





MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date: November 23, 2010
To: Montgomery County Planning Board
Via: Rollin Stanley, Director 
From: Joshua Sloan, Coordinator 
Re: CR-Zones Zoning Text Amendment

Recommendation

Transmit ZTA to County Council for introduction. This zoning text amendment will be sent to the Council Staff on the 3rd of December for subsequent introduction in order to be considered simultaneously with the master plans under current consideration. After introduction by the Council, the Planning Board will have a worksession on the zoning text amendment to prepare for a Council public hearing. Without this zoning text amendment, delays to one or more of the current Plans may be required.

Background

In October 2009, the Planning Board Draft of the *Kensington and Vicinity Sector Plan* was approved with a recommendation applying the CR Zones over much of the commercial area. In early March 2010, County Council Staff recommended a review of alternative zones for the Kensington Sector Plan area because of concerns regarding the economic redevelopment viability of small properties with lower allowed densities under the proposed CR Zones. Planning Board Staff responded with a memorandum in late March analyzing various alternatives and expressed the view that the CR Zones provided the best balance between encouraging revitalization and ensuring the provision of public amenities to fulfill the sector plan's vision.

During committee work sessions, discussion of the various zoning alternatives and the respective costs and benefits focused on a few issues of concern, including:

- Flexibility in meeting parking requirements,
- Feasibility of optional method projects on smaller properties,
- Appropriateness of public benefits for unique and diverse areas, and
- The costs of required building lot terminations (BLTs).

Planning Department Staff was directed to work with stakeholders to find solutions to these concerns through one of a number of means: a new zone, an overlay zone, or an amended zone. In discussions on these alternatives over several months during numerous public meetings and hearings, it was decided that an amendment to the CR Zones would be the most efficient and effective solution. This also allowed for a larger discussion with stakeholders in other areas that may have the CR Zones applied

to properties within their Plan boundaries, specifically within the Takoma/Langley Crossroads and Wheaton areas. Thus, four additional issues have been addressed by the attached ZTA:

- Introduction of limited uses near residential properties, and
- Modification of public use space requirements for standard method projects.
- Allowance for parking/drive through design waivers in certain circumstances when a site plan is not required.
- Change in payee designation for historic resource protection fee-in-lieu.

General Approach to Designation of Specificity

Many of the text amendments outlined and detailed below have to do with creating context-appropriate nuance for review and implementation of various standards and requirements. There are basically two means by which these nuances can be handled:

1. Create broadly applicable differentiation between areas and/or criteria generally and codify them within the ordinance (for example, “all properties zoned at or below 2.0 total FAR”), or
2. Create a legislative connection between the ordinance and the applicable master plans and allow each plan to define these areas or criteria independently (for example, “all properties within an area specifically recommended in a master plan”).

Planning Staff has chosen the later path for the obvious reason that it allows for the greatest amount of flexibility but will not compromise certainty. In each case, the ordinance remains clear but flexible when it defines the method for assessment and implementation, but the applicable master plan will apply the specific criteria and/or establish the specific parameters. Because each plan is approved and adopted by the Council and each application to which these subjects apply is reviewed by the Planning Board, the approach is consistently applied and properly delegated.

Disagreement over this issue persists to some extent and alternative approaches have been presented in the outline to provide the Planning Board with a sense of the discussions surrounding each topic.

CR Zoning Text Amendments

The proposed text amendments are outlined below with full language attached. Alternatives to Staff’s recommendation are provided in the outline but, where provided, these alternatives are not supported by Staff for various practical and technical reasons. After the summary, a table is provided that indicates the language and/or direction that would be provided in the applicable master or sector plan area.

1. Limited Land Uses

- a. A new category of land uses is proposed to ensure compatibility of certain commercial uses in transitional areas where the CR zone is adjacent to detached-unit residences.
- b. Modification would apply to 7 uses in the existing land use table and one new use (entertainment/performance venue).

- c. Limits the locations of buildings, parking, and driveway entrances associated with 6 of the proposed uses to at least 100 feet from any residentially- or agriculturally-zoned property line.
- d. Limits the location of drive-through service windows for 2 uses (retail & restaurants) to at least 100 feet from any residentially- or agriculturally-zoned property line. Banks, considered an office use, would not be affected.
- e. On properties that are not adjacent to such residentially- or agriculturally-zoned properties, the uses are simply permitted.
- f. Alternative: make such uses special exceptions with additional standards or allow municipalities to restrict uses independently as done with “automobile sales, outdoors” in the existing ordinance (59-C-15.5.(c)). Concerns related to these alternatives include:
 - i. Special exceptions for such uses are onerous in a zone meant to encourage flexible and dynamic revitalization.
 - ii. Setbacks recommended provide ample opportunity for visual and noise buffering.
 - iii. Municipal restrictions are hard to track, enforce, and document during application review.

2. Shared Parking Flexibility

- a. Proposed to ensure that municipalities can create shared-parking programs to increase flexibility for property owners that are not within parking lot districts.
- b. Increases range within which shared parking can be provided from 1,000 feet to ¼ mile (a 320-foot increase, or approximately one additional block).
- c. Adds language identical to that used for waivers currently applicable to parking requirements established in Article 59-E for the parking requirements in 59-C-15.
- d. Shared parking applies to municipalities that choose to create municipal shared parking programs.

3. Parking/Drive-Through Design & Parking Waiver Provision

- a. Two Parts:
 - i. To grant the Department of Permitting Services (DPS) the same authority granted the Planning Board to waive certain restrictions on parking/drive aisle design and drive-through design, and
 - ii. To establish waiver provision identical to current waiver allowed under Article 59-E (off-street parking and loading).
- b. DPS Director review is only applicable when a site plan is not required.
- c. Alternative to DPS review: require applications that request such a waiver to submit a site plan when not otherwise required. Concerns related to this suggestion include:
 - i. Particularly onerous financially for small properties,
 - ii. Little to be gained by additional review, and
 - iii. Sufficient criteria establish guidance for the Planning Board and DPS.
- d. Waiver provision applies to all CR-Zoned properties.

- e. Waiver guided by existing code language on parking facility objectives.
- f. Alternative to waiver language: enumerate specific criteria and/or circumstances that may be provided in support of a waiver of the parking requirements in the ordinance. Concerns related to this suggestion include:
 - i. Waivers are given for reasons too numerous to codify,
 - ii. Waivers for similar circumstances may not be applicable in different contexts, and
 - iii. The list may be interpreted as being the only criteria/circumstances under which a waiver may be granted.

4. *Public Use Space Requirements*

- a. Proposed to ease burden on small properties and interim uses that would have to provide public use space that would provide little benefit to the public.
- b. Removes requirement for public use space for properties under 5,000 square feet and limits calculation of public use space area to a larger development's limits of disturbance.
- c. Applies to standard method projects that require a site plan.
- d. Alternative: establish waiver provisions of public use space. Concerns related to this suggestion include:
 - i. Difficult to set waiver parameters that apply to all situations, and
 - ii. Requirements for public use space should remain a disincentive to standard method development except for small businesses and interim uses, i.e., encouragement of optional method development should remain for most properties.

5. *Public Benefit Reductions*

- a. Proposed to ease development burden on properties within specific areas or that meet specific criteria that a Plan designates as needing such consideration.
- b. Allows development that meets the Plan-designated criteria to achieve full incentive density (up to 30%) in four categories (connectivity, diversity, design, and environment) for the provision of only 1 public benefit.
- c. Applies to areas specifically recommended for such consideration in a master or sector plan.
- d. Alternative: establish universal criteria for such consideration in the Zoning Ordinance rather than Plan area by Plan area. For example, all lots under 20,000 square feet or zoned at or under CR2.0. This alternative has been a matter of great debate between Staff and property owners and municipal representatives. There is no agreement regarding the best approach, the basic difference coming down to which of two goals should be encouraged:
 - i. Rigidity and universal applicability (codify the criteria in the Ordinance), or
 - ii. Flexibility within and between Plans given economic context and vision of different areas (allow Plans to establish areas/criteria).

6. *BLT Exemption*

- a. Proposed to ease development burden on properties within specific areas that a Plan designates as needing such consideration and/or where other environmental benefits are desired.
- b. Allows for a Plan to delineate an area where properties are exempted from the requirements for BLT purchases/payments.
- c. Applies to areas specifically recommended for such consideration in a master or sector plan.
- d. An alternative would be to establish the criteria/circumstances in the Ordinance for reasons similar to issue #4, above. Staff recommends leaving the criteria to the master plans to allow for flexible application.

7. *Additional Public Benefits*

- a. Proposed to allow public benefits to be established that are specific to a Plan's context.
- b. Allows master or sector plans to indicate additional public benefits that may be proffered and approved by the Planning Board during optional method development review.
- c. Applies to properties that are within master or sector plans that indicate such additional public benefits.
- d. Alternative: establish and codify a set of additional public benefits with current ZTA and/or codify a new set of additional public benefits with each new master or sector plan that applies the CR Zones. Concerns related to this suggestion include:
 - i. Although both alternatives ensure flexibility and adaptability for properties and plan areas, the proposed solution does not require additional ZTAs; and
 - ii. The newly generated stream of ZTAs would change application of CR Zones within areas that were zoned CR prior to adoption of new public benefits.

8. *Historic Resource Protection*

- a. Proposed to modify payee for fee-in-lieu provision of historic resource protection benefit.
- b. Allows a developer to make a payment for a historic resource protection project in lieu of material conservation. Payment under amended language could be made for projects on private or park land.
- c. Applies to development using the historic resource protection public benefit for incentive density.

Text Amendment/Master Plan Synchronization

ZTA Item	Kensington Sector Plan	Takoma Sector Plan	Wheaton Sector Plan
1. <i>Limited uses</i>	No additional language/direction needed.	No additional language/direction needed.	Discussion on buffer ensured by this section of the ordinance provides visual and noise screening along East Avenue.
2. <i>Shared Parking Flexibility</i>	Should create a shared-parking program with established boundaries, spaces, and criteria for participation and tracking.	Should create a shared-parking program with established boundaries, spaces, and criteria for participation and tracking.	No additional language/direction needed.
3. <i>Parking/Drive-Through Design</i>	Guidance on parking waivers may be provided.	Guidance on parking waivers may be provided.	Guidance on parking waivers may be provided.
4. <i>Public Use Space</i>	No additional language/direction needed.	No additional language/direction needed.	No additional language/direction needed.
5. <i>Public Benefit Reductions</i>	Delineate areas and/or criteria where reduced benefits may be provided.	Delineate areas and/or criteria where reduced benefits may be provided.	Delineate areas and/or criteria where reduced benefits may be provided.
6. <i>BLT Exemption</i>	If used, delineate area where properties are exempted.	If used, delineate area where properties are exempted.	If used, delineate area where properties are exempted.
7. <i>Additional Public Benefits</i>	If used, indicate new public benefit list and any criteria required to apply the benefit(s).	If used, indicate new public benefit list and any criteria required to apply the benefit(s).	If used, indicate new public benefit list and any criteria required to apply the benefit(s).
8. <i>Historic Resource Protection</i>	No additional language/direction needed.	No additional language/direction needed.	No additional language/direction needed.

Proposed modifications and changes to the Kensington Sector Plan that address these text amendments are attached.

Changes are presented in detail below; underlined text is added to the existing language of the zone, ~~struck through~~ text is removed from the existing language of the zone.

1. Amendment for restrictions on uses in transitional areas next to detached-unit residential zones.

59-C-15.5. Land Uses.

No use is allowed in the CR zones except as indicated below:

- *Permitted Uses* are designated....
- *Special Exception Uses* are designated....
- Limited Uses are designated by the letter “L” and are limited in specific circumstances according to Section 59-C-15.51; where these circumstances do not apply they are considered permitted uses.

Ambulance or rescue squads	P <u>L</u>
Automobile repair and services	P <u>L</u>
Automobile sales, indoors	P <u>L</u>
Automobile sales, outdoors (except where a municipality prohibits the use within its jurisdiction by resolution)	P <u>L</u>
Eating and drinking establishments	P <u>L</u>
<u>Entertainment/performance venue</u>	P <u>L</u>
Retail trades, businesses, and services of a general commercial nature	P <u>L</u>
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, and projects resulting from biotechnical and biogenetic research and development	P <u>L</u>
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment	P <u>L</u>

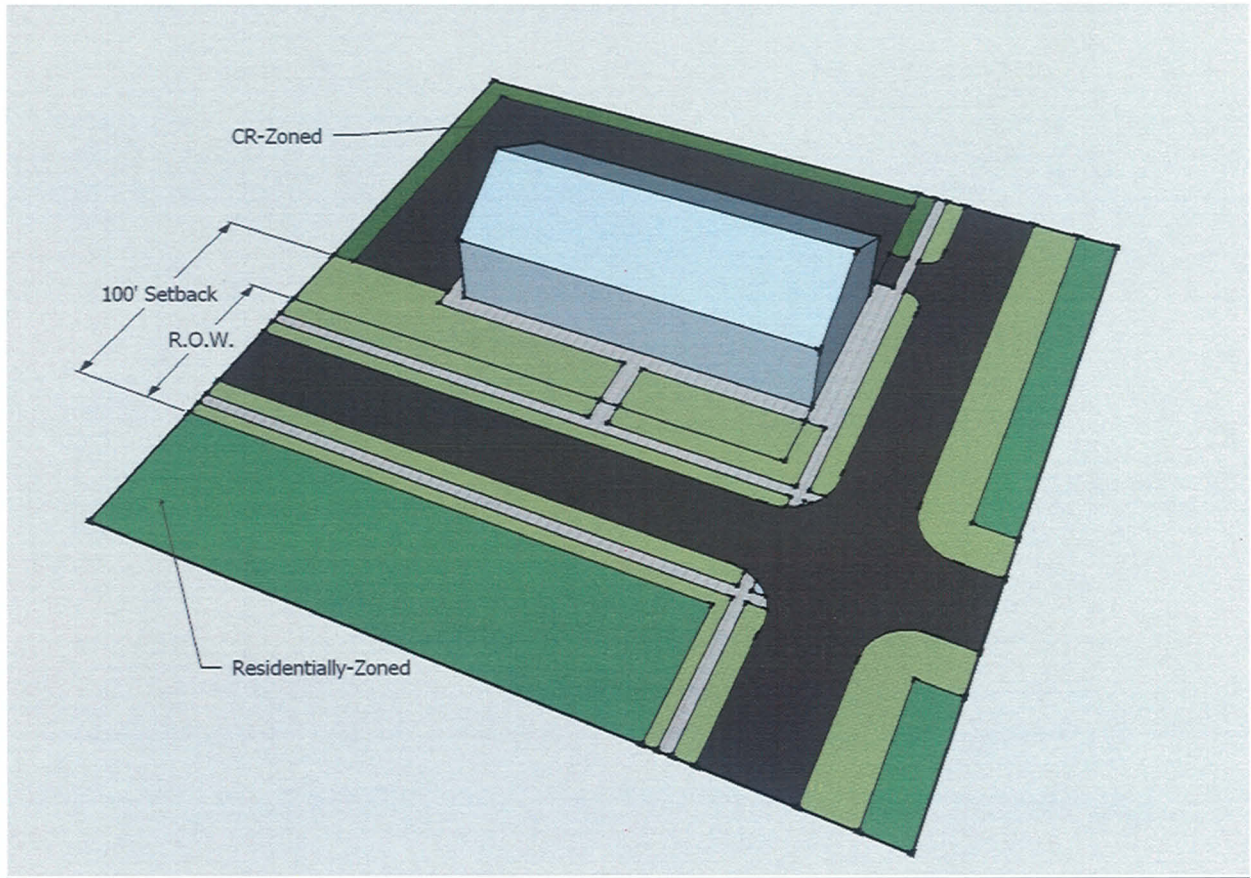
59-C-15.51. Limited Uses

If a use or activity designated by the letter “L” is on a property that is located adjacent to a property in an agricultural (Division 59-C-9) or residential (59-C-1) zone or is separated from such a property only by a master-planned primary residential street or lower street designation right-of-way it must comply with the following standards:

(a) Buildings, parking facilities, and driveway entrances serving the limited use and associated activities must not be located within 100 feet of the agriculturally- or residentially-zoned property line for the following uses:

- (1) Ambulance or rescue squads;
- (2) Automobile repair and services;
- (3) Automobile sales, outdoors;
- (4) Entertainment/performance venue;

- (5) Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, and projects resulting from biotechnical and biogenetic research and development; and
- (6) Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment.



Limited Use Setbacks Illustrative

- (b) Notwithstanding Section 59-C-15.65(f), a drive-through service facility is not allowed within 100 feet of the agriculturally- or residentially-zoned property line for the following uses:
 - (1) Eating and drinking establishments; and
 - (2) Retail trades, businesses, and services of a general commercial nature.

2. Amendment for parking reductions under certain circumstances.

59-C-15.65. Parking.

- (c) Parking requirements must be met by any of the following:
 - (1) providing the spaces on site;
 - (2) constructing publicly available on-street parking; or
 - (3) participating in:
 - (i) a parking lot district or other municipal shared parking program; and/or

(ii) entering into an agreement for shared private or publicly accessible parking spaces in a public or private facility within ¼ mile 1,000 feet of the subject lot, if the off-site parking facility is spaces are not in an agricultural (Division 59-C-9), planned unit development (Division 59-C-7), or residential (Division 59-C-1) zone, unless part of a municipal shared parking program or otherwise allowed by this Ordinance.

3. Amendment to grant the Department of Permitting Services the same authority as the Planning Board to review the design of surface parking facility locations and drive-through services when not subject to Planning Board review.

59-C-15.65. Parking.

- (e) The design of surface parking facilities must comply with the following:
- (1) a parking facility at or above grade must not be located between the street and the main front wall of the building or the sidewall of a building on a corner lot unless the Planning Board, or, in the case of a standard method project that does not require a preliminary or site plan approval, the Department of Permitting Services finds that safe and efficient circulation would be better served by a different arrangement per subsection 59-C-15.65.(h) below;
- (f) The design of parking facilities with drive-through services must comply with the following; however, the Planning Board, or, in the case of a standard method project that does not require a preliminary or site plan approval, the Department of Permitting Services may approve an alternative design if it finds that the alternative would provide safer and more efficient circulation per subsection 59-C-15.65.(h) below.
- (h) The Director, Planning Board, or Board of Appeals may waive any requirement of Section 59-C-15.65 not necessary to accomplish the objectives in Section 59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. Any request for a waiver under this Section must be referred to all adjoining property owners and affected citizen associations for comment before a decision on the requested waiver.

4. Amendment modifying public use space requirements for standard method projects.

59-C-15.74. Public Use Space.

- (a) Public use space is not required for any standard method project with a net lot area of less than 5,000 square feet or any project that does not require a site plan. If a site plan is required for the proposed project and the net lot area of the project is 5,000 square feet or greater, then the minimum public use space is 10 percent of the project's limits of disturbance net land area.

5. Amendment for public benefit reductions for specific master plan-determined areas in the four incentive density categories that list individual public benefits.

59-C-15.84. Incentives for Connectivity and Mobility.

In order to ... the Planning Board may approve incentive density of up to 30% for a project that provides at least 2 of the following public benefits. The number of required benefits for projects may be reduced to 1 for up to 30% incentive density in this category if the subject lot is within an area or meets particular criteria specifically recommended for such consideration in the applicable master or sector plan.

59-C-15.85. Incentives for Diversity of Uses and Activities.

In order to ... the Planning Board may approve incentive density of up to 30% for a project that provides ~~affordable housing or a public facility, as described below,~~ or at least 2 of the ~~other~~ following public benefits. The number of required benefits for projects may be reduced to 1 for up to 30% incentive density in this category if the subject lot is within an area or meets particular criteria specifically recommended for such consideration in the applicable master or sector plan, or if the project provides affordable housing as described below.

59-C-15.86. Incentives for Quality Building and Site Design.

In order to ... the Planning Board may approve incentive density of up to 30% for a project that provides at least 2 of the following public benefits. The number of required benefits for projects may be reduced to 1 for up to 30% incentive density in this category if the subject lot is within an area or meets particular criteria specifically recommended for such consideration in the applicable master or sector plan.

59-C-15.87. Incentives for Protection and Enhancement of the Natural Environment.

In order to ... the Planning Board may approve ~~a density increase~~ incentive density of up to 30% for a project that provides at least two of the following public benefits. ~~the public benefits in this Subsection:~~ The number of required benefits for projects may be reduced to 1 for up to 30% incentive density in this category if the subject lot is within an area or meets particular criteria specifically recommended for such consideration in the applicable master or sector plan, or if the project provides BLTs as described below.

6. Amendment for elimination of BLT requirement under specific recommendations of a master or sector plan.

59-C-15.87. Incentives for Protection and Enhancement of the Natural Environment.

- (a) Unless a property is in an area or meets particular criteria specifically exempted by the applicable master or sector plan, CR Zones require the purchase of BLT easements or payment to the Agricultural Land Preservation fund....

7. Amendment for additional public benefits when specified in a master or sector plan.

59-C-15.81. Incentive Density Provisions.

- (d) The Planning Board must adopt, publish, and maintain guidelines that detail the standards and requirements for public benefits that may be provided for incentive density. The guidelines must:
 - (4) only address the public benefits listed in Sections 59-C-15.82 through 59-C-15.88 and those additional public benefits specifically indicated in an approved master or sector plan and must not add a public benefit category; and...

8. Amendment to modify payee for historic resource protection fee-in-lieu option.

59-C-15.86. Incentives for quality building and site design.

- (a) Historic Resource Protection: ... A fee-in-lieu for a specific preservation project may be paid to the ~~Historic Preservation Division~~ M-NCPPC as specified in the Guidelines for Public Benefits.