development plan approvals; much smaller amounts (by acreage and percentage) have been provided during more recent approvals.

Since both town sector communities exceed the overall requirement for open space, there is a risk that future projects could be approved without any open space within the new neighborhood. Staff has discussed a potential requirement for open space for individual sites to avoid areas without open space. Alternatively, staff considered minimum sizes or dimensions of open spaces, to avoid small, unusable open spaces. Staff recommends that the open space requirements be reviewed more broadly, perhaps as part of the comprehensive revision of the Zoning Ordinance.

Density of population (59-C-7.25):

- *Should the population density provision be changed?* As described above, the population density in the town sector zone cannot exceed 15 persons per acre. Two recommendations have been made to staff: that more population should be permitted because census information indicates that we do not have an actual population of 15 persons per acre; and because we have an aging population, and seniors have smaller household sizes, a new category for calculating senior housing should be added.

Staff is unable to address the first argument because this agency does not have any authority over the number of people living in a dwelling unit. Arguably, a trend toward smaller household sizes has been observed since 1965, so further study may be appropriate. If the Planning Board wishes to examine the standards used to calculate the population in the zone, staff recommends doing it comprehensively, rather than as part of the Germantown Master Plan.

In considering the second recommendation, staff concludes that adding a category for senior housing would be inconsistent with the current formula which is based on dwelling types, not on resident types. Staff notes that facilities which will support an aging population, such as nursing facilities, are considered services and are not limited by any percentage in the zone.

- *Should the MPDU provision be changed?* In the town sector zone, the MPDU provision (ibid.) differs markedly from those in Chapter 25A. In the town sector zone, all MPDU population is in excess of the stated maximum population, whereas elsewhere, the required 12.5 percent is considered to be part of the maximum density. In addition, the 22 percent maximum MPDU calculation contains no market rate bonus. Last, the 22 percent cap is calculated on the entire acreage of the area, rather than site-by-site. These differences can reasonably be expected to cause ongoing confusion. However, standardizing the zone to reflect Chapter 25A could result in excess population as described in the previous section. Clarification is recommended, but should be mindful of this result.

Procedures for application and approval (59-C-7.28):

Should the limits on reclassification be changed? Once the town sector zone is granted, properties cannot be reclassified for 50 years. The town sector zone was granted in Montgomery Village in 1965, and in Churchill in 1968; those properties become eligible for reclassification in 2015 and 2018, respectively. The consequences of such reclassifications have not been examined. For instance, if some properties are reclassified, it could reduce the allowed commercial and major employment acreage, possibly taking other properties out of compliance with the zone.

During the review of the open area and population standards noted above, staff recommends that the policies and procedures for reclassification be made explicit. Both should be part of the comprehensive zoning revision.

Because the zone dates to the 1960s, the town sector contains no provision for using TDRs or BLTs.

Staff is not making land use recommendations in the Germantown Master Plan that require amending the town sector zone, but staff does find several sections of the zone where clarification is desirable. An amendment should be done as part of the comprehensive revision of the Zoning Ordinance or a study of the complete town sector area, rather than as part of this master plan. The two town sector communities, Montgomery Village and Churchill, should be included in the discussions of any amendments.

SUMMARY

The town sector zone is a flexible, mixed use zone that has been in place in Germantown for 40 years. It is a very workable tool for developing the Employment Corridor as envisioned in the Germantown Draft Plan, with concentrated, mixed-use transit nodes. Staff recommends retaining the elements of major employment and open space that have appeared consistently over the years, and recommends increasing the mix of uses, as has been proposed in the Draft Plan. This can create the kind of self-sufficient community described by the zone since its inception in 1965.

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Attachments:

- A. 59-C-7.2 Town Sector Zone
- B. Chapter 25A-5. Requirement to build MPDU's; agreements
- C. MPDU calculator worksheets
- D. Montgomery Village Development Plans (current plan and initial land use mix)
- E. Churchill Development Plans (current plan and initial land use mix)

ATTACHMENT A

Sec. 59-C-7.2. Town sector zone.

59-C-7.21. Purpose.

It is the purpose of this zone to provide a classification which will permit development of or additions to planned new towns or additions to existing urban developments. Such towns shall contain, insofar as possible, all of the residential, commercial, community and industrial facilities needed to make possible a town that is reasonably self-sufficient for all purposes, except major employment and central business district shopping. Adequate provision shall be made for the maintenance of open space and the location of streets and highways to assure orderly traffic circulation. Provision shall be made for the inclusion of housing for families of low and moderate incomes. Physical planning within the town shall be such as to assure that these uses, including a wide variety of types of housing accommodations, shall be placed in efficient and orderly relationship.

A new town is further described, for the purposes of this chapter, as being located on a substantially undeveloped site and meeting the following mutually interdependent requirements:

- (a) **Self-Sufficiency.** Containing as nearly as possible all of the commercial, employment, cultural and recreational facilities desirable and necessary for the satisfaction of the needs of its residents.
- (b) **Diversity.** Containing a wide variety of residential facilities, so as to offer a wide range of structural types, site planning layouts and arrangements, and rental and purchase prices.
- (c) **Density.** Urban rather than rural, in order to facilitate travel between residential, commercial, employment and other types of areas and to make the most efficient use of public utilities, but low enough to permit the incorporation of large amounts of open land within the town for recreational and scenic purposes.
- (d) **Transportation Facilities.** Transportation facilities adequate to serve the anticipated total population shall be either in existence or planned for future construction.
- (e) **Public Utilities.** Public sewer and water shall be available at the site or planned for construction.

Land lying principally within a corridor city as defined in section 59-A-2.1, title "Definitions," may be considered for classification in the town sector zone.

In order to encourage and facilitate desirable development of this kind, it is further the purpose to eliminate, in the town sector zone, some of the specific restrictions which regulate, in other zoning categories, the height, bulk and arrangement of buildings and the location of the various land uses; to provide for more flexibility in development; and to require that all development be in accordance with a plan meeting the requirements of this section, and the development plan provisions of division 59-D-1. It is the intent of this zone to achieve flexibility of design, integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the standards permitted by right and required in conventional zoning categories.

In addition, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees; and, in order to do so, minimize the amount of grading necessary for construction of a development.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

59-C-7.22. Limitation.

No property shall be placed in a town sector zone, except upon application of a person with a financial, contractual or proprietary interest in the property, notwithstanding any provisions of this chapter to the contrary.

59-C-7.23. Land uses.

Uses described on the approved development plan, as provided in division 59-D-1, shall be permitted by right in this zone. All uses authorized in any zone, by right or as special exceptions, may be similarly authorized in the town sector zone, subject to the following restrictions:

59-C-7.231. Only uses shown on the approved site plan shall be permitted, unless the site plan is first amended in accordance with the requirements of division 59-D-3. An amendment to the site plan shall not be required for construction of accessory buildings and additions or modifications to existing one-family detached dwelling units or townhouses and accessory buildings if:

- (a) The planning board has approved homeowners association documents establishing a procedure to review such development prior to said construction; and
- (b) Under this procedure, approval for said construction has been granted; provided, however, that site plan review is necessary for additional construction commenced prior to December 9, 1980, if:
 - (1) At the time such additional construction was commenced, site plan review was required; and
 - (2) The recorded subdivision plat creating the lot upon which such development is proposed did not indicate the standards to be applied or the procedures to be followed to approve additional construction beyond initial development.

59-C-7.232. No use shall occupy a location other than indicated on the approved site plan.

59-C-7.233. Areas designated as residential on the development plan, shall consist of the residential portion of the town sector zone and accompanying facilities such as local retail areas, public school sites, local recreational and open space areas and public roads. Only the following uses shall be permitted in residential areas:

- (a) One-family dwellings, which shall be used only for the following purposes:
 - (1) Dwelling for one family.
 - (2) Professional offices for use by not more than one member of a recognized profession who is a resident of the dwelling and by not more than one nonresident assistant. Recognized professions include but are not limited to medicine, dentistry, law, accounting and architecture; they do not include businesses such as insurance, real estate, etc. A professional office in this instance shall be incidental to the principal use of the building as a dwelling and shall not include a medical, dental or veterinary clinic or in-patient treatment facility.
 - (3) All other uses permitted in the R-90 zone, as shown in section 59-C- 1.31.
 - (4) All uses permitted as special exceptions in the R-90 zone, as shown in section 59-C-1.31, subject to the grant of a special exception in accordance with article 59-G.
- (b) Multiple-family dwellings, which shall be used only for the following purposes:
 - (1) Dwelling units, not more in number than shown on the site plan.

- (2) Office for rental, operation, service and maintenance of a multiple- family dwelling or group of dwellings.
- (3) All other uses permitted in the R-30 zone, as shown in section 59-C-2.3.
- (4) All uses permitted as special exceptions in the R-30 zone, as shown in section 59-C-2.3 subject to the grant of a special exception in accordance with article 59-G.
- (5) Any of the commercial uses permitted in the C-1 zone; provided that:
 - (i) There shall be no dwelling units on any floor on which there are commercial uses; and
 - (ii) The total floor area used for commercial purposes shall be no greater than shown on the site plan.
- (c) Housing and related facilities for senior adults and persons with disabilities.

59-C-7.234. Privately owned roads and community open spaces. Privately owned roads and community open spaces may be held in perpetuity by the developer or by an approved homes association, substantial in membership and duration, provided that easements for such uses shall be granted to the county and recorded in the land records of the county following planning board approval of such easements.

59-C-7.24. Area requirements.

59-C-7.241. Minimum area of tract. Each application for the town sector zone shall be for a tract of land which has an area of 1,500 acres or more; except, that an application for a tract of any size adjoining a tract in the town sector zone may be filed by the original applicant or a successor in title.

59-C-7.242.1. Rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room may be installed under the guidelines contained in Sec. 59-A-6.14.

59-C-7.242. Commercial area. Not more than 10 percent of the total area of the town sector may be devoted to commercial purposes. All required parking for commercial purposes shall be included within the 10 percent calculation.

59-C-7.243. Industrial area. Not more than 6 percent of the total area of the town sector zone may be devoted to industrial purposes and other major employment facilities.

59-C-7.244. Open space. Not less than 10 percent of the total area of the town sector zone shall be devoted to open space. This may include publicly owned, community-wide or common open space and facilities but may not include streets and parking areas.

59-C-7.25. Density of population.

The population of the town sector zone must be planned so as not to exceed 15 persons per acre based upon the total area within the town sector zone; except, that such planned population may be increased by an amount equal to the population to be housed in moderately priced dwelling units included in the development plan in accordance with chapter 25A of this Code, as amended, provided that the total increase in population does not exceed 22 percent of the population that would otherwise be permitted.

In calculating the density, the following standards shall apply:

- (a) One-family detached dwellings shall be assumed to have an average occupancy of 3.7 persons.

- (b) Townhouses shall be assumed to have an average occupancy of 3 persons.
- (c) Multiple-family dwellings less than 5 stories in height shall be assumed to have an average occupancy of 3 persons per dwelling unit.
- (d) Multiple-family dwellings 5 stories in height or higher shall be assumed to have an average occupancy of 2 persons per dwelling unit.

59-C-7.26. Height.

The heights of all buildings in the town sector zone shall be consistent with the limitations set in other zoning classifications for areas of similar density or similar use.

59-C-7.27. Utilities.

- (a) All utility lines in the town sector zone shall be placed underground. The developer or subdivider shall ensure final and proper completion and installation of utility lines as provided in the subdivision regulations, being section 50-40(c) of this Code. Standards for street lighting shall be provided by the developer in accordance with the approved site plan.
- (b) No use-and-occupancy permit shall be issued for any building which is not served by an approved sewer and water supply.

59-C-7.28. Procedures for application and approval.

- (a) Application and development plan approval shall be in accordance with the provisions of division 59-D-1. For the town sector zone, the development plan shall include a land use plan in accordance with the provisions of section 59-D-1.3(g) and a supplementary plan in accordance with the provisions of section 59-D-1.3(h).
- (b) Preliminary plans of subdivision shall be submitted and approved in accordance with the procedural requirements of chapter 50, title "Subdivision of Land." Partial-cost developer participation, as may be provided in an adopted annual growth policy, is allowed in the town sector zone.
- (c) Site plans shall be submitted and approved in accordance with the provisions of division 59-D-3, title "Site Plan." Standards for width and area of lots, side and rear yards, setbacks, lot coverage, height and grouping of buildings, and similar requirements shall be established at the time of site plan approval.
- (d) In the implementation of subsections 59-C-7.28(b) and (c), above the Planning Board may waive the substantive requirements of chapter 50 and certain requirements of Article 59-E (including the number of parking spaces described in Section 59E-3.7) upon a finding that the waiver would allow greater flexibility of development consistent with the purposes of the zone and promote more attractive and more efficient overall planning and design; except that the following may not be waived:

- (1) The adequate public facilities requirements of section 50-35(k);
- (2) The following provisions of Division 59-D-3 may not be waived:

59-D-3.4, "Action by Planning Board."

59-D-3.5, "Effect of Site Plan."

59-D-3.6, "Failure to Comply."

59-D-3.7, "Amendment of a Site Plan."

59-D-3.8, "Validity."

(e) Record plats shall indicate that the land is in the town sector zone and shall also include the following notations:

(1) An appropriate statement concerning all of the land which is designated for common or quasi-public use but not to be in public ownership. This statement shall grant to the public, on such land, easements covering all rights of development, construction or use other than the recreational or other quasi-public uses indicated in the approved site plan, except that, at the time of site plan approval, utilities easements may be excluded from specified areas.

(2) A statement indicating that the plat is in accordance with the approved site plan and that development of the land is permitted only in accordance with the approved site plan and the accompanying agreements concerning the ownership and maintenance of common land, which are on file at the offices of the planning board, and that application for reclassification shall not be permitted until 50 years after the grant of the town sector zone.

(Legislative History: Ord. No. 9-27, § 1; Ord. No. 10-6, § 3; Ord. No. 10-45, § 2; Ord. No. 11-38, § 7; Ord. No. 11-54, § 1; Ord. No. 11-62, § 7; Ord. No. 12-75, § 7; Ord. No. 13-109, § 1; Ord. No. 14-1, § 1; Ord. No. 14-47, § 1; Ord. No. 15-26, § 1.)

Editor's note-Section 59-C-7.2 [formerly §111-25] is cited in Maryland-National Capital Park & Planning Commission v. Rossmoor Corporation, 265 Md. 267, 288 A.2d 898 (1972); and in Gruver-Cooley Jade Corporation v. Perlis, 252 Md. 684, 251 A.2d 589 (1969). Section 59-C-7.2 [formerly §59-63] is cited in Kanfer v. Montgomery County Council, 35 Md.App. 715, 373 A.2d 5 (1977).

Ord. No. 10-6, § 3, ordained that a cable communications system be added as a special exception use in section 59-C-7.23 except as provided in sections 59-A-6.9 and 59-G-2.10.1.

ATTACHMENT B

EXCERPT, CHAPTER 25A. HOUSING, MODERATELY PRICED—REGULATIONS

Sec. 25A-5. Requirement to build MPDU's; agreements.

(a) The requirements of this Chapter to provide MPDU's apply to any applicant who:

(1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;

(2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 20 or more dwelling units at one location; or

(3) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location.

In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, record plat or building permit for fewer than 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 20 or more.

(b) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

(1) a specific number of MPDUs must be constructed on an approved time schedule;

(2) in single-family dwelling unit subdivisions, each MPDU must have 3 or more bedrooms; and

(3) in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU.

(c) When the development at one location is in a zone where a density bonus is allowed; and

(1) is covered by a plan of subdivision,

(2) is covered by a plan of development or a site plan, or

(3) requires a building permit to be issued for construction, the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location, not counting any workforce housing units required under Chapter 25B. The required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than 12.5 percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>		<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	12.5%		Up to 11%	13.6%
Up to 1%	12.6%		Up to 12%	13.7%
Up to 2%	12.7%		Up to 13%	13.8%
Up to 3%	12.8%		Up to 14%	13.9%
Up to 4%	12.9%		Up to 15%	14.0%
Up to 5%	13.0%		Up to 16%	14.1%
Up to 6%	13.1%		Up to 17%	14.2%
Up to 7%	13.2%		Up to 18%	14.3%
Up to 8%	13.3%		Up to 19%	14.4%
Up to 9%	13.4%		Up to 20%	14.5%
Up to 10%	13.5%		Up to 22%	15.0%

(d) (1) Notwithstanding subsection (c), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:

(A) would not allow compliance with applicable environmental standards and other regulatory requirements, or

(B) would significantly reduce neighborhood compatibility.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of MPDU's required must be governed by subsection (c) unless the formula in subsection (c) would not allow the development to have one bonus market rate unit. In that case, the Board must reduce the required number of MPDU's by one unit and approve an additional market rate unit.

(e) The Director may approve an MPDU agreement that:

(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or

(2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section 25A-5B.

(f) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit. The applicant must sign a written land transfer agreement approved by the Director and by the County Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to Montgomery County or to the County's designee before the building permit is issued, so that the County might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the County for the transfer of finished lots, the County must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The County must not reimburse an applicant for the cost or value of the transferred lots.

(2) If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment for finishing the lots.

(3) Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).

(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.

(g) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

(h) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(i) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

(1) MPDUs are built along with or before other dwelling units;

- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
- (4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

(j) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

(k) The applicant must execute and record covenants assuring that:

- (1) The restrictions of this Chapter run with the land for the entire period of control;
- (2) The County may create a lien to collect:
 - (A) that portion of the sale price of an MPDU which exceeds the approved resale price; and
 - (B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and
- (3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

(l) (1) In any purchase and sale agreement and any deed or instrument conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

- (A) the conveyed property is a MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and
- (B) any MPDU owner, other than an applicant, must not sell the MPDU until:
 - (i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the unit is for sale;
 - (ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the unit; and
 - (iii) The Department has notified the owner of the unit's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

(m) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a

larger development under this Chapter and Chapter 59. Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who voluntarily builds MPDU's under this subsection and in so doing qualifies for an optional method of development. (1974 L.M.C., ch. 17, § 1; 1974 L.M.C., ch. 40, § 1; 1976 L.M.C., ch. 34, § 1; 1976 L.M.C., ch. 35, § 3; 1978 L.M.C., ch. 31, § 2; 1979 L.M.C., ch. 21, § 3; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 8, § 1; 2002 L.M.C., ch. 2, § 1; 2002 L.M.C., ch. 16, § 2; 2002 L.M.C., ch. 27, § 1; 2003 L.M.C., ch. 1, § 1; 2004 L.M.C., ch. 29, § 1; 2005 L.M.C., ch. 4, § 1; 2006 L.M.C., ch. 23, § 2.)

Editor's note—2006 L.M.C., ch. 23, § 3, states: Effective date; Applicability; Expiration.

(a) This Act takes effect on December 1, 2006. The County Executive must submit all regulations necessary to implement Article V of Chapter 25B, inserted by Section 1 of this Act, to the Council by October 11, 2006.

(b) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which an application for a local map amendment, development plan, project plan, site plan, or preliminary plan of subdivision was filed before December 1, 2006, unless the applicant voluntarily includes workforce housing units in that development.

(c) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which an application for a local map amendment, development plan, project plan, site plan, or preliminary plan of subdivision is filed after December 1, 2014.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005. The amendments to Section 25A-5 made by Section 1 of this Act which reduced the minimum size of a development where MPDUs must be located do not apply to any development for which a preliminary plan of subdivision was approved before April 1, 2005."

2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

Section 25A-5, formerly § 25A-4, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

The requirement of providing for moderately priced dwelling units contained in § 25A-5 is mentioned in connection with Montgomery County's growth policy in P. J. Tierney, *Maryland's Growing Pains: The Need for State Regulation*, 16 U. of Balt. L. Rev. 201 (1987) at pp. 236, 237.