

KV - QUESTIONS FOR JOSH SLOAN or PLANNERS 12-20-10 - Combined

General Questions:

1. Why is the CRN a Euclidean zone and not a Floating zone? We have already lost so much of our subdivision to piecemeal Euclidean zoning. Are there safeguards in this new zone that will protect us from further loss than what you are requesting with this new Sector Plan (we're assuming this CRN zone will apply to all of our Transition areas)?

Floating Zones

Floating zones are a more flexible approach to zoning regulation that encourages creativity of design, permits specialized land development, and provides more flexibility in standards and requirements than the Euclidean zones. In exchange for the greater flexibility of standards, an applicant must allow the Planning Board to make a detailed site plan review that takes into account how compatible the proposed development is internally to the site and externally to the surrounding area.

To approve a floating zone, the County Council must find the proposed rezoning to be compatible with surrounding uses and in accord with the expressed purposes and other requirements of the zone, as well as the General Plan. While all floating zones have site plan review by the Planning Board, not all Euclidian zones do. **The traditional finding of change or mistake required for the grant of a Euclidian zone is not required for a floating zone.**

There are many types of floating zones in the Montgomery County Zoning Ordinance that require varying levels of commitment by the applicant prior to receiving final permission to develop. They are basically divided into two types: a) Development plan zones and b) Non-development plan zones.

http://www.montgomeryplanning.org/info/resident_guides/zoning/intro.shtm#two

2. Where will the CRN, CRT zones apply in our subdivision?

University Blvd. -

East Avenue -

Sandy showed a map at the last work session that had CR on University from East Ave. to Hillsdale Drive - was this a change or mistake?

3. How will Dr. Grant's lots (2813 University - CT, 11107 Midvale - R60, 11206 Upton Drive - R60) be treated - I.e. will he be allowed to develop all three together with one development? Where is this addressed?

4. Do "incentives" only kick in for Optional Method (CR, CRT, not applicable to CRN) and not for Standard Method?

5. Will the Sector Plan language have more "meat" with these changes?

Page Specific Questions:

✓ **Page 3**

Does CRN require site plan?

“Density averaging is not allowed in CRN” - does this solve the ‘Dr. Grant properties’ concerns? (2813 University - CT, 11107 Midvale - R60, 11206 Upton Drive - R60)

Virginia:

p.3 – Under overview/CRN/

3rd bullet – should specify – ‘standard method only’ add ‘site plan required if adjacent, confronting, abutting existing residential’

4th bullet – define ‘flexible residential’ or use different word

Page 4

Methods of Development:

“Under the standard method, a site plan is required for any property:”

Must a development meet all requirements or would the statement “Adjacent to or confronting an agricultural or single-family residential zone” alone require a site plan?

Virginia :

p.4-Applicability – 1st bullet – what does ‘more generally under Article 49-H’ mean – be specific "fully"

Methods of development – 1st bullet – add ‘remain for CR and CRT, standard method only for CRN

Move bullets 6 and 7 up between 1 and 2

Land Uses – provide objective language in place of subjective ‘deemed compatible in trans. Areas’

‘deemed’ is not an enforceable standard

Page 6

Development Standards

“Not required for properties under 5,000 square feet”

Is this gross lot area?

Public Benefits

“CRN-zoned projects do not require any points because they may not develop under the optional method, but they must meet the category requisite public benefits (see below).”

What are the “requisite public benefits?”

Page 7

“the proposed zoning will have to be reconsidered to adapt to the proposed CR zone expansion.”

Has the draft been changed for the Board to consider or will this be suggested by the Board at the next work session?

Page 8

Virginia:

p. 8 - 3rd paragraph, 2nd sentence, sector and master plan recommendations are only reliable protections available to existing residential communities and transition areas should be specifically described in these plans to ensure residential integrity of certain areas

Applicability – this sentence is repeated in many places – should be a lead of section only. 59-C-15.13 could begin with last sentence in 1st paragraph

Page 9

Default Context, Density and Height Range

Where are the C-O defaults?

What is C-Inn?

Will Sandy be changing University Blvd./East Avenue to these defaults?

Virginia:

p.9 – Default Context table – is data shown maximum or minimum in all categories

Page 10

C-T and CRN Land Use Comparison

Does blank mean “not permitted”?

Why are “Automobile repair and services“, “Automobile sales, indoors“, or “Automobile sales, outdoors” allowed, even limited, in the CRN zone?

Page 10 (continued)

Can you give us an example, based on the lots in our subdivision, where/how “Eating and drinking establishment, excluding a drive in” could be built? - Could we still end up with El Pollo Rico’s or Biker Bars adjacent to or confronting our single family homes?

“Funeral parlors or undertaking establishments” **Do these include crematories?**

“Personal Living Quarters”(PLQ) - Per Chapter 59 current definitions - “Any building or portion of a building containing at least 6 individual living units which must have cooking facilities that the residents may share, and which may also have shared sanitation facilities in accordance with Section 59-A-6.15.” **These appear to be Boarding Houses, Transient housing, Bed and Breakfast’s, or Tourist homes that we do not believe belongs adjacent to/confronting single-family homes. PLQ’s are currently only allowed in R-30, R-20, R-10, R-H, CBD zones (and may be allowed in mixed use zones - MXTC, MXTR/TDR, TMX)**

Are “tenant footprints” structure size or leasable space? Could massage parlors, 7-elevens, pawn shops, adult bookstores, or any other uses that resident’s might find objectionable go in the houses on University Blvd.?

“Seasonal outdoor sales” **Can this be changed to Limited?**

Page 10 (continued) & Page 11

Virginia:

p. 10-11 –most of these P and L uses should not be allowed on East Avenue

Page 14

59-C-15.122, Density Averaging

(e) “The total allowed maximum density...lot or parcel may not exceed that allowed by the zone.” **Which zone, the CR, CRT, or agricultural/residential zone?**

Virginia:

p. 14 – 59-C-15.2 see note above on p. 8 Applicability

Page 15

59-C-15.41 Standard Method

Why are the CRT, CR maximum total density less than the CRN maximum density?

C. “A site plan is required for all standard method development that:

(1) is adjacent to or confronting a property in an agriculturally-zoned...”

Can you add the word “or” after this (unless your intent is for a development to meet all requirements)?

D. “If a site plan is required, standard method development must comply with section 59-C-15.82 regarding the provisions of public benefits.”

59-C-15.82 of the current CR zone is for Incentives for Master-Planned Major Public Facilities. **Do incentives apply to standard method or how does this work?**

Virginia:

p. 15 – 59-C-15.41.c - what would this look like on East Avenue

Page 16

59-C-15.43 (4) “A general phasing outline of structures, uses, roads, sidewalks, dedications, public benefits, and subsequent preliminary/site plan applications.”

Will the CRN zone be applied to our transition areas, will they require site plan, and will the width of East Avenue be taken into account if site plans are required?

Page 18 & 19

I think we’ve covered most of these uses above, but do bank drive-throughs have limited parameters such as stacking lanes, etc.?

Some of these uses will be dependent on where the zones actually occur; we need further clarification on some of these uses and how they may impact our homes.

Virginia:

p.18 – note warehousing shows a square footage range – all automotive uses should should show same

Page 19

Virginia

p. 19 – 59-C-15.511. a-c – what would this allow on East Avenue?

Page 20

59-C-15.512 Restrictions and requirements of limited uses

(1) “The 100-foot buffer must contain at least an 8-foot evergreen hedge or tree line”

Is this height or width? If width, why is this less than 59-C-15.645 (b)?

(3) “These requirements replace any applicable parking facility landscaping requirements in section 59-C-15.645.” **What about “internal pervious coverage”, “tree canopy of 15 years growth”, “right-of-way screening”?**

What happened to 59C-15.62 “Priority Retail Street Frontages”?

59-C-15.63 “In place of the requirements of Article 59-E regarding bicycle parking spaces...” **Where is this in 59-E? (It could be didn’t print it)**

Virginia:

p. 20 – 59-c-15.63 – specify number of bikes to be accommodated not number of racks

Page 21

59-C-15.641 Parking ratios

Is this referring to the current 59-E-3.5 & 59-E-3.7? What about 59-E-3.3 (10% reduction)?

Hugo’s, 2901 University Blvd, currently has a 17,563 sf lot with a 4,878 sf building

Can you give us what the current parking space requirements are?

How many spaces would be required if CRN?

How many spaces would be required if CRT?

What if he added outdoor seating and served coffee and donuts?

CT currently requires 10% green space. How will his site plan (if required) change?

A suggestion - change the table to add 0’s to make the table consistent (0.7 becomes 0.70)

Virginia:

p. 21-22 – 59-c-15.642.d – unrealistic to trade one car-share for 6 required spaces in most areas

Page 21 (continued)

59-C-15.642 Accepted parking spaces

(b) “Constructing publicly available on-street parking” **What are these?**

Can you give us a brief description of how this will affect Kensington View?

Page 22

59-C-15.644 Drive-through facility design. “Any drive-through”
Does this include banks?

Page 23

What are “reasonable mitigating requirements above the minimum standards”?

Page 24

59-C-15.71 Density and height table

Why is CRN maximum total density higher than CRT/CR?

Virginia:

p. 24 – 59-c.15.71a.1 – sector/master plan must specify zone formula for transition properties (CRN-C_R_H)

Page 25

In the first table, would a 6,000 sf lot (minimum in our transition areas) require 600 sf public use space? Could green space qualify? What is “net tract area” - is that subtracting the square footage of a building?

Back to Hugo’s, 2901 University Blvd, - 17,563 sf lot, 4,878 sf building - what would his public use space be?

In the second table “Optional method” - why is the public use space requirement less than the standard method?

Page 28

Virginia:

p. 28 – 59-c-15.843 – incentive points should be cut by 50% - much too generous to developer who will complete development and leave but our community has to live with results for a long time.

Virginia:

No points should be allowed for transit proximity, through block connections, grey field development, way-finding, exceptional design, public charette, vegetated wall/roof and other similar elements that should be inherent in good and cost effective design to be competitive – the developers responsibility not at a cost to the public by increasing density.

Housing diversity, except for MPDUs and WFHU, should be negotiated at site plan based on site specific environment – not subject to gaining density bonus

Since the rest of the pages deal with Optional Method and we’re not sure which zones will go where, we didn’t really focus on these. If the CR or CRT is going in our transition areas, maybe a brief description with examples would help us.

Kensington View Civic Association
Judy Higgins, Chair, Land Use and Zoning Committee
CR Zone - Zoning Text Amendments
Montgomery County Planning Board - Agenda Item #9 - 13th January 2011

Kensington View representatives remain an active part of the 'ZTA 09-08, Proposed Amendments to the CR Zone' discussion as well as the Wheaton Sector Plan as the perimeters of our sub-division will be greatly affected in the future if any of the three CR Zones, as currently written, are applied as planners continue to recommend.

It is impossible to fully examine the current Amendments, as the final draft is not available on line as of today, Tuesday, January 11, 2011. We received a copy via email on Jan 7 but it was stated in the email, "Other staff may weigh in and we will publish on the web early next week." That is not the case.

Further, the latest changes to the "Draft Wheaton Sector Plan" and the relationship to the CRN/CRT zones cannot be fully explored until pre February 3rd, Wheaton Sector Plan Work-session # 6. We therefore find we still cannot understand how any of the three CR Zones if adopted would work on our edges or implement the current language of the Sector Plan draft (townhouse residential with limited office/commercial use).

Recently it has been brought to our attention that although Kensington View may not be the 'worst case scenario, it is the first case scenario' therefore the complex nature of the edges of our community will be setting a precedent as to how zoning applications in future Master Plans for other areas address residential borders of single family neighborhoods, in our case, 'residential lots' that are greater than 2000 ft. from Metro.

We believe that the 'flexibility' and 'non residential' uses still remain unacceptable as well as the projected heights, limited parking requirements, reduction of green space for small properties, and projected densities in either the CRN or CRT Zone as written in the draft we are currently discussing.

If we are to support such zones, which we had hoped we could, than we must be guaranteed that our community is protected and to date that is not necessarily the case.

We again request that a far more compatible, limiting zone be written or modified as none of the CR Zones as written and/or amended have yet to be considered a comfortable transition. If you are creating the CRN or CRT for residential transition areas such as Kensington View, this amendment does not protect, preserve, or enhance either the residential properties or the current business properties.

Please do not vote to allow these Amendments to go forward until all involved can actually see how, if adopted, they will apply to their communities. To quote a statement from a KVCA resident to the Council, "While I understand the desire to submit to the Council so action can be taken before you begin your budget-oriented focus, it is a disservice to the residents of the county to respond to artificial deadlines and send forward recommended policies with the anticipation that it will be returned to the Planning Board for additional action."

Let's not send something that is 'half baked.' Thank you.

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Kensington View Civic Association
Judy Higgins, Chair, Land Use and Zoning Committee
CR Zone - Zoning Text Amendments
Montgomery County Planning Board - Agenda Item #3 - 10 February 2011

Kensington View has been very clear that we do not agree with the standards regarding height and uses of the CRN Zone. We believe that only light office or residential uses are appropriate as a 'buffer' next to any single-family neighborhood.

Since the results of our discussion of February 3, 2010 on Sections 59-C-15.4 and 59-C-15.5 are not available for review, we again state the following to ensure our opinion is being noted: was posted 2/9/11 late afternoon after this was finalized by our committee

The CRN Zone:

- *Should be used as implied, for the protection of neighborhoods not encouragement of commerce.*
- *No height minimum should be imposed to allow for possible future redevelopment to single family homes if the property owner should choose.*
- *To ensure compatibility with any existing neighborhood the maximum height should be no more than 45".*
- *Should only allow residential or low intensity offices development.*

The following addresses the items on today's agenda, Sections 6,7,8,9.

59-C15.62 Streetscape

Without the 'design guidelines' available, this is difficult to address.

59-C15.64 Parking

After hours and hours of research and frustration that no citizens should have to do we determined this was too complicated and completely unfair, but unfortunately at this juncture imperative Here is our best shot at understanding in the hopes we may receive sound, sustainable future redevelopment with adequate parking. We firmly believe that CRN and CRT should require the provisions of Section 59-E, which is time proven.

59-C-15.64

MC Code-Section 59-E-2.8, Parking facilities within or adjoining residential zone.

This appears to have requirements more conforming to a residential neighborhood.

59-E-2.81 (a) "Where a parking facility is within a residential zone or adjoins land in a residential zone that is neither recommended for commercial or industrial use on an approved and adopted master or sector plan, nor used for public or private off-street parking, nor in a public right-of-way that is 120 feet or more in width, residential setbacks apply as follows: All parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility".

In Kensington View, East Avenue currently has 25 foot building restriction lines, University Blvd. and Kensington Blvd. have 40 foot building restriction lines. The CR Zone is not clear on whether this applies to confronting properties, as we don't find this mentioned.

A (2)

**Kensington View Civic Association, CR Zone - Zoning Text Amendments
Montgomery County Planning Board - Agenda Item #3 - 10 February 2011**

59-C-15.641 Parking Ratios (Table between lines 305-306 in ZTA clean copy Jan. 13, 2011)
Based on our calculations using one example from our neighborhood this is what we are seeing.

Hair Salon - CT Zoned Property, Wheaton CBD Sector Plan, Pg 39, Block X, Lot 1
(This property morphed from corporate office with accessory hair services to total hair salon)

Description - 4,878 sf building on a 17,563 sf lot

CT Zone currently requires 17 parking spaces.

When Hugo's is doing well, this is not enough parking, so clients park in the lawyer's lot next door or on the residential street that does not have permit parking.

CRN zone will reduce this requirement to 10 parking spaces

CRT zone will reduce this requirement to 7 parking spaces

CR Zone would require 19.5 based on location (between 1/4 and 1/2 mile of metro, 4 spaces per 1,000 sf).

Can this possibly be correct? Would you figure Hugo's on 1/4 - 1/2 mile from Metro or within 1/4 mile of a bus route?

We clearly know where spillover will be directed!

59-C-51-642. Accepted Parking Spaces

Ford Dealership, East Ave, Wheaton CBD Sector Plan, Pg 38, block S, lots 7-13 & P282 Veirs Mill Road:

If the properties on Veirs Mill Road are assigned the CR Zone and are in the 'parking lot district,' and the CRN or CRT are assigned to the East Avenue properties and developments can cross lot lines, how will the parking be treated?

Which parameters do you use, since we don't see any differences for confronting residential zones.

This is the X factor to us...

59-C-15.645 Landscaping and Lighting

Why does 59-C-15.645 (b) require "one deciduous tree per 30 feet" for properties adjacent to residential lots, but "no less than 30 percent of the parking facility area (at 15 years growth)" for all other properties?

59-C-15.71 Setbacks

(a) This section deals with setbacks of buildings adjacent to lot or parcels in an agricultural or single-family residential zone.

What about the confronting properties as on East Ave or other sections of the county where the property may be deeply embedded in a residential zone?

Do these setbacks also apply to parking lots?

(a), (2) As we do not agree with the heights and you with your wisdom you may agree with us, this angular plane projection and drawing would need to be changed.

59-C-15.72. Public Use Spaces

In the table - what is included and considered 'limit of disturbance' is that parking lot, land or area for building?

(2) Line 395 and 396 from redline 1-13-11 - Making a payment in part or in full for design, construction, renovation, restoration, installation, and/or operation near applicable master or sector plan areas.

Operation of what near applicable master or sector plan area?

Thank you for reviewing our comments.

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A 9

**Kensington View Civic Association
 Judy Higgins, Chair, Land Use and Zoning Committee
 CR Zone - Zoning Text Amendments – Public Testimony
 Montgomery County Planning Board - Agenda Item #6 – 17 February 2011**

Kensington View continues to believe that the CRN Zone should be designed to be compatible with and used for the protection of single-family residential neighborhoods not for possible future advancement of commerce through redevelopment. We again state that when a developer purchases ‘residential property’ adjacent to or abutting a single-family residential neighborhood they do so with no guarantee they will be able to redevelop the properties for commercial use. Conversely, the residents of Kensington View bought homes in a residentially zoned (R-60) neighborhood. We have placed faith in our county officials to protect that character, and reject ill-advised zoning that would ultimately lead to our neighborhood’s demise. To quote the draft Wheaton Sector Plan, we believe that “the Plan area benefits from quiet residential streets abutting business streets and larger State highways.” We strongly urge you to protect the walk able residential neighborhoods adjacent to the CBD by crafting a zone that addresses the unique needs of Kensington View and similar communities.

Kensington View Testimony by Sections, mostly based on January 13th draft, but includes some pieces distributed February 14, 2011 after this review was completed for public testimony:

59-C-15.11

The heights should require no minimum in the event a future property owner should choose to build a single-family home. We also request that the maximum height be capped at 45’ for the protection and compatibility with homes adjacent to or confronting ‘possible’ commercial properties. Without mapping the density component is less clear to us with limited experience. Please closely reconsider the standards of the CRN Zone, allow it to be ‘the zone’ to protect neighborhoods. Further, we do not see any purpose to increase the max height of the CRT Zone to 150’.

Category	Max Total FAR	Max C or R FAR	Max H
CRN	0.5 to 1.5	0.25 to 1.5	40 to 65
CRT	0.5 to 4.0	0.25 to 3.5	40 to 150
CR	0.5 to 8.0	0.25 to 7.5	40 to 300

59-C-15.122. Density Averaging

Kensington View still remains unclear exactly how this is achieved based on the text. If lots to be combined for a development project have three different zones mapped which one is used to determine the maximums?

59-C-15.122. Density Averaging

- (a) the properties are subject to the same sketch plan and provide public benefits as required for the sum of their total densities;*
- (b) the resulting lots or parcels are created by the same preliminary subdivision plan or per a phasing plan established by an approved sketch plan;*
- (c) the maximum total, non-residential, and residential density limits apply to the entire development, not to individual lots or parcels;*
- (d) no building may exceed the maximum height set by the zone;*
- (e) uses are subject to the underlying zone allowances and restrictions; and*
- (f) the total allowed maximum density on a resulting lot or parcel that is adjacent to or confronting an agriculturally-zoned (under Division 59-C-9) or single-family residentially-zoned (under Division 59-C-1) lot or parcel may not exceed that allowed by the zone.*

Regardless, this needs to be much more specific in our opinion so all can understand the intention of this section.

59-C-15.2. Description and Objectives of the CR Zones

We believe that the ‘flexible mix of uses, densities, and building heights’ for the CRN zones should be more limiting to offer true compatibility as a buffer and ensure the protection of single family residential neighborhoods. We believe there must be at least one zone that does such.

59-C-15.2. Description and Objectives of the CR Zones.

(d) allow a flexible mix of uses, densities, and building heights appropriate to various contexts to ensure compatible relationships with adjoining neighborhoods;

59-C-15.41. Standard Method.

KV believes that regardless of which zone is applied, CRN or CRT, all development that is adjacent to or confronting residential neighborhoods should require a site plan, regardless of the FAR. It is not clear why the ‘0.5 FAR’ has now become a requirement along with the ‘adjacent and confronting requirement’ to trigger a site plan and we would like that to be removed. Compatibility with the neighborhood is of the utmost importance.

For clarity we would like to see the word ‘or’ added between (1) and (2) and (2) and (3).

59-C-15.41. Standard Method.

Standard method development is allowed under the following limitations and requirements.

(a) In the CRN zones, the maximum total, non-residential, and residential density and maximum height for any property is set by the zone shown on the zoning map.

(b) In the CRT and CR zones, the maximum standard method density and height is the lesser of the density and height set by the zone shown on the zoning map or:

<i>Category</i>	<i>Maximum Total Density (FAR)</i>	<i>Maximum Building Height (feet)</i>
<i>CRT</i>	<i>1.5</i>	<i>65</i>
<i>CR</i>	<i>1.5</i>	<i>80</i>

(c) A site plan approval under Division 59-D-3 is required for a standard method development only if it:

(1) is adjacent to or confronting a property in an applicable residential zone and requests a maximum total density exceeding 0.5 FAR;

(2) requests a gross floor area exceeding 10,000 square feet;

(3) requests a building height exceeding 40 feet; or

(4) contains 10 or more dwelling units.

59-C-15.5. Land Uses.

We continue to believe that any uses allowed in the CRN Zone, either permitted, limited or by SE, should be most protective of the confronting or adjacent single family neighborhoods and should only allow residential or low intensity offices development. We believe that by adding residential uses to the uses currently found in the C-T Zone would be most protective of the residential areas in the County. The C-T Zone was created for the sole purpose of protecting residential single-family homes from the adverse impacts of commercial areas.

We do not believe the following uses are compatible with any single-family residential neighborhood and we would like you to please reconsider eliminating the ones we have detailed below.

Use	CRN	Use	CRN
<u>(a) Agricultural</u>		<i>Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 5,000sf and 15,000sf</i>	<i>L</i>
<i>Farm and country markets</i>	<i>L</i>	<i>Veterinary Hospitals and offices with boarding facilities</i>	<i>SE</i>
<i>Seasonal outdoor sales - Unless limited dates</i>	<i>P</i>	<u>(d) Institutional and Civic</u>	
<u>(b) Residential</u>		<i>Day care facilities and centers with over 30 users</i>	<i>L</i>
<i>Group homes, small or large</i>	<i>P</i>	<i>Educational institutions, private</i>	<i>L</i>
<i>Hospice care facilities</i>	<i>P</i>	<i>Private clubs and service institutions</i>	<i>L</i>
<u>(c) Commercial Sales and Service</u>		<i>Religious institutions</i>	<i>P</i>
<i>Ambulance or rescue squads, private</i>	<i>SE</i>	<u>(e) Other</u>	
<i>Animal boarding places</i>	<i>SE</i>	<i>Public utility buildings, structures, and underground facilities</i>	<i>P</i>
<i>Automobile repair and services</i>	<i>L</i>	<i>Rooftop mounted antennas and related unmanned equipment buildings, cabinets or rooms</i>	<i>P</i>
<i>Automobile sales indoors</i>	<i>L</i>		
<i>Automobile sales outdoors</i>	<i>L</i>		
<i>Clinics</i>	<i>P</i>		
<i>Eating and drinking establishments</i>	<i>L</i>		
<i>Home occupations, major</i>	<i>SE</i>		
<i>Hotels and motels</i>	<i>L</i>		
<i>Retail trades, businesses, and services of a general commercial nature with each tenant footprint up to 5,000sf</i>	<i>P</i>		

A (12)

59-C15.62 Streetscape

Without the 'design guidelines' available, this is difficult to address and we believe these should be part of the Sector Plan process and examined at the same time to offer the description and certainty one needs.

59-C15.64 Parking

After hours of research and frustration we determined this is incredibly complicated but unfortunately imperative at this juncture. It is our hope we will receive sound, sustainable future redevelopment standards with adequate parking, but aren't sure how as this is written.

We firmly believe that CRN and CRT adjacent to or confronting single family homes, should require all the provisions of Section 59-E, which is time proven more conforming to a residential neighborhood.

MC Code-Section 59-E-2.8, Parking facilities within or adjoining residential zone.

59-E-2.81 (a) "Where a parking facility is within a residential zone or adjoins land in a residential zone that is neither recommended for commercial or industrial use on an approved and adopted master or sector plan, nor used for public or private off-street parking, nor in a public right-of-way that is 120 feet or more in width, residential setbacks apply as follows: All parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility".

59-C-15.641. Parking Ratios

We do not believe that as written these amendments require adequate parking for commercial uses adjacent to single family neighborhoods. (Table between lines 305-306 in ZTA clean copy Jan. 13, 2011) Based on our calculations using one example from our neighborhood as detailed in our February 3, 2011 testimony for ease of understanding, this is what we are seeing.

Hair Salon – CT Zoned Property, Wheaton CBD Sector Plan, Pg 39, Block X, Lot 1 (This property morphed from corporate office with accessory hair services to total hair salon)
Description - 4,878 sf building on a 17,563 sf lot
CT Zone currently requires 17 parking spaces.

This is currently not enough parking, so clients park in the lawyer's lot next door or on the residential street that does not have permit parking.

CRN zone will reduce this requirement to 10 parking spaces

CRT zone will reduce this requirement to 7 parking spaces

CR Zone would require 19.5 based on location (between 1/4 and 1/2 mile of metro, 4 spaces per 1,000 sf).

We are not sure why CR Zoning would require more parking than CRN or CRT. If the Hair salon decided to move upstairs and retail use on the first floor they are doubling the usage of the building with less required parking. We clearly know where spillover will be directed and believe this to be an unacceptable practice and clearly designed for future redevelopment without regard for those who now live here!

59-C-51.642. Accepted Parking Spaces

Kensington View does not believe that the following would ensure the developer provide adequate parking further eroding the quality of life in single family residential neighborhoods.

59-C-51.642. Accepted Parking Spaces. Parking requirements must be met by any of the following:

- (a) providing the spaces on site;
- (b) constructing publicly available on-street parking; or
- (c) participating in:

- (1) A parking lot district;
- (2) A shared parking program established by municipal resolution or;
- (3) Entering into an agreement for shared parking spaces in a public or private facility within 1/4 mile feet of the subject lot, if the off-site parking facility

A 13

59-C-51.642. Accepted Parking Spaces (continued)

Once again we refer to our testimony of February 3, 2011 using an area in our subdivision as the concrete example that brought us to this conclusion.

Auto Dealership, East Ave, Wheaton CBD Sector Plan, Pg 38, block S, lots 7-13 & P282 Veirs Mill Road:

If the properties on Veirs Mill Road are assigned the CR Zone and are in the 'parking lot district,' and the CRN or CRT are assigned to the East Avenue properties and developments can cross lot lines, how will the parking be treated? □

Which parameters do you use, since we don't see any differences for confronting residential zones.

59-C-15.645 Landscaping and Lighting

We do not understand why 59-C-15.645 (b) requires "one deciduous tree per 30 feet" for properties adjacent to residential lots, but "no less than 30 percent of the parking facility area (at 15 years growth)" for all other properties?

59-C-15.71 Setbacks

We do not see where this addresses 'confronting properties' as is the case on East Ave or other sections of the county where the property may be deeply embedded in a residential zone, nor whether these setbacks also apply to parking lots?

59-C-15.72. Public Use Spaces

Currently the C-T Zone requires 10% green space, which is compatible with single family home areas-green lawns, green trees, etc...We do not see this type of language in the CR Zone designations.

In the table – it is unclear what is included and considered 'limit of disturbance' is that parking lot, land or area for building?

59-C-15.72. Public Use Space (2) Line 395 and 396 from redline 1-13-11 –

Making a payment in part or in full for design, construction, renovation, restoration, installation, and/or operation near applicable master or sector plan areas.

Operation of 'what' near applicable master or sector plan area?

59-C-15.8 CR Zones Incentive Density Implementation Guidelines

Some members of our community feel strongly that many items listed should be inherent in good design and planning and not allowed to be used to gain further height or density.

9-C-15.9 Existing Approvals:

We have questions re this section. Again using a parcel we are familiar with, as example we don't understand how this would be applied.

The current BBT proposal, which has been approved by the Board and the Hearing Examiner, but has yet to come before the District Council will have binding elements recorded with the land records. The binding elements require that the drive-through, on a separate lot than the bank, be built no closer than 65' from the adjacent residential properties. Since this binding element goes in the land records and was agreed upon for the bank use on an adjacent/separate lot, can this now be used, for eternity, for any use - i.e. eating establishment, pharmacy, bank, or any other use that CR-type zoning allows?

Christopher A. Bruch
3936 Washington Street
Kensington, MD 20895

cabruch@msn.com

February 1, 2011

Ms. Francoise Carrier
Planning Board Chair – Montgomery County
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: 1-13-11 “DRAFT” CR ZONE ZTA

Dear Ms. Carrier:

I have reviewed the January 13, 2011 “draft” CR Zone ZTA as it might pertain to my community and offer comments for your consideration.

For background purposes, I am a 19-year resident of the Town of Kensington, served two-terms on the Town Council, acted as Town Building Inspector for several years and have served on the Town Revitalization and Commercial Development Review committees.

Definitions (59-C-15.3)

Transit Proximity – Both rail stops and bus stops are placed in the same Transit Service Level 2 category. It seems that 1) Metrorail, 2) MARC Rail/Rapid Bus Transit and 3) Bus Transit have vastly different ridership levels and therefore each deserve unique and separate ranking levels.

Design Guidelines (59-C-15.62)

Design Guidelines should be developed in consultation with local municipalities (where applicable) and they should have “teeth” and specificity to guide future commercial projects. I am putting faith in to-be-developed Guidelines that I trust will address details such as façade materialization, i.e., prohibition of EIFS and vinyl siding.

Parking Ratios (59-C-15.641)

I was surprised to see that there is no distinction between Level 1 and Level 2 Transit uses for the purposes in determining minimum parking requirements. In other words, the same parking credit is offered for a development next to a Metro station (Level 1) as would be offered for development next to a MARC station, BRT or Bus stop (Level 2). This seems highly illogical that a Metro Station which might accommodate as many as 10,000 riders per day (Bethesda) would be treated similarly to the Kensington MARC Station which may handle only 150 riders per day.

B ①

PAGE TWO
February 1, 2011

Public Use Space (59-C-15.72)

This language allows a project to pay in lieu of providing on-site public use space which is fine however it allows those monies or benefits to be used outside the applicable master or sector plan area. If monies or benefits are to be applied outside the sector plan area, that should be only after consultation with the affected local municipality (where applicable).

Public Benefits Required (59-C-15.82)

The 50 point minimum requirement for development in the CRT zone appears to be readily achievable when you consider that some of the point qualifiers are for items already required by Code in most jurisdictions i.e., recycling programs and energy efficient (LEED) design. For example, if LEED Certified was a minimum standard, bonus points would only be awarded for projects that achieve Silver, Gold or Platinum levels.

I am very encouraged to see this modified three zone approach (CR, CRT and CRN) and I believe it does address the one-size does not fit all argument that accompanied the previous one-zone approach. While I am disappointed the Council has returned the Kensington Sector Plan to your staff, I believe this new three-zone approach will be a better solution for Kensington in the long-term. I look forward to seeing future modifications to this ZTA and seeing precisely where the CRT and CRN zones will be located in Kensington. I ultimately look forward to the adoption of a new Kensington and Vicinity Sector Plan.

Thank you for your consideration of these views.

Sincerely,

Christopher Bruch

cc: Valerie Ervin, Council President
Nancy Floreen, PHED Committee Chair
George Leventhal, PHED Committee
Marc Elrich, PHED Committee
Mayor Fosselman
Fred Boyd

B (2)

MEMORANDUM

DATE: February 15, 2011
TO: Montgomery County Planning Board
FROM: Robert L. Cope
SUBJECT: C R ZONE

1. 59-C-15.12. Although the distinction between the CRN Zone and the CRT ZONE is predicated on uses, we suggest that the CRN Zone be tailored toward STICK CONSTRUCTION as opposed to steel or reinforced concrete construction. Stick construction is generally limited to four stories. After four stories the cost of construction dramatically increases.
2. 59-C-15.121. The minimums which are listed in the CRN and CRT Zones would appear to be a mistake. Under the CRN Zone a developer may well desire to focus on three story construction, yet the zone appears to require a minimum of 40 feet. Why a minimum?
3. 59-C-15.43. Sketch Plan. It is important to add a provision that the Planning Board and not the Applicant has discretion to make changes to a sketch plan, including changes at site plan.
4. 59-C-15.8. Optional Method. A provision must be added which provides discretion to staff and to the planning board to require improvements such as cross streets, cross connection, sidewalks, and other pedestrian and transportation improvements which are needed in order to make the site work and function. And, points should not be awarded for improvements which are necessary in order to make the site properly function. If the developer needs to make these improvements any way, then points should not be awarded.
5. 59-C-15.85. Individual public benefits.

Points should only be awarded for extras. Points should not be awarded for things which a developer would do any way, or things which staff would require any way, or things required by code.

It is important that the CR Zone clearly state that category selection and point allocation (Planning Board decides how many points are actually awarded) is at the discretion of the Planning Board. It is also important that the CR Zone remove those categories which will always be required by planning staff. For example, awarding points for construction of through roads, cross connections and other transportation improvements, all of which are necessary in order to make the site actually function, should be separated from the optional categories for which points are awarded.

59-C-15.85. Individual Public Benefit Descriptions and Criteria

59-C-15.851. Major Public Facilities

Delete transportation or utility infrastructure upgrades. Transportation or utility infrastructure upgrades would normally be required anyway. If such improvements are considered extras then a separate section should be provided. It is important that the major public facility section not be watered down, and that they be limited to master plan identified facilities. Master plan identified facilities must be constructed.

59-C-15.852. Transit Proximity.

If a site is too far away for location of an amenity such as a recreation center, then the section should be considered as too far away for the purpose of awarding points. Point allocation needs to be reduced by half.

59-C-15.853. Connectivity and Mobility

Reduce all points to maximum of 15 points.

- (a) Neighborhood Services
- (b) Minimum Parking
- (c) Through-Block Connections

- (d) Public Parking
 - (e) Transit Access Improvement
 - (f) Trip Mitigation
 - (g) Grey-Field Redevelopment
 - (h) Streetscape
- Offsite must mean not adjacent
- (i) Advance Dedication
 - (j) Way-Finding

59-C-15.854. Diversity of Uses and Activities

- (a) Affordable Housing
- (b) Adaptive Buildings
- (c) Care Centers

Point allocation must be based on proportionality. Fifteen users per so many square feet.

- (d) Small Business Retention

Impossible to enforce. Points are being awarded before before occupancy.

- (e) Dwelling Unit Mix
- (f) Enhanced Accessibility for the Disabled

Does not appear to go beyond code.

- (g) Diversity Ratio

59-C-15.855. Quality Building and Site Design

- (a) Historic Resource Protection
- (b) Structured Parking
- (c) Tower Step Back
- (d) Public Art
- (e) Public Open Space
- Proportionality
- (f) Exceptional Design
- (g) Architectural Elevations
- (h) Public Charette

Awarding points for a charette should be eliminated. If the planning board desires that charette be held, then that requirement should be included but points should not be awarded for a charette.

59-C-15.856. Protection and Enhancement of the Natural Environment.

- (a) BLT
- (b) Energy Conservation and Generation
- (c) Vegetated Wall
- (d) Tree Canopy

(e) Vegetated Area

(f) Vegetated Roof

(g) Cool Roof

(h) Recycling Facility Plan

Already required by code

(i) Habitat Preservation and Restoration

To: Montgomery County Planning Board

Copies: Rollin Stanley, Joshua Sloan

From: Julie Davis

Date: January 13, 2011

Subject: CR Zones, Staff Draft

Below are detailed comments and recommendations regarding the red-line and clean copies of the staff draft of the CR zones that are on the Board's agenda for discussion today. As you will see, we believe there are numerous drafting glitches and substantive problems with the current draft, with the result that the current CR zones drafts are far from ready to be submitted to the Council for consideration.

Although the new CR zones are apparently intended primarily for application in upcoming Kensington, Wheaton and Takoma Park/Langley master plans, they may also be broadly applied throughout the County. However, there has been no mention, much less discussion and analysis, of the zones by the ZAP, which was appointed by the Planning Board to assist in the current effort to rewrite the County zoning code.

Any overhaul of the existing CR zone and creation of two new CR zones is too important a zoning matter to proceed without input from the ZAP, and without significant opportunity for public discussion and debate. We thus urge the Board to give careful consideration to the comments and questions below before rushing to judgment on the current draft.

1. **C-15.11 Zones Established.** The existing CR zones are established as a combination of four factors (maximum FAR, non-residential FAR, residential FAR, and height). Staff draft states that the zones are a "combination of context designation" and the four factors. The term "context designation" is effectively a fifth factor for purposes of applying a CR zones to a particular site.. However, the term is not defined and there are no guidelines in the staff draft as to what constitutes a "context" and what the Council should consider in deciding on the proper "combination" of context and the four factors. **Recommendation: To prevent confusion on the part of the Council and community, the term "context designation" should either be clearly defined or deleted.**

2. **C.-15.121 Density and Height Limits.**
 - CRN – max density 2.0; min/max height 40-80'
 - CRT - max density 4.0; min/max height 40-100'
 - CR - max density 8.0; min/max height 40-300'

The existing CR zone does not have a height “floor” of 40 feet (four stories), but merely allows the Council to set the height in five-foot increments up to 100 feet, and 10-foot increments up to 300 feet. Why do we need a four-story minimum height requirement in the new CR zones, especially the CRN zone? A 40-foot structure with an FAR of 2.0 developed in the CRN zone could easily overwhelm an immediately adjacent single family neighborhood or a nearby property in AG zones. **Recommendation: Delete the 40’ minimum height requirements in all the new CR zones, and consider whether an FARs of 2.0 and 4.0 are too dense for CRN or CRT parcels that abut or confront single family or AG zones.**

3. **C-15.13 Applicability.** The CR zones are intended for existing and emerging commercial and mixed-use areas. They can only be applied if specifically recommended on an approved and adopted master or sector plan and only by the sectional map amendment process. [Note: no local map amendments permitted]. **Recommendation: To protect existing communities, this master/sector plan requirement must be retained in all three zones. In addition, no language should be inserted giving the Planning Board discretion to ignore applicable master plan requirements on the grounds that circumstances have changed and the plan requirements are outdated.**

4. **C-15.2 Descriptions and Objectives.** The existing CR zone states *inter alia* that one of its objectives is to “standardize optional method development by providing minimum requirements for provision of public benefits.”

The staff draft changes that objective. It now reads “standardize optional method development by providing minimum parameters for public benefits.” This change from “minimum requirements” to “minimum parameters” substantially weakens this objective, and suggests the zones are merely intended to produce a loosely calculated range of points rather than specified requirements for public benefits.

As discussed below, the provisions in the staff draft for the new point system for public benefits needs additional clarification and specificity, especially the “up to” maximums for the points available for certain of the benefits. The provision that the Planning Board can give density points for public benefits not listed in the text of the CR zones is also very troubling. As discussed below, at the very least it raises illegal delegation issues. **Recommendation: The “minimum requirements” language in the existing CR zone should be retained. Also, the Board should not be given discretion to add public benefits not already listed in the CR zones.**

5. **C-15.122 Density Averaging.** The existing CR zone permits density averaging of multiple adjacent or confronting lots in the CR zones only if (1) the lots are subject to the same sketch plan, (2) the lots are created by the same preliminary subdivision plan; (3) the building heights do not exceed the maximum in the zone; (4) public benefits are provided under the phasing element of an approved sketch

plan; and (5) the total development conforms to the design and land use objectives of the applicable master/sector plan and design guidelines. Moreover, if one of the lots confronts or is adjacent to an AG or single family residential zone, the density for that lot cannot exceed the density of its particular CR zone.

The staff draft eliminates several of these requirements. The requirement that public benefits for the aggregate parcels must be provided pursuant to the phasing plan requirements of an approved sketch plan has been deleted. Staff draft also does not require all density-averaged parcels to be created by the same preliminary subdivision plan, but instead allows averaging if the parcels are created “per a phasing plan set forth in an approved sketch plan.” In addition, staff has eliminated the requirement that the overall development conform to the applicable master/sector plan and design guidelines. **Recommendation: These requirements, which are all in the existing CR zone, should be retained.**

6. **C-15-3 Definitions**

Limits of Disturbance: A new definition defined as an area delineated by a perimeter within which construction work must occur per approved site plan. Staff comment indicates that this definition reflects a change in the public use space requirements in the standard method development for parcels over 3 acres (C-15.74). It is by no means clear what is being proposed here.

Recommendation: Staff should provide more information as to the need for and meaning of this term.

7. **C-15.41 Standard Method:** Under the current CR zone, the standard method of development is not available if (1) the density of the project exceeds 0.5 FAR, (2) the gross floor area of the project exceeds 10,000 square feet, or (3) the height of the project exceeds 40.’

Under the staff draft, however, all projects in the CRN zone must be developed under standard method even though densities in that zone can reach a 2.0 FAR and building heights can reach 40 feet. As discussed above, this density and height can be excessive for standard method development next door to a single-family or AG neighborhood, especially because the developer need not provide a sketch plan, any public benefits or public use space if the development does not require a site plan.

As to the CRT and CR zones, the staff draft states that the maximum density and height for standard method development are the lesser of (1) the density and height factors in the specific CRT or CR zone or (2) the density and height in a standard method table which shows an FAR of 1.5 and a height of 80 feet. (approximately 8 stories).

The staff draft next provides, however, that if the residential or commercial density factor in the CRT or CR zone is greater than 1.5 standard method density,

“then up to the maximum total density allowed may be developed with that use.” Allowed by what - the zone itself or the limitations in the standard method table? This language can be read to allow developers to use the “by right” standard method to achieve densities up to the maximums of the zones, which are 4.0 for CRT and 8.0 for CR.

This language is extremely troubling because, as previously discussed, the standard method of development is effectively “by right,” with no sketch plans or public benefits ever required, and no public use space required if there is no site plan requirement. To give developers discretion to use standard method for projects reaching FARs of 4.0 in the CRT zone and 8.0 in the CR zones is totally unacceptable.

It is also unacceptable that developments reaching 80 feet in height can be developed under the standard method. Even though a site plan is required for such developments, the site plan process is too late in the game in most cases to permit meaningful participation by affected communities. **Recommendation: Given that the standard method does not require sketch plans, public benefits, or in many cases public use space, the requirements in the existing CR zone for standard method development should be retained, i.e., the standard method should not be available for any project in a CR zone that exceeds an FAR of 0.5, a height of 40,’ or 10,000 square feet of gross floor area.**

8. **C-15-42(d) Site Plan Requirements for Standard Method Development.** A site plan is required for the standard method only if (1) the parcel is adjacent to or confronting a single family residential or agricultural zone; (2) the development involves more than 10,000 square feet of gross floor area; (3) the development will reach a building height of more than 40 feet; or (4) 10 or more dwelling units are involved. The early drafts of the existing CR zone required a site plan if the development would generate 30 or more peak hour trips. Traffic generation should be a key consideration for purposes of site plan review. **Recommendation: The 30+ trip generation factor should be a site plan requirement for all CR zones.**

9. **C-15.43 Sketch Plans Requirements.** Staff has deleted a number of critical requirements for sketch plans filed in connection with optional method development. The draft also states that sketch plans are required for all optional method developments under the CRT and CR zones, but not the CRN zone, because development in the CRN zone can only take place under the standard method.

However, it is the CRN zone is that will likely confront or adjoin existing single family and AG communities, and the residents of those communities need to know what the developer is planning for their back yards and whether the proposed development will be compatible with their neighborhood. The fact that a CRN development across from those communities will require a site plan does not

obviate the need for a sketch plan. The community needs to know early in the process what major features of the proposed CRN development will be.

We realized that some of the areas now under consideration for the new CR zones (Wheaton, Langley, Takoma Park) need revitalization, and that the one of the primary objectives of the new zones is to provide more flexibility and to lessen the regulatory burden on developers willing to undertake mixed-use projects in these areas. However, the new CR zones will also be broadly applicable throughout the County, and should not sacrifice protection of nearby communities in the name of flexibility and regulatory easing. **Recommendation: Sketch plans should be required for all CR projects requiring a site plan, including CRN developments.**

10. **C-15.43(a)(1) Sketch Plan Contents.** The developer must show *inter alia* that the proposed optional method development “will further the objectives of the relevant master/sector plan.” The “will further [plan] objectives” language is vague and confusing. What does “will further” mean? Master/sector plan standards are of critical importance to communities, and need to be easily understood and applied. There is also no requirement that the sketch plan meet applicable design guidelines. **Recommendation: The developer should be required to show that the proposed development will conform to both the existing master/sector plan (not just “further plan objectives”), and applicable design guidelines.**

11. **C-15-43(c) Sketch Plan Findings.** To approve a sketch plan, the Planning Board must make certain specified findings. Consistent with the requirement discussed above concerning the contents of a sketch plan, the Board must find that the development described in the sketch plan “will further the objectives” of the applicable master/sector plan. Again, the phrase “will further objectives” is vague and confusing. Again, there is no requirement that the sketch plan meet applicable design guidelines. **Recommendation: The Board should be required to find that the proposed development will conform to both the existing master/sector plan and to applicable design guidelines.**

The Board must also make findings regarding the adequacy of the phasing elements of the sketch plan. However, staff has inserted a new qualifying term in that provision. It now states that the Board need only find that the phasing plan is a feasible and appropriate “provisional” plan. The term “provisional,” which is not in the existing CR zone, creates justification for later site plan changes to the phasing elements of an approved sketch plan, *i.e.*, an argument that the approved sketch plan was “only provisional” and thus there is no presumption of correctness or weight to be given to its provisions. **Recommendation: Delete the term “provisional.”**

Significantly, staff has also deleted a number of findings that are in the existing CR zone and that are of critical importance to communities. **Recommendation:**

Add the following findings in the existing CR zone back to the staff draft: (1) that the development will provide more efficient and effective development of the site that would be the case under the standard method; (2) that the proposed building massing and height, together with the proposed public open spaces, will be located and scaled to achieve a compatible relationship with buildings adjacent to the development and with adjacent communities (staff draft requires compatibility only between and among internal and external buildings and roads); (3) that the public benefits to be provided will further the objectives of the applicable master or sector plan (finding should include “conform to” language), and (4) that general phasing of the structures, uses, public benefits, and site plan is feasible and appropriate to the scale and characteristics of the project (the staff draft allows the Board to find merely that the sketch plan “delineates an outline” of the public benefits to be provided).

12. **C-15.5 Uses.** There has not been sufficient time in which to do a thorough analysis of the use provisions in the staff draft. The communities need time to compare the allowed uses, particularly those in the CRN zone, with those in the current C-T zone, as well as those in single family residential and AG zones, for compatibility purposes.
13. **C-15-61 Conformance with Master and Sector Plans.** The staff draft provides that all developments requiring a site plan “must be consistent with the applicable master and sector plan,” and “must address any Design Guidelines adopted by the Planning Board to implement the applicable plan.” **Recommendation: The heading to this section uses the term “conformance.” The text should also require the development to “conform to” the applicable master/sector plans and design guidelines.**
14. **C-15.7 Development Standards.** The existing CR zone states that the standard method development is not available if the site exceeds 10,000 sq. ft. of gross floor area or involves 10 or more dwelling units. As discussed above, staff has eliminated both these limitations for standard method development.

Although proposed developments in excess of these density and height limits require a site plan (see below), allowing a development to proceed by the standard method means that the developer does not have to show the community a sketch plan demonstrating what is planned until the site plan stage. The developer also does not need to provide any public benefits, and may not have to provide public use space if no site plan is required.

Development under the standard method is entirely “by right.” Even though a site plan may be required for the development, that is entirely too late in the development process to allow the community to have meaningful input into the details of the proposed development. **Recommendation: The standard method of development limitations in the existing CR zone should remain in effect.**

Standard method should also not be available for any development of more than 40' in height.

15. **C-15.72 Public Use Space.** None required in standard method if no site plan required. If a site plan is required for a standard method development, the existing CR zone requires public use space totaling a flat 10 percent. Under the staff draft, however, if a standard method site plan is required, (1) no public use space need be provided for development up to 10,000 square feet; (2) 10% of the net tract area must be public use space for parcels between 10,001 square ft. and 3 acres; (3) if the parcel is more than three acres, 10% of the "Limit of Disturbance" area delineated on the approved site plan is required. **Recommendation: For the standard method of development, the existing CR zone requirement of a flat 10 % should be required. Also, the term "Limit of Disturbance" needs clarification as to its meaning and purpose.**

For optional method developments, the maximum amount of public use space depends on a confusing scheme of "existing and planned right-of-way frontages." However, the highest percentage of public use space required in the staff draft in an optional method development is also 10 percent. Why is the amount required for the optional method, which will inevitably involves substantially higher densities and heights, the same as for the standard method? **Recommendation: For optional method development involving significantly increased densities and heights, the public use space requirements should be substantially greater than that required for standard method developments.**

Staff has also eliminated important requirements in the earlier draft and/or in the existing CR zone (1) that the calculation of "net tract area" be the same as the net tract area that was included in the sketch plan, (2) that the public use space be distributed throughout that same net tract area, (3) that only with respect to sites larger than 3 acres may developers may a payment in lieu of providing the requisite public use space or provide a comparable public use space within the master plan area as indicated on the approved sketch plan (the staff draft now allows comparable space to be provided for any parcel of any size "near" the master/ sector plan area, and has no requirement that the alternative space be indicated on the approved sketch plan), and (4) that, for large sites of 3 acres or more, the developer has to provide either master or sector planned open space improvements, or a payment in lieu to provide public use space within the master or sector plan area equal to or greater than what is required on the development site and designated on the relevant sketch plan. **Recommendation: The deleted requirements should be included in the draft.**

16. **C-15.75 Residential Amenity Space.** None is required for affordable housing units if Planning Board finds comparable recreational and/or open space within 1/2 mile of development. Regardless of what else is in the general vicinity, the demographics and needs of County residents living in these units would seem to require at least as much on-site amenity space than those living in market units.

We realize that there are economic implications of providing amenity space in affordable housing units. However, we believe that the economic benefits of the density bonuses for providing such housing opportunities far outweigh the costs of such amenities. **Recommendation: Affordable housing should have the same amenity requirements as market housing.**

17. **C-15.82 Required Optional Method Density Incentives.** The developer must provide public benefits on a point system from 4 of 6 categories – major public facilities; transit proximity; connectivity between uses, activities, and mobility options; diversity of uses and activities; quality of building and site design; and protection and enhancement of the natural environment. Development in CRT zone requires public benefits totaling 50 points; in the CR zone, 100 points with 5 points from BLTs and 95 points from density bonuses. As discussed above, no public benefits need be provided for CRN projects.

In approving proposed benefits, Planning Board may count not only listed benefits but may also consider “enhancements not listed” as a public benefit but that “increase public access to or enjoyment of a listed benefit.” What does this mean? The existing CR zone requires the Board to adopt guidelines that address only the public benefits specifically listed in the zone, and prohibits the Board from adding public benefit categories not listed in the zone. The staff draft gives the Board total discretion to create new categories of public benefits that are not listed in the text of the new CR zones. **Recommendation: Because of illegal delegation concerns, the provision giving the Board discretion to add public benefits not listed in the zone should be deleted.**

18. **C-15.84 Incentive Density Guidelines.** Most of the density incentives are expressed as sliding scale of from zero “up to” a maximum number of points. However, the guidelines in the staff draft regarding how far “up” the Planning Board can/should go in determining the number of points to be awarded any specific development proposal are hardly a model of clarity. Moreover, the staff has deleted the requirement that the public benefit guidelines be based on the objectives of the applicable master or sector plan. **Recommendation: Refine the incentive density guidelines to be more specific, and include a requirement that the guidelines conform to the applicable master/sector plan and design guidelines.**

19. **C-15-85 Specific Density Incentives.**

a. **Major Public Facilities.** These facilities are eligible for up to 40 points in CRT zone and 70 points in the CR zone. Unlike the provisions in the existing CR zone, such facilities do not have to be recommended in an applicable master/sector plan. Instead, the Planning Board can approve a so-called “major public facility” if it finds that the proposed facility provides the community with a “resource that has a particularly beneficial civic impact.” What is the meaning of a “resource that has particularly beneficial civic impact?” Developers should not

be allowed to substitute a public facility that may or may not be considered “major,” much less desirable, by the community in exchange for a planned master plan facility. **Recommendation: Deleted the provision enabling developers to substitute public facilities of their choosing for major master planned public facilities.**

b. **Minimum Parking.** Up to 10 points for providing less than the maximum number of parking spaces otherwise required. How much is “less?” One less? 10 less? This is an illustration of the perils of providing bonus points “up to” specified amounts. **Recommendation: Clarify standards under this section.**

c. **Public Parking.** Up to 25 points for providing up to the maximum number of parking spaces otherwise required. This provision appears to be totally contrary to the “Minimum Parking” incentive to provide less than the maximum required. **Recommendation: Rationalize this maximum parking bonus provision with the preceding minimum parking bonus provision.**

d. **Transit Access Improvements.** Up to 20 points for meeting handicapped access required requirements adopted by the County. Why give a density bonus for meeting with County requirements? **Recommendation: This density bonus should be deleted.**

e. **Trip Mitigation.** Up to 15 points for providing a verifiable program that will result in a modal split for the site of 50% non-auto trips. These agreements are of dubious value, and there is no credible evidence that any such agreement has been or can be verified. **Recommendation: This density bonus should be deleted.**

f. **Advance Dedication.** Up to 30 points for dedications of master planned rights of way in advance of preliminary or final plans of subdivision. Inasmuch as the development under these zones are supposed to conform to applicable master/sector plans, why give a substantial bonus density for dedicating rights of way that will have to be dedicated in any event? **Recommendation: This density bonus should be deleted.**

g. **Grey-Field Development.** Up to 5 points for infill development. If the areas outside the AG reserve are virtually built-out, the only available new development will be redevelopment of existing sites. Why give bonus points to developers who take advantages of the opportunities for redeveloping such sites? **Recommendation: This density bonus should be deleted.**

h. **Affordable Housing.** Developers must provide MPDUs as required by Chapters 25A and 25B but get bonus points equal to the percentage provided, e.g., up to 22 points. [The example in the text doesn’t make sense.] If work force housing is provided, developer gets an additional 2 points for every WF unit provided up to 30 points. Result is that developers could get more points than

needed for CRT zone (50 needed, 52 available) and over half the points needed for CR zone (100 needed, 52 available) simply by providing affordable housing units, many of which would be required in any event under County law. Also, it is not clear whether these CR density bonuses are a substitute for or in addition to the density bonuses provided in Chapters 25A and 25B. **Recommendation: This provision should be clarified.**

i. **Historic Resource Protection.** Up to 20 points for preserving/enhancing a resource on the Master Plan for Historic Preservation. Again, why give bonus points to a developer who is simply following the law? **Recommendation: This density bonus should be deleted.**

j. **Structured Parking.** Up to 20 points for placing parking in above or below grade structures. Staff is clearly trying to discourage surface parking, but surveys and the discussion as a ZAP meeting last summer show that most workers and shoppers think parking structures are inherently unsafe and difficult to navigate. The new CR zones should not discourage developers from providing at least some surface parking by providing substantial bonus points for structured parking. **Recommendation: This density bonus should be deleted.**

k. **Public Use Space.** Up to 20 points for providing public use space over and above the minimum requirements. The existing public use requirements are wholly inadequate and should be increased. Rather than provide bonus points for providing public use space over and above the required minimums, the minimum should be substantially increased. **Recommendation: This density bonus should be deleted.**

l. **Exceptional Design.** Up to 10 points for “a building or site whose visual or functional impacts enhance the characteristics of the setting per the purposes delineated in this Section.” This standard is to be evaluated by the Planning Board and staff. What do these words mean? This is the ultimate “eye of the beholder,” or “I know it when I see it” standard, and is clearly a “gimme” for the development community which is supposed to be providing high quality design in their optional method developments. Good design is desirable; these standards for same are debatable. **Recommendation: This density bonus should be deleted.**

m. **Architectural Elements.** Up to 20 points for providing elevations of architectural facades. This density incentive is not in the existing CR zone. Why aren't such elements required as part of the Sketch Plan or at least the Site Plan? Elevations of architectural facades would greatly aid the Planning Board and nearby communities in understanding the design features of the proposed development. They should be provided in any event. **Recommendation: This density bonus should be deleted.**

n. **Public Charrette.** 10 points for conducting same prior to the pre-submittal public meeting required by the development review procedures. This



density incentive is not in the existing CR zone. It requires the developer to document the notice process for the meeting, the discussion at the meeting and responses to comments. If a public charrette is a valuable aid in assisting the community to understand the details of the proposed development, it clearly should be incorporated into the Sketch Plan process with no extra bonus points awarded for compliance. **Recommendation: This density bonus should be deleted.**



**TO: Montgomery County Planning Board
Hon. Francoise Carrier, Chair
Hon. Marye Wells-Harley, Vice Chair
Hon. Joe Alfandre, Member
Hon. Amy Presley, Member
Hon. Norman Dreyfuss, Member**

CC: Rollin Stanley (Staff), Joshua Sloan (Staff)

FROM: Julie Davis, Meredith Wellington

DATE: February 8, 2011

**Re: CR Zones Work Session on February 10th – Public Benefits Standards,
Standard Method of Development Issues**

Below for your consideration are comments and recommendations regarding the public benefits requirements in the CR optional method of development. I understand that this subject is on the agenda for the Board's February 10 meeting. Also below are comments and recommendations regarding the provisions of the current CR draft concerning the standard method of development. We will appreciate your consideration of our views at the work session on Thursday.

A. Public Benefit Requirements Under the New CR Zones.

In 2009 and 2010 when the current CR zone was pending before the Council and its PHED Committee, community representatives expressed serious concerns regarding its percentage-based density incentive provisions. At the time, the Planning Board explained that the new approach was intended to provide more objective, more uniform, and more easily enforced standards than the density incentives in the CBD and TOMX zones.

Community representatives, however, saw the new approach as a "check the box" system that enabled a developer to obtain significant additional densities and heights merely because its site was proximate to major transportation facilities such as Metro or MARC which had been built by public rather than private funding; and/or the developer agreed to provide affordable housing that was otherwise required by MPDU and workforce housing standards; and/or because the project would feature design elements (e.g., streetscape, structured parking, pedestrian walkways, etc.) that would likely be an integral part of the development in any case.

The community representatives also questioned why the approach adopted in the CBD and TOMX zones for optional method development should be abandoned. They pointed out that the CBD system, which is essentially a three-way negotiation between

and among the developer, affected communities and the Planning Board staff, has substantial procedural and substantive advantages over the proposed CR system.

Procedurally, the CBD process includes all the stakeholders, including nearby neighborhoods that will be adversely impacted by the new development. The history of the CBD optional method shows that, with a place at the table, neighborhoods are far more likely to obtain public benefits and amenities that their residents consider desirable and genuine as a trade-off for the massive new structures, loss of skyline, increased shadowing, substantial traffic congestion, and negative environmental effects that high-density, transit-oriented new development inevitably brings to adjoining communities.

Substantively, the broader public interest is represented in the CBD process by the Planning Board and its staff, who have the leverage to require the developer to provide higher quality development than would otherwise be the case, including increased open spaces, major public facilities and other negotiated benefits. As history has shown, optional method projects in CBD zones have historically resulted in better design and more amenities because the Board and staff were also at the table.

Notwithstanding the relative success of the CBD optional method system, the Planning Board convinced the Council last year that a new, percentage-based, density incentive system would be superior. Now less than a year later, the staff proposes to abandon that system in favor of a new point-based system. However, the proposed point system is still a "check the box" approach that has the same deficiencies as the existing percentage system.

As is the case with the existing CR zone, the new bonus system confers on the developer substantial density bonuses if the property is proximate to publicly financed transportation systems; if the developer is meeting otherwise required affordable housing and other legal standards; and/or if the developer agrees to provide various design features that would likely be provided in any large-scale project.

As to community participation, impacted neighborhoods can make their views known at the "sketch" plan stage as to the desirability of the public benefits being proposed, but the developer is free to ignore that input. The Planning Board and staff can try to obtain facilities and amenities that would genuinely benefit the public, but it is unclear that the Planning Board has the legal leverage to obtain those facilities and amenities if the developer declines to cooperate, and has proffered 100 points worth of public benefits at the time of "sketch" plan. The Planning Board does have the legal authority at site plan (Sec. 59-D-3.4 (d)), but that is far too late in the process to be desirable for any of the parties and stakeholders.

The Planning Board's recent experience with the first sketch plans submitted under the new CR zones for development under the new White Flint plan simply confirmed the communities' worst fears. Sketch plans for over 7 million square feet of new CR development were approved, none of which separately or in the aggregate included a major public facility or amenity. Instead, the benefits largely involved parking

structures, green roofs, an undefined “public arts program,” pedestrian walkways, and other features that any major up-scale mixed use development would include in order to be economically viable.

Given these considerations, I ask you to consider the specific comments below. You now have a second bite at the public benefit apple. Please do it right this time.

1. **C-15.2(e). Descriptions and Objectives of the CR Zones [re Public Benefits].** The existing CR zone states *inter alia* that one of its objectives is to “standardize optional method development by providing minimum requirements for provision of public benefits.” The staff draft changes that objective. It now reads “standardize optional method development by providing minimum parameters for public benefits.” This change from “minimum requirements” to “minimum parameters” substantially weakens this objective, and suggests the zones are merely intended to produce a loosely calculated range of points for public benefits rather than specific requirements for specific benefits. **Recommendation: The “minimum requirements” language in the existing CR zone should be retained.**

2. **Section 59-C-15.81. Incentive Density Approval:** This provision requires the Planning Board to “consider” the “policy objectives and priorities of the applicable master or sector plan,” as well as any “applicable design guidelines and any adopted public benefit standards and guidelines.” **Recommendation: The incentive densities for any given project should be either “consistent with” or “conform to” the applicable master/sector plan, design guidelines and/or adopted public benefit standards and guidelines.**

3. **Section 59-C-15.82. Required Optional Method Density Incentives.** This provision requires the Planning Board to adopt, publish and maintain guidelines detailing the standards and requirements for public benefits that may be provided to meet the incentive density requirements of the CR zones.

The provision also allows the Planning Board to consider “enhancements not listed” in the CR zones, but which “increase public access to or enjoyment of a listed benefit.” What does this mean? Isn’t this provision clearly inconsistent with the goal of providing standardized, identifiable density incentives? Isn’t a provision giving the Planning Board discretion based on a vague standard to create new public benefits on a case-by-case basis an illegal delegation of the Council’s authority?

Recommendation: The provision allowing the Planning Board to adopt public benefit guidelines should at least require the guidelines to conform to (or be consistent with) the applicable master/sector plan. The Planning Board’s authority to award density incentive points should also be limited to those specific density incentives listed in the zone itself.

4. **C-15.84 Incentive Density Guidelines.** Most of the density incentives are expressed as sliding scale of from zero “up to” a maximum number of points. However,

the guidelines in the staff draft regarding how far “up” the Planning Board can/should go in determining the number of points to be awarded any specific development proposal are hardly a model of clarity. Moreover, the staff has deleted the requirement that the public benefit guidelines be based on the objectives of the applicable master or sector plan.

Recommendation: Refine the incentive density guidelines to be more specific, and include a requirement that the guidelines conform to the applicable master/sector plan and design guidelines.

5. **C-15-85 Specific Density Incentives.**

a. **Major Public Facilities.** These facilities are eligible for up to 40 points in CRT zone and 70 points in the CR zone. Unlike the provisions in the existing CR zone, such facilities do not have to be recommended in an applicable master/sector plan. Instead, the Planning Board can approve a so-called “major public facility” if it finds that the proposed facility provides the community with a “resource that has a particularly beneficial civic impact.” What is the meaning of a “resource that has particularly beneficial civic impact?”

Developers should not be allowed to substitute a public facility that may or may not be considered “major,” much less desirable, by the community in exchange for a planned master plan facility. **Recommendation: Delete the provision enabling developers to substitute public facilities of their choosing for major master planned public facilities.**

b. **Transit Proximity.** For both CRT and CR zones, proximity ranges are adjacent/confronting, ¼ mile, ½ mile and 1 mile. Depending on whether transit is Level 1 or 2, density bonuses range from 5 to 25 points for the CRT zone, and 15 to 50 points for the CR zone. **Recommendation: Consider whether any bonus points should even be allowed for proximity to transit facilities, given that they are wholly financed by public funds and provide substantial economic benefits to nearby developments.**

c. **Minimum Parking.** Up to 10 points may be awarded for providing less than the maximum number of parking spaces otherwise required. How much is “less?” One less? 10 less? This is an illustration of the perils of providing bonus points “up to” specified amounts. **Recommendation: Clarify standards under this section.**

d. **Public Parking.** Up to 25 points may be awarded for providing up to the maximum number of parking spaces otherwise required. This provision appears to be totally contrary to the “Minimum Parking” incentive to provide less than the maximum required. **Recommendation: Rationalize this maximum parking bonus provision with the preceding minimum parking bonus provision.**

e. **Transit Access Improvements.** Up to 20 points for meeting handicapped access required requirements adopted by the County. Don’t all new

developments have to provide transit access for the handicapped? Why give a density bonus for meeting otherwise applicable County requirements? **Recommendation: This density bonus should be deleted.**

f. **Trip Mitigation.** Up to 15 points for providing a verifiable program that will result in a modal split for the site of 50% non-auto trips. Based on my experience on the Friendship Heights Transportation Management District Advisory Committee, these programs are of dubious value, and difficult if not impossible to verify. **Recommendation: This density bonus should be deleted.**

g. **Advance Dedication.** Up to 30 points for dedications of master planned rights of way in advance of preliminary or final plans of subdivision. Inasmuch as the development under these zones are supposed to conform to applicable master/sector plans, and the development in question will be subject to the subdivision process before the project can proceed, why give a substantial bonus density for dedicating rights of way that will have to be dedicated at subdivision in any event? **Recommendation: This density bonus should be deleted.**

h. **Grey-Field Development.** Up to 5 points for infill development. If the areas outside the AG reserve are virtually built-out, the only available new development will be redevelopment of existing sites. Why give bonus points to developers who take advantage of the opportunities for redeveloping such sites? **Recommendation: This density bonus should be deleted.**

i. **Affordable Housing.** Developers must provide MPDUs as required by Chapters 25A and 25B but get bonus points equal to the percentage provided, e.g., up to 22 points. [The example in the text doesn't make sense.] If work force housing is provided, developer gets an additional 2 points for every WF unit provided up to 30 points. Result is that developers could get more points than needed for CRT zone (50 needed, 52 available) and over half the points needed for CR zone (100 needed, 52 available) simply by providing affordable housing units, many of which would be required in any event under County law. Also, it is not clear whether these CR density bonuses are a substitute for or in addition to the density bonuses provided in Chapters 25A and 25B. **Recommendation: This provision should be clarified to prevent bonus points for being awarded for affordable housing units that would otherwise be required under Chapters 25A and 25B.**

j. **Historic Resource Protection.** Up to 20 points for preserving/enhancing a resource on the Master Plan for Historic Preservation. Again, why give bonus points to a developer who is simply following the law? **Recommendation: This density bonus should be deleted.**

k. **Structured Parking.** Up to 20 points for placing parking in above or below grade structures. Given the scarcity of developable land down-County, which is where most of future infill development will occur, developers will need to provide structured parking above or below-grade inasmuch as surface parking will be a non-

economical use of the site. The new CR zones should not awarding substantial bonus points for structured parking facilities that will be provided in any event.

Recommendation: This density bonus should be deleted.

l. **Public Use Space.** Up to 20 points for providing public use space over and above the minimum requirements. The existing public use requirements are wholly inadequate and should be increased. Rather than provide bonus points for providing public use space over and above the required minimums, the minimum should be substantially increased. **Recommendation: The threshold requirement for public use space should be increased and this density bonus should be deleted.**

m. **Exceptional Design.** Up to 10 points are awarded for “a building or site whose visual or functional impacts enhance the characteristics of the setting per the purposes delineated in this Section.” This standard is to be evaluated by the Planning Board and staff. What do these words mean? This is the ultimate “eye of the beholder,” or “I know it when I see it” subjective standard, and is clearly a “gimme” for the development community. **Recommendation: This density bonus should be deleted.**

n. **Architectural Elements.** Up to 20 points for providing elevations of architectural facades. This density incentive is not in the existing CR zone. Why aren't such elements required as part of the sketch plan or at least the site plan? Elevations of architectural facades would greatly aid the Planning Board and nearby communities in understanding the design features of the proposed development. They should be provided in any event. **Recommendation: This density bonus should be deleted.**

o. **Public Charrette.** 10 points for conducting same prior to the pre-submittal public meeting required by the development review procedures. This density incentive is not in the existing CR zone. It requires the developer to document the notice process for the meeting, the discussion at the meeting and responses to comments. If a public charrette is a valuable aid in assisting the community to understand the details of the proposed development, it clearly should be incorporated into the development review process with no extra bonus points awarded for compliance. **Recommendation: This density bonus should be deleted.**

B. Standard Method of Development Under the New CR Zones

1. **59-C-41. Standard Method.** Under the new CR zones, as is the case with the CBD and certain other zones, the standard method of development is “by right.” It does not require a sketch plan, open space or public benefits. In some cases no site plan is required. In addition, there is virtually no opportunity for meaningful public participation under the standard method.

Given these limitations, it is not surprising that the quality of projects developed under the standard method in the CBD zones have been generally less desirable than those developed under the optional method. Indeed, the “Zoning Discovery” report issued by the Planning Board staff in February 2009 explicitly states at page 43 that “quality

development is not coming out of the standard method and more should be done to set the bar higher." The staff analysis then states at page 44 that "it is easier to build a bad development under the standard method than it is to build a well-designed optional method project."

Given the shortcomings of the standard method, one would expect that an important objective of the new CR zones would be to limit significantly the availability of that method in the CR development process -- in other words "to set the bar higher" as suggested by the Staff in "Zoning Discovery." Yet, the current Staff draft goes in the opposite direction.

Under new CR zones, all projects in the CRN zone must be developed under standard method even though densities in that zone can reach an FAR of 1.5. and building heights can reach 65 feet. In the absence of a sketch plan, public benefits, open space requirements and opportunities for community input, this CRN density and height is excessive for any development that can be next door to a single-family or AG neighborhood.

The fact that a site plan is required for some standard method developments, including those confronting or adjoining single-family neighborhoods, does not address, much less resolve, this problem. By the time the site plan is filed, the plans for the project are effectively final, and it's too late for meaningful input from those affected neighborhoods.

As to the CRT and CR zones, the staff draft allows the standard method for densities up to 1.5 FAR and heights up to 65 feet in the CRT zone and 80 feet in the CR zone. These density and height maximums are clearly excessive, especially when compared to the maximum densities and heights in the existing CR zone for standard method developments, i.e., density - the greater of 0.5 FAR or 10,000 square feet of gross floor area, and heights - not to exceed 40 feet.

Finally, the standard method table shows a minimum height of 40 feet for projects in all three CR zones. Four story buildings may well be excessive depending on the circumstances, especially in the CRN zone which is likely to abut or confront single-family neighborhoods.

Recommendation: The standard method maximum densities and heights in the existing CR zone should be retained, i.e., the maximum densities for any standard method development, including standard method development in the new CRN zone, should be the greater of 0.5 FAR or 10,000 square feet of gross floor area. Similarly, the maximum height for a standard method project should be 40 feet, and there should be no minimum height requirement. The optional method of development should be required for all projects with densities and/or heights in excess of these limits.

2. **C-15.72 Public Use Space (Standard Method).** No public use space is required in the standard method if a site plan is not required. If a site plan is required, the existing CR zone requires public use space totaling a flat 10 percent. Under the staff draft, however, if a standard method site plan is required, (1) no public use space need be provided for development up to 10,000 square feet; (2) 10% of the net tract area must be public use space for parcels between 10,001 square ft. and 3 acres; (3) if the parcel is more than three acres, 10% of the "Limit of Disturbance" area delineated on the approved site plan is required. **Recommendation: For standard method developments requiring site plans, the existing CR zone requirement of a flat 10 % should be required. Also, the term "Limit of Disturbance" should be clarified as to its meaning and purpose.**

Staff has also eliminated important requirements in the existing CR zone (1) that the calculation of "net tract area" be the same as the net tract area that was included in the sketch plan, (2) that the public use space be distributed throughout that same net tract area, (3) that only with respect to sites larger than 3 acres may developers may a payment in lieu of providing the requisite public use space or provide a comparable public use space within the master plan area as indicated on the approved sketch plan (the staff draft now allows comparable space to be provided for any parcel of any size "near" the master/sector plan area, and has no requirement that the alternative space be indicated on the approved sketch plan), and (4) that, for large sites of 3 acres or more, the developer has to either provide either master or sector planned open space improvements, or a payment in lieu to provide public use space within the master or sector plan area equal to or greater than what is required on the development site and designated on the relevant sketch plan. **Recommendation: The deleted requirements should be reinserted.**

Garcia, Joyce

From: Robert Cope [rcope@gjcobert.com]
Sent: Friday, February 11, 2011 4:38 PM
To: MCP-Chair
Subject: meeting on thursday

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FEB 11 2011

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

I suggest that for CR zone discussion on Thursday that you place on the agenda page the most current revised red lin of CR zone, there have been so many changes I think everybody needs to work with the same score card

Robert L. Cope

Grove, Jaskiewicz and Cobert

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FEB 09 2011

MCP-CTRACK

From: MCP-Chair
Subject: FW: Planning Board Meeting: February 10: Kensington

OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

-----Original Message-----

From: khansel2@aol.com
To: MCP-Chair@mncppc-mc.org.councilmember
Cc: councilmember.ervin@montgomerycountymd.gov
Sent: Wed, Feb 9, 2011 8:26 am
Subject: Planning Board Meeting: February 10: Kensington

Planning Board Meeting: February 10,
3 - CR Zones Zoning Text Amendment Worksession - continued discussion of modifications to the mixed use CR (Commercial/Residential) Zone to add "CR Town" and "CR Neighborhood" zoning categories

I want to greatly thank Montgomery County Planning Board for sending the Kensington Sector Plan to be looked at further. I appreciate everyone's hard work and dedication to making this a prosperous community.

However, I am very concerned over two issues: school overcrowding and traffic. The projected population density is based off the 2005 Census Update (data gathered between 2000-2004) from Parks and Planning. According to the population demographics projected by Parks and Planning in the Town of Kensington's Sector Plan:

- Kensington's population will increase by only 0.2 % between 2005-2030.
- Between 2005 and 2010, Kensington is expected to lose 850 residents (- 4.0%) as household sizes shrink in the short term
- decline in the average household size from 2.57 in 2005 to 2.45 by 2010

Clearly these figures are WAY off. These estimates are based on 10 year old figures. Why not wait and see the results of the 2010 census? Based on my experience of living and participating in the Kensington community, the influx of young families with multiple children are immense. People move to this area specifically for the location, schools, and community. Reading the advocates of the revitalization plan would have you believe there's a mass exodus due to a limit in the amount of restaurants. Strangely, property values increase in a declining economy and housing inventory is low.

A personal example is in my cul-de-sac alone (Parkwood Court), there were 3 children in 2004 and now there are 10 children in 2010. KP has had to add a new kindergarten class each year (from 4 classes to 5 classes) for the last three consecutive years due to an increase in student population. Just this year, KP has also had to add another bus just to accommodate all of the students from the Town of Kensington. Currently, there are 20 students from the Kensington apartments on Frederick Ave. (efficiencies, 1 bedroom, 1 bedroom w/den, 2 bedroom and 3 bedroom apartments) that attend Kensington Parkwood Elementary School. This is an increase of 8 students just from the previous year. With the addition of all of these residences in the Kensington development plan, I think it is naive to say that there will only be an additional 40 students (KP, North Bethesda and Walter Johnson combined!). Even if there are only 40 new students, KP is already overcrowded. Where are you going to put them...more portables on the black top taking away playground space? Two gym teachers already have to share the gym to accommodate all of the current KP students. Or, will you have to open the old Kensington elementary school and then would TOK volunteer to leave KP? Hopefully there will be an analysis of the 2010 Census before any development plans are approved.

The other large factor I have with this plan is how it greatly increases the population density in the form of traffic. The traffic on Kensington is impossible during rush hour! It will take anywhere from 30 minutes to 45 minutes to go less than a mile on Knowles to get onto Connecticut Ave. Kensington is wondering why some businesses are failing? It's partly due to people not being able to patronize them during rush hour traffic. I can't tell you how many times I would have loved to not cook dinner and pick something up quick, but with three young children wanting to eat about 6 PM, this is impossible! It's faster for me to get to downtown Bethesda for dinner (2+ miles away) than it is to go less than a mile to get to Kensington. That's even before BRAC (where NO infrastructure improvements were made to accommodate the added burden of how many thousand new people?) Or White Flint Sector. Or Symphony Park.

Please do not RUSH this decision. Time needs to be taken to look at the real population density from the new 2010 Census. Also, provisions need to be made for traffic and re-opening the old Kensington elementary to accommodate this

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population increase (my suggestion is ToK attend this new school along with Chevy Chase View and Homewood thereby alleviating the overcrowding at three different local elementary schools) BEFORE the plan is approved. There also should be an analysis of the apartment inventory for North Bethesda/South Rockville area to see if there is a need for this many apartments. The surplus of housing inventory greatly contributed to our country's current financial situation. Maybe Kensington can resolve Warner Circle before we take on another ambitious project.

Lastly, will the Mayor of Kensington (Pete Fosselman) gain monetarily from this project as he's a principal with an "Urban Planning" firm that appears to be involved with the "redevelopment" of Kensington.

Thanks,
Karen Hansel
Kensington, Maryland

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FEB 16 2011

MCP-CTRACK

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

From: khansel2@aol.com
Sent: Tuesday, February 15, 2011 11:21 PM
To: MCP-Chair
Cc: councilmember.ervin@montgomerycountymd.gov
Subject: Kensington CR Zone

Dear Francoise Carrier,

I implore you to greatly consider the impact of the CR zone in Kensington. With diminished parking available, new residents will have to resort to other places to park their vehicles. Just look at any community close to a Metro. Even with the incentive of the Metro, most residents have one car and often have two cars/family(couple). I think it is extremely naive to think these residents will NOT have vehicles and these extra vehicles will not impact the Kensington area. Besides, for you to even consider the MARC to be anywhere equivalent to the Metro is grossly negligible. I personally know over 60 families living in Kensington. Of those 60 families, I know ONE person that rides the MARC to/from work. Do you honestly believe that all of the new residents will be taking public transportation to work and for recreation purposes? Just look at how many people are currently getting on at MARC's Kensington stop (that includes the surrounding residents, not just Kensington)! I think you should look at DC for examples of this (NOT New York City!). Even with limited parking and multiple public transportation options, do you think most residents don't own a vehicle? Three of my neighbors(or previous neighbors) moved here from DC. All of these families had at least one vehicle. With the new residents taking up the available parking in Kensington, where do you think community members are supposed to park when patronizing local stores? Do you really think the communities surrounding the ToK will be walking to patronize the stores? Don't you think this will have an impact on area businesses?

In addition to the parking issues, the concentration of population density on all four corners of Connecticut Ave. is incomprehensible! Why on earth would you put the greatest population density on one (if not the worst!) intersections in Kensington. Why wouldn't you spread the population density throughout the town instead of concentrating it in one small area. Currently, it takes me any where from 30-45 minutes to get from Knowles onto Connecticut. How do propose solving this problem BEFORE the implementation of the sector plan? Why do you think some of the restaurant businesses are failing in the TOK; it's partly due to the fact that we can't get there! Are you going to sit in a vehicle for 30-45 minutes with three hungry children during rush hour traffic? This is even before BRAC or the White Flint Sector Plan!

I have lived/worked (MCPS elementary school teacher) my entire life in Montgomery County (38+ years). I have seen first hand how the county underestimates the impact of development on area communities (roads, traffic, overcrowding in schools, etc.). I can't even make it back to my childhood home for dinner on a weekday. One of the main reasons I moved to Kensington, was I knew the traffic I was getting into. However, as a 20 something buying my first home, I was naive to think there was no more space left to build (forgot that you could go vertical!).

I sincerely hope that you will consider the quality of life of your current residents. From the approval of the White Flint Sector plan and the proposal of Kensington's CR Zones, I am beginning to wonder if anyone in the county government really cares.

Sincerely,
Karen Hansel
Parkwood resident in Kensington

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FEB 16 2011

OFFICE OF THE CHAIRMAN
THE MONTGOMERY COUNTY
PARK AND PLANNING COMMISSION

MCP-CTRACK

From: khansel2@aol.com
Sent: Tuesday, February 15, 2011 11:25 PM
To: MCP-Chair
Cc: councilmember.ervin@montgomerycountymd.gov
Subject: Kensington CR Zone

Dear Francoise Carrier,

The new CR zones should not be weighted in favor of the standard "by right" method of development; they should require the development to be compatible with adjacent communities; large development under the optional method should produce major master-planned public facilities; and the CR zones should insure that public participation remains a fundamental part of the development process in Montgomery County.

Respectfully,
David Conaway
Kensington Resident

ES

20101231 questions for fred re: ztas new cr zones

Two main questions –

1. how will CR zones be implemented with regard to our Sector Plan (what is process and timeline?)

and

2.) Does the Sector Plan absolutely take precedence over whatever CR Zone is underlying it with regard to density and building height designations? So is there any threat of “flexibility” with regard to Sector Plan maximums if CRN or CRT maximums are higher/less restrictive? My concern: In 5 years, can a developer come in and possibly successfully petition to go higher than the master plan density, based on the zone density alone (not some other hardship specific to that site plan)?

-
- Why is an FAR 2.5 and 80-foot building height considered “neighborhood transition?” [Seriously??]
 - Was there ever a lower-density CR proffered by staff in this process? Similar to C-T? This is much more appropriate for areas of Kensington such as Sector Plan areas designated 1.5 FAR and/or 45 and 50 feet max heights.

Don't get - Please explain to me Sectional Map Amendment or Local Map Amendment and what it means (if anything) to this process with regard to CR and Sector Plan now.

- Under charts showing FARs and heights, it says density and height “may be mapped at lower designations.”
- Important -- Does “mapping” hold less authority than a master plan? Or is mapping add to and become part of a master plan?

What is public input into process of adding CR to Sector Plan?
(Does my Town Council have to vote on it? Will it go before Planning Board again?)

-Just to clarify my understanding:

CRN is standard method only, correct? And no sketch plan is required (true for Kensington or no?) But the standard method has been changed to FAR 2.5 with max height 80 feet (so .5 FAR is completely gone?)

-A site plan under CRN is required if the site is adjacent to R-60, correct? What about across the street from?

- Are there any instances under CRN or CRT where a property could go higher than the maximum height? See p. 13 MNCPPC 12/22/2010 memo, in the "example": A CRT building height of 150' is given, despite the 100' maximum listed in the chart.

p. 7 memo, 3rd bullet point- "This allows standard method maximum FAR to increase..." What does this mean? I understand all have to meet requisites. But does this increase density or height beyond existing maximum?

p. 7 last paragraph, 2nd sentence: "Although each of the pending sketch plans..." What sketch plans? If they are in Kensington, can I see them?
- also "each of the pending sketch plans will likely be approved before adoption of this ZTA" (I assume this is White Flint, not Kensington?)

- p. 23 memo - Director of Planning (in addition to Plan. Bd.) can waive parking restrictions? Is this new? Can he/she waive all parking restrictions - is this completely arbitrary and what is the process? What are the circumstances under which parking restrictions could be waived by one person?

- p. 24 memo - 59-C.15.71 - #1 "...if density allowed is greater than the Standard Method density..." - How could it be?

- p. 27 Major public facility. Is there one in Kensington? Would the new MARC parking lot be considered a major public facility and therefore allow for 40 points in CRT?

- Are the points allotted for Level 2 Transit Proximity in CRT about the same as the percentages allotted in CR?

p.29 59-C.15.854 (b) "affordable housing percent of bonus density equivalent to points required by this Division" - ?

Transit Proximity - looks like "confronting" was added to "adjacent." Does this mean Antique Village gets 15 points (chart p. 28) for being "confronting?"

Are the Transity Proximity public benefits for Level 2 reduced somewhat as compared to the previous CR? (Can't tell with point system.)

Sooooo ... it looks like CRT Standard Method is FAR 1.5 and height 80 feet (chart p.24), but CRT optional method is FAR 4.0 and max height 100'. Correct?

Obviously my main concern is that these CR Zones, which are less restrictive than the FARs and heights in the Sector Plan will be used to **increase** the density in Kensington even at this point in the process. Or that it will set the stage for an easier way for developers to gain more density than the Sector Plan in the coming years and site plans.

Josh-

Thank you for the outreach to us prior to finalizing your recommendations and for your obvious hard work at attempting to address various concerns. I appreciate the approach in your draft to put the development standards and parameters back in the zone (not partially in Sector Plan) for the various reasons previously discussed; however, I do have the following concerns and comments :

1. My first question is not specific to this draft but more general and process related: Why isn't the staff's proposal from June (attached) for CR zone adjustments that was drafted based on meetings with the Kensington Revitalization Committee (per PHED committee instruction) and significant input from members of the committee (who have limited resources) and approved by Town of Kensington introduced to the Planning Board and PHED committee? These changes were responsive to the concerns that the Town, the property owners, the County Executive and the PHED committee expressed about the CR zone for Kensington, and yet it has not been introduced (even with changes to incorporate the recent issues from Wheaton). Or, if the issue is that some of the new incentive options aren't appropriate for the CR zone in White Flint, some or all of the changes can easily be isolated to an overlay zone (which can be used in other areas that have the CR zone), which would not open up the CR zone to numerous changes which will continue to hold up the Kensington process.

2. The raising of the standard method density is helpful (and I assume that staff finds that the "category requisites" required for site plan properties and all optional method projects will be feasible for areas intended to redevelop) and should help with the feasibility issues. Hopefully this concept will stay will any change that moves forward (again, could add to the attached proposal from June or to an overlay zone?).

3. It is difficult to provide focused analysis of the impact of the CRN and CRT zone specifically, since we do not know which of the new proposed zones will apply to what properties or areas, but have the following general questions and concerns:

a) The revision from the percentage to point system for the CR zones seems inconsistent with the common direction (including the Planning Board's recent recommendation) to make the CR zone- and namely the incentive menu- more feasible for certain areas? In particular, the CRT zone is challenging to have to obtain 5 points from EACH category, except transit and major public facility.

b) The requirement for both a site plan (which includes compatibility review) and prohibiting retail uses from 100' of residentially zoned properties seems duplicative and will simply make the retail use not permitted at all on some properties (that are not even 100' wide) or not allow a retail streetfront as desired in urban design guidelines. If the duplication continues, I'd suggest that the Planning Board should have waiver authority and/or flexibility for certain circumstances should be added so there are not unintended consequences.

There are others that can speak more effectively to the overall switch from percentages to points for the incentives, but in general it does inhibit the flexibility to put the precise points in the zone instead of in guidelines that the Planning Board can adapt and update as the process is more fully developed. I do think the revision to add that adjacent properties in the CR zone that are part of the same phasing plan and sketch plan can develop together, not necessarily same preliminary plan (which is consistent with CBD zones), is helpful for developed areas.

Thanks again for your efforts and your outreach. Sorry I could not make it over to discuss with you in person, but let me know if you'd like to discuss. Thanks.

...and have a Happy Holidays!

Anne

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<http://www.linowes-law.com>
amead@linowes-law.com

1. 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,

(ii) a municipal shared parking program, or

(iii) 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 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.

(4) The minimum number of parking spaces may be waived in full or in part under the provisions of section 59-E-4.5. Such waivers are deemed especially appropriate in the CR zones for:

(i) lots under 10,000 square feet;

(ii) lots with existing and retained buildings that cover 80 percent or more of the net lot area; or

(iii) when the subject lot is within a site, district, or other area specifically recommended as an appropriate place for waivers of minimum parking requirements by the applicable master or sector plan.

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Deleted: A waiver may only be granted under (i) and (ii) above if the Planning Board finds that the resulting lack of parking spaces may be offset by publicly accessible parking spaces within ¼ mile of the subject lot.¶

2. Amendment for public benefit reductions for small/low density lots in the four incentive density categories that list individual public benefits.

59-C-15.81. Incentive Density Provisions.

(e) The Planning Board may approve incentive density of up to 30% under each of the sections 59-C-15.84, 59-C-15.85, 59-C-15.86, and 59-C-15.87 for projects that provide public benefits under the applicable category according to the following table and subsections (i) and (ii) below.

<u>Net Lot Size</u>	<u>Zoned CR Density</u>	<u>Must provide a minimum of</u>	<u># of Required Benefits</u>
<u>20,000 sf or less</u>	<u>Or 2.0 FAR or less</u>		<u>1</u>
<u>20,001 sf or greater</u>	<u>2.25 FAR or greater</u>		<u>2</u>

(i) Any project may be granted incentive density of up to 30% for the applicable category when providing affordable housing under 59-C-15.85 or building lot terminations under 59-C-15.87.

(ii) The number of required benefits for projects with lots 20,001 sf or greater or with a zoned CR density of 2.25 FAR or greater may be allowed to provide only 1 benefit for up to 30% incentive density in the applicable category if the subject lot is within a site, district, or area specifically recommended for such consideration in the applicable master or sector plan.

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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 projects that provide public benefits under this category according to 59-C-15.81.

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 for projects that provide other public benefits under this category according to 59-C-15.81.

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 projects that provide public benefits under this category according to 59-C-15.81.

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 the public benefits in this Subsection: a project that provides BLTs as described below, or for projects that provide other public benefits under this category according to 59-C-15.81.

3. 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 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....

Deleted: a project is within a site, district, or area

4. Amendment for additional public benefits and minor changes under the four categories with individual public benefit lists.

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

- (g) Wayfinding: Provision of one or more wayfinding signs on- or off-site along a publicly accessible sidewalk that indicates the locations of local facilities and attractions such as transit stations and stops, public buildings, parks, public artworks, and cultural attractions on a street map covering a minimum of ¼ mile around the subject site.

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

- (g) Live/Work: For projects developing at or under 1.5 total FAR, include a minimum 20% and maximum 80% residential floor area or construct any commercial uses as live/work units. For projects developing above 1.5 total FAR, construct at least 50% of the commercial uses as live/work units.

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

- (h) Street Level Articulation: For projects that are not on a street delineated in a master or sector plan or applicable design guidelines, provision of a building façade and streetscape within 20 feet maximum of the curb that provides closely spaced usable entries; significant transparency along the first floor street wall; and architectural differentiation for those floors below the third floor through materials, ornamentation, or the equivalent.

Deleted: with

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

- (d) Tree Canopy: Coverage at 15 years of growth of at least 25% of the on-site open space or off-site planting of trees that will provide tree canopy coverage at 15 years growth of an area equal to 20% of the net lot area of the application.
- (g) Recycling Facilities Plan: Delineate recycling collection facilities, outreach and education signage, storage areas, and pick-up location points on the certified site plan that further the goals of Montgomery County Executive Regulation #15-04AM, "Residential and Commercial Recycling", as amended.

Sloan, Joshua

From: Mead, Anne M. - AMM [AMead@linowes-law.com]
Sent: Wednesday, January 19, 2011 5:07 PM
To: Sloan, Joshua; Carrier, Francoise
Subject: CR zone ZTA -comments to 1/13 discussion

Mr. Sloan (and Planning Board)-

Thanks again for your efforts and time to revise the CR zone and create the new CRT and CRN zones to address concerns for varying issues for smaller and/or less dense sites.

For property owners in areas like Kensington that have been coordinating with staff for a proposal (overlay zone, new zone, revised CR zone) to go back to the Council for almost a year, we had hoped the Board would send the ZTA to the Council this week for introduction to move forward (and it would thus come back to the Planning Board for refinement and the staff could address the specific new zones they would recommend for particular sites). We understand the ZTA will be delayed however because of the grandfathering issues for a plan that has not gone to public hearing before the Council - Takoma/ Langley? I don't know the specifics of what the Takoma/Langley representatives have suggested, but perhaps the grandfathering language (59-C-15.9) can be adjusted for properties that are reclassified near a planned - not existing-transit line to allow for interim reinvestment in those sites that addresses that issue? Again, like the original CR zone, the language would be refined through hearing and worksession (both Board and Council).

If the CR zone ZTA does stay with the Planning Board longer, I did hope that the Chair's comment at the discussion last week (1/13) regarding allowing for some minimal development on a site adjacent to single-family or agricultural without site plan would be incorporated into the ZTA, as not all of these sites are zoned transitional today, and small development, especially with residential uses (e.g. a single family home), should not be subjected to the expensive and discretionary site plan review process.

Example of potential language to address:

- (d) A site plan approval under Division 59-D-3 is required only for a standard method development that:
- (1) is adjacent to or fronting a property that is in an agricultural (under division 59-C-9) or single-family residential (under Division 59-C-1) zone and is for a non residential use that exceeds a gross floor area of 5,000 square feet or .5 FAR, whichever is less, or for a residential use that exceeds a gross floor area of 5 FAR or 10,000 square feet, whichever is less;
 - (2) requests a gross floor area exceeding 10,000 square feet;
 - (3) requests a building height exceeding 490 feet; or
 - (4) contains 10 or more dwelling units.

Thank you for your consideration of my comments and your continued efforts on this ZTA.

Anne

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-----Original Message-----

From: Sloan, Joshua [mailto:joshua.sloan@mncppc-mc.org]

Sent: Friday, January 07, 2011 10:54 PM

To: Carrier, Françoise; Dreyfuss, Norman; Wells-Harley, Marye; Presley, Amy; Alfandre, Joe; Stanley, Rollin; Kreger, Glenn; Krasnow, Rose; Afzal, Khalid; Boyd, Fred; Tallant, Sandra; Russ, Gregory; Kronenberg, Robert; Dolan, Mary; william.kominers@hklaw.com; rgbrewer@lercheearly.com; robert.harris@hklaw.com; Ilona Blanchard; Mayor Peter Fosselman; mrsweegee@aol.com; patbaptiste@verizon.net; patricia.harris@hklaw.com; Mead, Anne M. - AMM; Anne Marie Vassallo; sarobins@lercheearly.com; sullivan.flyger@verizon.net; Evan Goldman
Subject: redline and clean cr zones zta to be discussed on january 13 2010.

Finished the first draft of the redline and clean version of the CR ZTA with changes as directed and initial comments. Other staff may weigh in and we will publish on the web early next week. Please forward to those for whom I don't have an email. Have a good weekend. See you next week!

Thanks,

Josh

<<complete cr zta redline january 7 2010.pdf>> <<complete cr zta clean january 7 2010.pdf>>

Joshua C. Sloan, RLA

Coordinator
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301.495.4597
(f) 301.495.1306
joshua.sloan@mncppc.org

Montgomery County Planning Department

Sloan, Joshua

From: Julia OMalley [omalley10@msn.com]
Sent: Tuesday, February 15, 2011 10:54 AM
To: county.council@montgomerycountymd.gov
Cc: Sloan, Joshua
Subject: CR Zones and Kensington

Dear President Ervin and Council Members:

I am concerned as to the development of the CR Amendments and how they will apply to Kensington.

As I understand the CRN and CRT zones, they are to be applied to smaller communities such as Kensington. I believe the CRN height has been brought down? Four stories (40 to 45' seems like a reasonable height to be adjacent to a neighborhood. Anything higher does not. Kensington has stretches which *directly* abut neighborhoods, in particular along the south side of Knowles, the proposed extended Summit Ave to the west (KenGar), Connecticut on the east, and Plyers Mill on the north. While the heights might be compatible, what will the other restrictions be for the CRN zone?

Density will affect setbacks and traffic flow. How are these adjusted for a neighborhood setting?

Because Kensington is bifurcated by Connecticut Ave., and because there has been no solution offered to help pedestrians in a situation with F quality intersections (an *attractive* walkover would show travelers they've arrived somewhere), there should be limits to the incentives to reduce parking requirements where you count parking (within 1/2 or 1/4 mile??) which is across uncrossable roads. Where is the solution to the walking problem?

Our smaller communities thrive because we have specialty shops, mom and pop shops. How can they survive if we encourage redevelopment instead of revitalization. They will lose what parking they have, and they will not survive a major rebuilding stage. As a small town, we will lose what advantage we have.

High buildings = higher rents = chain stores.

To truly revitalize a small town area you need to include more sections which will be less impacted by the CR zoning changes. My sense is that this is what the Planning Board is TRYING to do with the CRN. It does not go far enough.

Our small town is NEVER going to compete with White Flint, Silver Spring, or Chevy Chase Lake. What we CAN compete with is a unique blend of *different shops* in a quiet setting where you CAN walk easily around and you can park to shop. Don't take that away!

Julie O'Malley
10019 Frederick Ave.
Kensington

I don't feel the Montgomery County community as a whole is aware of the fact that there are TOTAL rezoning efforts on a fast track! Will the Master Plans still take precedence?

Sloan, Joshua

From: mrsweegee@aol.com
Sent: Thursday, February 17, 2011 12:48 AM
To: eleanorduckett@comcast.net; Sloan, Joshua
Cc: Stanley, Rollin; Carrier, Francoise; Afzal, Khalid; boots3303@aol.com; Tallant, Sandra
Subject: Re: Kensington View

Ok then Josh, perhaps a little too philosophical for me to get....but thank you. Eleanor detailed it all and now maybe you better understand that this area is not primarily a commercial area as I believe was your impression and I must add, it's actually a redeveloping single family residential, transition area...so we will have to agree to disagree on this matter and continue working on this process.

My only comments to you and Rollin is that the 'vision' planners have for the East Ave and University 'buffer' properties in KV is one neighbors were willing to accept once the CRN was introduced and the protection of site plan was added, but now with that removed and most uses remaining, I guess we'll just have to continue the fight in hopes that at some level of government the responsibility to add the needed protections will come for those who now live in KV and similar areas through out the county. ~and~

Do you see the CRN Zone as written in planners vision below because we don't? It's more likely, for example, on East Ave my neighbors would have parking lots, auto dealership showroom or auto repair shops in the near term further degrading their quality of life, not the professional offices or townhouses planners scripted and they want.

This district of single-family neighborhoods is edged with low and moderately scaled residential units with some professional offices and neighborhood-serving retail along University Boulevard. The district will continue to be primarily residential with office and retail located nearest the intersections of the boulevards. The Plan envisions two new low to moderately scaled mixed-use developments along Veirs Mill Road, flanking the western entrance to the CBD. Pedestrian connections will link these areas to the Core and to existing neighborhoods.

Lots 7-13 - 'residential development as a transition to the single-family residential neighborhood to the west of the property. No commercial uses should be developed on these properties.'

Blocks X, Y & Z - 'Residential townhouse-scale development would be the most appropriate. Commercial development should be limited to small professional offices.'

See you later today, maybe I'll be mute...not!
Judy

Shameless Mom that I am!
Tayisha Busay! <http://tayishabusay.com/videos>

-----Original Message-----

From: eleanorduckett <eleanorduckett@comcast.net>
To: Joshua Sloan <joshua.sloan@mncppc-mc.org>
Cc: Rollin Stanley <rollin.stanley@mncppc-mc.org>; Francoise Carrier <francoise.carrier@mncppc-mc.org>; Khalid Afzal <Khalid.Afzal@mncppc-mc.org>; boots3303 <boots3303@aol.com>; Sandra Tallant <Sandra.Tallant@mncppc-mc.org>;

mrsweegee <mrsweegee@aol.com>

Sent: Wed, Feb 16, 2011 5:13 pm

Subject: Re: Kensington View

Hi, Josh,

In reality, we are talking about two very different areas in Kensington View. East Avenue currently has two C-2 zoned properties (Lindsay garage, Lindsay parking lot) that never required site plan or conformance with the Sector Plan (and it shows), one C-T zoned lot that, until recently, had a house that was never anything but residential, and two R-60 lots that, until recently, had houses. These lots are on a Tertiary Road (platted at 50 feet), across the street from single-family homes. Even if the two R-60 lots keep their R-60 zoning, you still have multiple lots on a small dead-end road that could end up with buildings, each under 0.5 FAR, with extensive uses and limited parking that would not need to conform to the Sector Plan or the Design Guidelines.

On University Boulevard, between East Avenue and Valley View Avenue, there is Capital One Bank (C-O), four houses (one R-60, 3 C-T), and the recently approved BBT Bank (C-T). With the exception of Jerry's tailoring, all of these required site plan and conformance with the Sector Plan (based on wording in the CT & RT zone) and had limited uses. Each of these structures are adjacent to single-family homes and across a highway from an 18 foot wall that encloses 1.5 million square feet of retail. None of these structures are over 0.5 FAR. It is unlikely that Capital One or BBT will be going anywhere anytime soon. Even if they leave, it is likely that another bank will move in - I doubt they will ever give up the drive-throughs if the CRN does not allow them and they are grandfathered in. The only structures that may change will be the houses. Based on your proposal, the houses could expand, reduce their green space, reduce their parking and have expanded uses. Hugo could double his business, add outdoor seating, reduce his parking and green space and still remain under 0.5 FAR. Our neighborhood will have to live with these changes - reduced access to our homes, noise, pollution, and aggravation - for years with the hopes that some day, someone may come in and build something over 0.5 FAR and be required to conform with the Sector Plan.

From everything I've read, over multiple years, and taken classes on, the purpose of zoning in Montgomery County is to implement the Plan (Master or Sector). No where in our buffer areas did I see a plan for restaurants, retail, clinics, auto repair shops, auto sales, or many of the other uses that are now included in this zone. Now we probably won't even see good Urban design.

I guess we have to agree to disagree. To me, trying to simplify a zoning code by squishing it into three zones and removing the safeguards we currently have is not in the public's best interest.

Thanks for your response. I'm sure you'll be hearing from Judy, also. Oh, lucky you!!!

Eleanor Duckett

----- Original Message -----

From: "Joshua Sloan" <joshua.sloan@mncppc-mc.org>

To: mrsweegee@aol.com, eleanorduckett@comcast.net

Cc: "Rollin Stanley" <rollin.stanley@mncppc-mc.org>, "Francoise Carrier" <francoise.carrier@mncppc-mc.org>, "Khalid Afzal" <Khalid.Afzal@mncppc-mc.org>, roots3303@aol.com, "Sandra Tallant" <Sandra.Tallant@mncppc-mc.org>

Sent: Wednesday, February 16, 2011 7:01:58 PM

Subject: RE: Kensington View

Judy & Eleanor,

In answer to the two emails received in response to my initial thoughts.... This may be a bit too philosophical to ease any concerns, but we have very differing opinions on how to get the results I think we both want. So, at the risk of possibly saying the wrong thing politically, I offer this follow-up:

I believe the properties we are talking about are commercially zoned at present and that the recommendation for the single-family-zoned properties being drafted by staff is to keep them as such. These are edges of existing commercial areas with existing commercial uses but need to act as transitions to the scale of development around them – we agree. There are many examples of C-T-zoned properties that have done a horrible job at creating such a transition. The difference is in the qualitative public realm created: whether parking lots and drive-throughs are allowed along transitional streets or whether buildings of similar (or smaller) size and height to the single-family houses create pleasant and safe sidewalks. Unfortunately, “process” is used as a knee-jerk response to zoning that allows bad urban form - but it only works if the right staff, citizens, and Board are in place and active. This is not always the case, whereas, design parameters establishing safer, more pedestrian-oriented urban form can be written into the code. In fact, if the right rules are in place, the hundreds of thousands of dollars spent on process for small-scale development (and 0.5 FAR is less than a single-family house can build to) could have been spent on a better building or landscape. The rules need to be written so that better results occur – not so that they might happen if we can just get one more look at the plans. We have tried hard to balance the potential impacts of noise, traffic, building size, use, and aesthetic concerns against the zoning – and its concomitant entitlements – that is on the ground today and, of course, with the vision of the future for these areas.

We obviously disagree, but I think it is unfair to make such a blanket statement as was made without noting the context of what other zones that have been used in similar situations allow and have resulted in. Further, the law exists on the books today and we are trying to work with the constructive criticism and ideas we receive to respond to concerns and improve the law where the Board and, ultimately, the Council see fit.

Josh

From: mrsweegee@aol.com [<mailto:mrsweegee@aol.com>]

Sent: Wednesday, February 16, 2011 5:02 PM

To: Sloan, Joshua

Cc: Stanley, Rollin; Carrier, Francoise; Afzal, Khalid; boots3303@aol.com; eleanorduckett@comcast.net; Tallant, Sandra

Subject: Re: Kensington View

Thank you Josh, but you're talking apples and oranges. We are not the CBD and we're not talking about commercial property we're talking about transition properties in single family residential neighborhoods. Perhaps you did not understand my question or know that the drive-thru is on a separate lot from the bank building so perhaps that was a poor example. I was referring to the building size as an example.

As for C-1 and C-2 properties, you are correct and the most egregious property on East Ave, that allowed all this to happen, is C-2 as well as all those in Wheaton on Ennals Ave.

So, based on your answer, I guess we're are right and that further confirms what more seasoned civics are referring to.

Thank you.

Judy

Shameless Mom that I am!

Fayisha Busay! <http://tayishabusay.com/videos>

-----Original Message-----

From: Sloan, Joshua <joshua.sloan@mncppc-mc.org>

To: mrsweegee <mrsweegee@aol.com>

Cc: Stanley, Rollin <rollin.stanley@mncppc-mc.org>; Carrier, Francoise <francoise.carrier@mncppc-mc.org>; Afzal, Khalid <Khalid.Afzal@mncppc-mc.org>; boots3303 <boots3303@aol.com>; eleanorduckett <eleanorduckett@comcast.net>; Tallant, Sandra <Sandra.Tallant@mncppc-mc.org>

Sent: Wed, Feb 16, 2011 9:32 am

Subject: RE: Kensington View

Hi Judy,

I don't have as much time as I'd like to give you a full answer before I head to a meeting in Rockville, but I will try to give you a brief synopsis of my thoughts. The short answer is that the Board discussed and added the 0.5FAR trigger to ensure site plan was based on impact of size – it's much smaller than a detached house could be. Further, the bank would have required a site plan because the Board had changed the provisions regarding drive-through facilities. There are much larger projects developed all the time that do not require any public review process (besides posting of a building permit) and, in fact, it is unusual for commercial sites to require site plans – virtually none of the C-1 or C-2 zoned properties require a site plan, nor do any standard method CBD-zone projects. There is much more public participation – and at a lower threshold – in the CR zones than in any of those situations.

Josh

From: mrsweegee@aol.com [mailto:mrsweegee@aol.com]

Sent: Wednesday, February 16, 2011 12:41 PM

To: Sloan, Joshua

Cc: Stanley, Rollin; Carrier, Francoise; Afzal, Khalid; boots3303@aol.com; eleanorduckett@comcast.net; Tallant, Sandra

Subject: Kensington View

Hey Josh,

Judy Higgins here. I'm sure you have received this latest from the 'civic ladies' but have attached in the event you have not. We are concerned about some of the statements in particular regarding Standard Method of development as in theory what will be used for development/redevelopment of most parcels in and around Kensington View.

Civic's statement - "In addition, there is virtually no opportunity for meaningful public participation under the standard method."

It is clear that Maryland law requires that zoning powers be exercised in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, all zoning power must be exercised:

. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district. [*Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*].

The 'board reviewed draft' of sections 1-7 we received yesterday now states the following:

59-C-15.41 Standard Method

(c) A site plan approval under Division 59-D-3 is required for a standard method development only if it:

- (1) is adjacent to or confronting a property in an applicable residential zone and requests a maximum total density exceeding 0.5 FAR;**
- (2) requests a gross floor area exceeding 10,000 square feet;**
- (3) requests a building height exceeding 40 feet; or**
- (4) contains 10 or more dwelling units.**

That clearly brings my community pause. We were told that a site plan would be required for all the parcels of concern in our community that we refer to as reference and was also stated in prior CR Zone drafts and that brought us a measure of

comfort. When and why was that changed and added? It's like bait and switch if we are clearly understanding this amended section!

As we read and have applied for clarity to something we know: A small project, like the recently Board approved BB&T Bank on University Blvd. which is a 4,080 sf building @ 25 feet height, and is adjacent to or confronting a single family residence, would not require a site plan hence no conformance with the SP/MP or compatibility with the existing neighborhood thru further examination, so the recommendation in the SP would mean nothing and we could get anything. Are we right?

59-C-15.61. Master Plan and Design Guidelines Conformance. 2

Development that requires a site plan must be consistent with the applicable master or sector plan, unless the Planning Board finds that events have occurred to render the relevant master or sector plan recommendation no longer appropriate, and must substantially conform to any design guidelines approved by the Planning Board that implement the applicable plan.

Anyone we have copied **Please** try and review if possible pre tomorrow as our testimony needs to reflect an accurate analysis and understanding.

We are trying to remain positive...

THE WHITE FLINT PARTNERSHIP

January 5, 2011

BY ELECTRONIC MAIL

Francoise Carrier, Chair, and
Members of the Montgomery County Planning Board
The Maryland-National Capital Park and Planning Comm.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Commercial/Residential (CR) Zones Zoning Text Amendment – Item 2 on January 6,
2011 Planning Board Agenda

Dear Chair Carrier and Members of the Planning Board:

On behalf of The White Flint Partnership (“WFP” or “Partnership”), the purpose of this letter is to provide comments on the proposed CR Zones Zoning Text Amendment. As you are aware, the WFP is composed of six owners of major redevelopment properties within the White Flint Sector planning boundary. All of these properties are classified in the CR Zones and two Partnership members, Federal Realty Investment Trust and The JBG Companies, currently have Sketch Plans pending. Based on the December 22, 2010 Technical Staff Report on the ZTA, it is our understanding that the purpose of the ZTA is to provide two new CR contexts, identified as “neighborhood” and “town,” while maintaining the current CR zones for “Metro” or White Flint context.

We find that certain aspects of recommended changes are not appropriate for achieving this objective and recommend they be modified. For ease of reference, our requested modifications are listed below in chronological and bullet form. All pages and Section references are to the text of the ZTA as set forth in Appendix A to the Staff Report.

- *Page 20, Section 59-C-15.63* – The proposed table should be reformatted and reworded to reflect the total number of secure bike storage spaces required, and the minimum number of this total number that must be “publicly accessible.” For example, for residential projects with fewer than 20 units, a total of 6 secure bike spaces would be required, of which a minimum of 2 spaces must be publicly accessible. By expressing the requirement in this way, a developer is able to provide a greater number of publicly accessible secure bike spaces to meet the total requirement.
- *Page 21, Section 59-C-15.641(b), regarding parking ratios for non-residential retail and restaurant uses*, should be clarified to indicate that (i) the required number of parking spaces per 1,000 square feet refers to gross leasable area, and (ii) no parking spaces are required for outdoor patron areas. Both these qualifiers are in the existing parking ratio section of the CR Zones and it is important to clearly maintain these provisions to facilitate the purposes of the CR Zones.
- *Page 23, Section 59-C-15.645, entitled “Landscaping and lighting”* – It should be made clear in the text of this Section that existing parking lots that will be used or modified for use on an interim basis for the phased redevelopment of a property may be retained or modified in accordance with a phasing plan without requiring compliance with the new standards.

- *Page 25, Section 59-C-15.74(d)(2) regarding payment in lieu of providing public use space on site* – This Section should be modified as follows:
 - i. ~~Equal to the cost of constructing an equal amount of the public use space and associated amenities on-site per square foot added to the fair market value of the application property that was required to be public use space per square foot;~~ In accordance with guidelines adopted to implement the CR Zones;

Placing the methodology for calculating the amount of the payment in the CR Zones guidelines will provide needed flexibility to better address the varying situations of individual applicants.

- *Page 26, Section 59-C-15.75(a), regarding the permitted type of residential amenity space.* The text of this Section should note that such private outdoor recreation space includes balconies, enclosed courtyards or other private assembly space. This will avoid confusion as to what is meant.
- *Page 26, Section 59-C-15.82(b), entitled “Public benefits required,” incorrectly references the section of the law that deals with individual public benefit descriptions and criteria.* In this regard, the reference to “Section 59-C-15.84” should instead be to “59-C-15.85.”
- *Page 26, Section 59-C-15.82 – any references to category “requisites” should be removed from the ZTA.* We believe that the concept of requisites should be eliminated. This concept is contrary to the original intent of the CR Zones to provide incentive density credit for the provisions of public benefits in a number of areas, with no one area (with the exception of major public facilities) providing over 30%. The WFP does not object to converting the current percentage calculation to a points-based analysis but strongly objects to establishing new “requisites” or required minimums in four pre-determined categories. We request that the Board maintain the current law that permits an applicant to choose, subject to Board review and approval, a series of public benefits that best implement the Sector Plan and purposes of zone for the site in question. To accomplish this, all language addressing category requisites found at page 28, Section 59-C-15.853(a), page 29, Section 59-C-15.854(a), page 30, Section 59-C-15.855(a), and page 31, Section 59-C-15.846(a)(1) would also be removed. As to the latter Section, we acknowledge that the current law requires the purchase of a certain number of BLTs, and we are not asking for any modification to this existing requirement.

Francoise Carrier, Chair, and
Members of the Montgomery County Planning Board
January 5, 2011
Page 3

We thank you for your consideration of our comments. Representatives of the WFP will be present on January 6, 2011 for the Board discussion of this item and available to discuss any aspect of these comments.

Best Regards,

THE WHITE FLINT PARTNERSHIP

Combined Properties
Federal Realty Investment Trust
Gables Residential
The JBG Companies
Lerner Enterprises
The Tower Companies

cc: Mr. Rollin Stanley
Mr. Josh Sloan

Holland & Knight

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February 23, 2011

VIA ELECTRONIC MAIL

Mr. Joshua Sloan
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: CR Zone -- Zoning Text Amendment

Dear Mr. Sloan:

On behalf of Harsam Properties, Inc., the owners of the Kensington Shopping Center at 10540 Connecticut Avenue (the "Property"), I wanted to express our concern with respect to Section 59-C-15.852 of the latest draft of the CR Zone Zoning Text Amendment ("ZTA"), which sets forth the potential transit proximity points. The pending CR Zone ZTA which has expanded the CR Zone to incorporate the CRN and CRT Zones has resulted in a significant reduction in the incentive density attributable to transit proximity for certain properties.

The eastern boundary of the Property is located almost exactly 1/4 mile from the Kensington MARC Station. As such, in accordance with the existing CR Zone, the Property is eligible for 20 percent incentive density, based on its location of 1/4 to 1/2 mile from a "Level 2" transit station. In comparison, the latest draft of the CR Zone, which establishes the CRN and CRT Zones, provides an incentive density of only 10 percent (5 points out of total of 50) for properties zoned CRT which are located 1/4 to 1/2 mile from a "Level 2" transit station.

There appears to be no basis for the reduction in the incentive density from 20 percent to 10 percent and we would respectfully request your consideration of reinstating the 20 percent incentive density back into the current ZTA for those sites located within 1/4 and 1/2 mile of a "Level 2" transit station. The proposed changes to the CR Zone, which include the establishment of the CRT Zone, will have no substantial affect on the ultimate development of the Property. The CR Zone changes currently being reviewed by the Planning Board simply impose a different zoning classification on the Property -- CRT versus CR. Importantly, there have been no other corresponding changes to the CR ZTA which would warrant a change in the incentive density. That is, the Property will be redeveloped with the same types of uses and densities and will generate the same modal splits, irrespective of whether the Property is zoned CR or CRT.

Mr. Joshua Sloan
February 23, 2011
Page 2

Further, we would note that under the earlier drafts of the CR Zone, the original transit density incentives for a site such as the Property, which is located immediately adjacent to several major bus lines, was 25 percent.

The CR and CRT Zones, which are intended to promote mixed use development in areas served by public transportation, must include the necessary incentives to encourage this desired development. A continued decrease in the incentive density attributable to transit proximity is contrary to this objective. For these reasons, we request that you revise Section 59-C-15.852 to provide for 10 points (instead of 5) for properties located within 1/4 mile and 1/2 mile of a Level 2 transit station.

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact me.

Sincerely,

HOLLAND & KNIGHT LLP



Patricia A. Harris

cc: Diane Burka, Esq.
Mr. Neil Burka

#10144807_v1

H (2)

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William Kominers
301 215 6610
william.kominers@hklaw.com

February 15, 2011

VIA ELECTRONIC MAIL

Francoise Carrier, Chair, and Members
of the Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: CR Zone Amendments -- Protection of Approved Sketch Plan

Dear Chair Carrier and Members of the Board:

The purpose of this letter is to comment on the draft CR Zone amendments now being considered by the Board. This one particular comment is presented on behalf of the applicants for the North Bethesda Gateway Project, Sketch Plan No. 320110020. This Sketch Plan was approved by the Board on January 20, 2011, although the Resolution has not yet been adopted.

The North Bethesda Gateway Sketch Plan was approved under the CR Zone as it existed on January 20, 2011. The CR Zone amendments now being considered propose significant, substantive changes to the current character, content, and methodology of the CR Zone. As a result, there may be significant ways in which the implementation of sketch plans and their subsequent plan reviews (preliminary plan, site plan) will occur under an amended CR Zone. Therefore, the applicants for North Bethesda Gateway recommend that a new grandfather provision be added to the CR Zone amendment to protect the approvals of sketch plans that were granted January 20 and to ensure that these plans may complete their implementation using the methodology and assumptions of the CR Zone that existed at the time of their approval.

The enclosed grandfather language provides that sketch plans approved prior to the proposed amendments to the CR Zone would continue to be governed by the CR Zone as the Zone existed at the time of the sketch plan approval. This treatment would apply to the subsequent preliminary plan and site plan, and also to any amendments that might occur to the sketch plan itself. Since the exact character of the new CR Zone is unknown at the present time, the proposed grandfather language also provides the option for an applicant to utilize the new CR Zone standards instead. This option will give an opportunity to utilize the new CR Zone when adopted, should an applicant choose to do so.

KO

The proposed grandfathering language is set forth below and would be added as a new Section 59-C-15.9(e).

59-C-15.9 Existing Approvals

* * *

(e) An approved sketch plan may obtain approvals of implementing plans, and may be built, altered, amended, or modified at any time, subject to either: (1) the full provisions of the CR Zone that existed at the time of approval of the sketch plan, or (2) at the option of the owner, the full provisions of this Division at the time of any subsequent action. If implemented under the CR Zone at the time of sketch plan approval, all such development will be treated as a lawfully existing building, project, or site development, and may be renovated or reconstructed under Subsection (a) above. If built with an incremental increase over the previous approval, only that incremental increase must comply with the then-current provisions of this Division.

Please include this comment in your deliberations on the CR Zone amendments. To date, Planning Board Staff has not included Section 59-C-15.9 in the discussion, as it deals with grandfathering related to projects pre-dating the original CR Zone and has not been proposed to change. This proposed new Section 59-C-15.9(e) can be added without changing any of the existing provisions of Section 59-C-15.9.

I look forward to discussing this matter with you.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

cc: Mr. Joseph Alfandre
Mr. Norman Dreyfuss
Ms. Amy Presley
Ms. Marye Wells-Harley
Mr. Rob Smith
Mr. Robert Eisinger
Ms. Hilary Goldfarb
Jody S. Kline, Esquire
Mr. Josh Sloan
Ms. Rose Krasnow
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William Kominers
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February 22, 2011

VIA UPS

Francoise Carrier, Chair, and Members
of the Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Comments on CR Zone Amendments

Dear Chair Carrier and Members of the Board:

In accordance with the discussion at your meeting on February 17, 2011, please find enclosed my mark up of comments on the two CR Zone Amendment elements prepared by Staff. These include: (1) the Staff's February 14 draft (incorporating comments from your earlier worksessions), and (2) the Staff's February 15 draft of Sections 59-C-15.8 and 15.9 which had not been previously reviewed by the Board.

In the interest of time, I have marked these drafts by hand with my comments. These markups reflect my complete comments on the drafts, not only those items that I mentioned in my testimony on February 17. I am sending copies of this material to the Staff so that it can be included in the comprehensive analysis being prepared for next week.

Thank you for the opportunity to comment on these prospective amendments to the CR Zone. I look forward to continued dialogue with the Board on this matter.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

Enclosures

cc: Mr. Joseph Alfandre
Mr. Norman Dreyfuss
Ms. Amy Presley
Ms. Marye Wells-Harley
Ms. Rose Krasnow
Mr. Joshua Sloan
Mr. Gregory Russ
#10143872_v1

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REVISED
2/20/11
KOMINERS

1 **Sec. 1. Division 59-C-15 is amended as follows:**

2 * * *

3 **DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL [(CR)] ZONES**

PART 1

4
5 **59-C-15.1. Zones Established.**

6 **59-C-15.11.** The Commercial/Residential [(CR)] zones are established as
7 combinations of zone categories and a sequence of 4 factors: maximum total floor
8 area ratio (FAR), maximum non-residential FAR, maximum residential FAR, and
9 maximum building height.

10 (a) There are three commercial/residential (CR) categories with variable uses,
11 density and height limits, general requirements, development standards, and
12 public benefit requirements to respond to different settings. These zone
13 categories are:

- 14 (1) CR Neighborhood ("CRN");
- 15 (2) CR Town ("CRT"); and
- 16 (3) CR Metro ("CR").

17 ~~(a)~~(b) The CR category is followed by a number and [These zones are identified
18 by] a sequence of three additional symbols: [CR,] C, R, and H, each
19 followed by a number where:

- 20 ~~(a)~~(1) the number following the CR category [symbol "CR"] is the
21 maximum total FAR;
- 22 ~~(b)~~(2) the number following the [symbol] "C" is the maximum non-
23 residential FAR;
- 24 ~~(c)~~(3) the number following the [symbol] "R" is the maximum
25 residential FAR; and
- 26 ~~(d)~~(4) the number following the [symbol] "H" is the maximum
27 building height in feet.

28 (c) The Commercial/Residential Zones will be applied on the zoning map that
29 will show, for each property classified under a CR zone, the zone category
30 and the four regulated factors (total, non-residential, and residential density
31 and height).

32 (d) This Division uses examples and illustrations to demonstrate the intent of
33 the CR zones. These[The] examples and illustrations [in this Division] do
34 not add, delete, or modify any provision of this Division.[Examples are
35 provided only to demonstrate particular applications of the provisions in the
36 Division. Examples are not intended to limit the provisions.]

37 **59-C-15.12. Density and Height Allocation.**

38 **59-C-15.121. Density and Height Limits.**

39 (a) Each unique sequence of CRN, CRT, or CR, and C, R, and H is established
40 as a zone under the following limits:

<u>Category</u>	<u>Max Total FAR</u>	<u>Max C or R FAR</u>	<u>Max H</u>
<u>CRN</u>	<u>0.5 to 1.5</u>	<u>0.25 to 1.5</u>	<u>40 to 65</u>
<u>CRT</u>	<u>0.5 to 4.0</u>	<u>0.25 to 3.5</u>	<u>40 to 150</u>
<u>CR</u>	<u>0.5 to 8.0</u>	<u>0.25 to 7.5</u>	<u>40 to 300</u>

41 (b) Zones may be established and mapped at densities in increments of 0.25 and
42 heights in increments of 5 feet with the ranges indicated in the table.

43 [~~(a) the maximum total FAR must be established as an increment of 0.25 from~~
44 ~~0.5 up to 8.0;~~

45 [~~(b) the maximum non-residential and residential FAR must be established as an~~
46 ~~increment of 0.25 from 0.25 up to 7.5; and~~

47 [~~(c) the maximum height must be established as an increment of 5 feet up to 100~~
48 ~~feet and an increment of 10 feet from 100 feet up to 300 feet.]~~

49 **59-C-15.122[1]. Density Averaging.**

K5

50 Permitted density may be averaged over 2 or more directly abutting or confronting
51 properties[lots] in one or more CRN, CRT, or CR zones, provided that:

- 52 (a) the properties[lots] are subject to the same site plan or sketch plan;
- 53 (b) the resulting lots or parcels are created by the same preliminary subdivision
54 plan or satisfy a phasing plan established by an approved sketch plan;
- 55 (c) the maximum total, ~~[density and]~~ non-residential, and residential density
56 limits apply to the entire development, not to individual lots or parcels;
- 57 (d) no building may exceed the maximum height set by the zone;
- 58 (e) uses are subject to the provisions of the zone category ~~[public benefits must
59 be provided under the phasing element of an approved sketch plan]; and~~
- 60 (f) the total allowed maximum density on a resulting ~~[of a]~~ lot or parcel [zoned
61 CR] that is adjacent to or confronting a lot or parcel in an applicable TERMINOLOGY *
62 residential zone ~~[one-family residentially zoned or agriculturally zoned lots
63 or parcels]~~ may not ~~[be]~~ exceed ~~[ed]~~ that allowed by the zone. ~~[; and~~
- 64 ~~(g) the resulting development must conform to the design and land use
65 objectives of the applicable master or sector plan and design guidelines.]~~

66 **59-C-15.13. Applicability.**

67 The CRN, CRT, and CR zones can only be applied when specifically
68 recommended by an approved and adopted master or sector plan and only by ~~[the]~~
69 sectional map amendment ~~[-process]~~.

DOES NOT NEED
TO BE EQUAL.
COULD BE 1.0 & 0.5

71 *Examples:*

- 72 • An area zoned CRN-1.5 ~~[2.0]~~, C1.0, R1.0, H45 ~~[80]~~ allows a total FAR ~~[of]~~ up to 1.5 ~~[2.0]~~,
73 with maximum non-residential and residential FARs of 1.0, thereby requiring an equal
74 mix of uses to obtain the total FAR allowed. The height for any building in this zone is
75 limited to 45 ~~[80]~~ feet.
- 76 • An area zoned CR-6.0, C3.0, R5.0, H200 allows ~~[a residential FAR of up to 5.0,]~~ a non-
77 residential FAR ~~[of]~~ up to 3.0, a residential FAR up to 5.0, and a mix of the two uses
78 could yield a total FAR of 6.0. This combination allows for flexibility in the market and

MISLEADING.
CANNOT REACH
3.5 FAR. MAX FAR = 3.0

Monday, February 14, 2011

CR Zones Zoning Text Amendment: Planning Board Reviewed Modifications for Sections 15.1-15.7

79 shifts in the surrounding context. The height for any building in this zone is limited to
80 200 feet.

- 81 • An area zoned CRT-3.0[4.0], C3.5[4.0], R3.5[4.0], H100[60] allows complete flexibility
82 in the mix of uses, including buildings with no mix, because the maximum allowed non-
83 residential and residential FARs are both equivalent to the total maximum FAR allowed.
84 The height for any building in this zone is limited to 100[60] feet.

85
86 **59-C-15.2. Description and Objectives of the CR Zones.**

87 The CRN, CRT, and CR zones permit a mix of residential and non-residential uses
88 at varying densities and heights. The zones promote economically,
89 environmentally, and socially sustainable development patterns where people can
90 live, work, recreate, and have access to services and amenities while minimizing
91 the need for automobile use. [~~The application of the CR zones is appropriate~~
92 ~~where ecological impacts can be moderated by co-locating housing, jobs, and~~
93 ~~services.~~]The objectives of the CRN, CRT, and CR zones are to:

- 94 (a) implement the policy recommendations of applicable master and sector
95 plans;
- 96 (b) target opportunities for redevelopment of single-use areas and surface
97 parking lots with a mix of uses;
- 98 (c) reduce dependence on the automobile by encouraging development that
99 integrates a balanced combination of housing types, mobility options,
100 commercial services, and public facilities and amenities;
- 101 (d) allow a flexible mix of uses, densities, and building heights appropriate to
102 various contexts to ensure compatible relationships with adjoining
103 neighborhoods; and~~[encourage an appropriate balance of employment and~~
104 ~~housing opportunities and compatible relationships with adjoining~~
105 ~~neighborhoods;~~
- 106 (e) ~~establish the maximum density and building height for each zone, while~~
107 ~~retaining appropriate development flexibility within those limits; and~~

108 ~~(f)~~ (e) standardize optional method development by establishing minimum
109 parameters[requirements] for the provision of [the] public benefits[that will
110 support and accommodate density above the standard method limit].

111 **59-C-15.3. Definitions Specific to the CR Zones.**

112 The following words and phrases, as used in this Division, have the meaning
113 indicated. The definitions in Division 59-A-2 otherwise apply.

114 **Applicable Residential Zone:** zones governed by Division 59-C-1 ^(OR) and Division
115 59-C-9 are included in all references in this Division to “an applicable
116 residentially-zoned property” or equivalent phrases.

*EITHER LIST ALL USAGES,
CAPITALIZE THEM ALL,
OR ELIMINATE THIS CLAUSE &
USE ONE
TERM ONLY.*

117 **Car share space:** a parking space that serves as the location of an in-service
118 vehicle used by a vehicle-sharing service.

119 **Cultural institutions:** public or private institutions or businesses including: art,
120 music, and photographic studios; auditoriums or convention halls; libraries and
121 museums; recreational, performance, or entertainment establishments,
122 commercial; theater, indoor; theater, legitimate.

123 **Day care facilities and centers:** facilities and centers that provide daytime care
124 for children and/or adults, including: child daycare facility (family day care,
125 group day care, child day care center); daycare facility for not more than 4
126 senior adults and persons with disabilities; and day care facility for senior
127 adults and persons with disabilities.

128 **Frontage:** a property line shared with an existing or master-planned public or
129 private road, street, highway, or alley right-of-way or easement boundary.

130 **Limits of Disturbance:** an area defined by a perimeter within which all
131 construction work must occur as established on a certified site plan.

- 132 **Live/Work unit:** Buildings or spaces within buildings that are used jointly for
133 non-residential and residential purposes where the residential use of the space
134 may be secondary or accessory to the primary use as a place of work.
- 135 **Manufacturing and production, artisan:** The manufacture and production of
136 commercial goods by a skilled manual worker or craftsman, such as jewelry,
137 metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food
138 products.
- 139 **Public Arts Trust Steering Committee:** A committee of the Arts and Humanities
140 Council that allocates funds from the Public Arts Trust.
- 141 **Public owned or operated uses:** Activities that are located on land owned by or
142 leased and developed or operated by a local, county, state, or federal body or
143 agency.
- 144 **Recreational facilities, participatory:** Facilities used for sports or recreation.
- 145 **Reconstruction:** Building the same or less floor area on or within the footprint of
146 a demolished or partially demolished building.
- 147 **Renovation:** An interior or exterior alteration that does not affect a building's
148 footprint.
- 149 **Seasonal Outdoor Sales:** A lot or parcel where a use or product is offered
150 annually for a limited period of time during the same calendar period each year.
151 The availability or demand for the use or product is related to the calendar
152 period, such as Christmas trees, pumpkin patches, or corn mazes.
- 153 **Tenant Footprint:** The horizontal area measured within the exterior walls for the
154 ground floor of the main structure allocated to each non-residential tenant or
155 owner-occupant.
- 156 **Transit proximity:** Transit proximity is categorized in two levels: 1. proximity
157 to an existing or master-planned Metrorail Station; 2. proximity to an existing

INCLUDES
MARC?

158 or master-planned station or stop along a rail or bus line with a dedicated, fixed
159 path. All distances for transit proximity are measured from the transit station
160 or stop portal.

161 **59-C-15.4. Methods of Development and Approval Procedures.**

162 The CRN zones allow development only under the standard method. The CRT
163 and CR zones allow development under the standard method and may allow
164 development under the optional method.~~[Two methods of development are~~
165 ~~available under the CR zones.]~~

166 **59-C-15.41. Standard Method.**

167 Standard method development [~~must comply with the general requirements and~~
168 ~~development standards of the CR zones.]~~ is allowed under the following limitations
169 and requirements.

170 (a) In the CRN zones, the maximum total, non-residential, and residential
171 density and maximum height for any property is set by the zone shown on
172 the zoning map.

173 (b) In the CRT and CR zones, the maximum standard method density and
174 height is the lesser of the density and height set by the zone shown on the
175 zoning map or:

<u>Category</u>	<u>Maximum Total</u> <u>Density (FAR)</u>	<u>Maximum Building</u> <u>Height (feet)</u>
<u>CRT</u>	<u>1.5</u>	<u>65</u>
<u>CR</u>	<u>1.5</u>	<u>80</u>

176 ~~[-](c)~~ A site plan approval under Division 59-D-3 is required for a standard
177 method development [~~project~~] only if it:

178 (1)(a) is adjacent to or confronting a property in an applicable residential
179 zone and requests a maximum total density exceeding 0.5 FAR;

- 180 (2) requests a~~the~~ gross floor area exceeding~~s~~ 10,000 square feet;
181 (3) requests a building height exceeding 40 feet; or ~~BOUISO FROM 45'~~
182 (4)~~(b)~~ ~~any building or group of buildings~~ contains 10 or more dwelling
183 units.

184 **59-C-15.42. Optional Method.**

185 Optional method development [~~must comply with the general requirements and~~
186 ~~development standards of the CR zones and must provide public benefits under~~
187 ~~Section 59-C-15.8 to obtain greater density and height than allowed under the~~
188 ~~standard method of development. A sketch plan and site plan are required for any~~
189 ~~development using the optional method. A sketch plan must be filed under the~~
190 ~~provisions below; a site plan must be filed under Division 59-D-3. Any required~~
191 ~~preliminary subdivision plan must not be submitted before a sketch plan is~~
192 ~~submitted.]is allowed under the following limitations and requirements.~~

- 193 (a) The maximum total, non-residential, and residential density and height for
194 any property is set by the zone shown on the zoning map.
195 (b) A sketch plan must be submitted under Section 59-C-15.43. Site plan(s)
196 must be submitted under Division 59-D-3 for any development on a
197 property with an approved sketch plan.
198 (c) Public benefits must be provided under Section 59-C-15.8.

199 **59-C-15.43. Sketch Plan.**

200 Any optional method development in the CRT and CR zones requires an approved
201 sketch plan. Any required preliminary plan of subdivision or site plan may not be
202 submitted before a sketch plan has been approved.

- 203 (a) A sketch plan application must contain:
204 (1) a justification statement that addresses how the project meets the
205 requirements and standards of this Division [~~for optional method~~

- 206 ~~development]~~and describes how the development will further the
207 objectives of the applicable master or sector plan;
- 208 (2) ~~[an]~~illustrative plans ~~[or model that]~~showing[s]:
- 209 (A) building densities, massing, heights, and the anticipated mix of
210 uses;~~[the maximum densities for residential and non residential uses,~~
211 ~~massing, and heights of buildings;]~~
- 212 (B) locations of public use and other open spaces;
- 213 (C) pedestrian, bicycle, and vehicular circulation, parking, and
214 loading; and
- 215 (D) ~~[the]~~relationships between existing or proposed adjacent
216 buildings and rights-of-way;~~[on adjoining tracts;]~~
- 217 ~~[(3) an illustrative diagram of proposed vehicular, pedestrian, and bicycle~~
218 ~~access, circulation, parking, and loading areas;]~~
- 219 ~~(3)~~~~[(4)]~~ a table of proposed public benefits and the incentive density
220 requested for each; and
- 221 ~~(4)~~~~[(5)]~~ a~~[the]~~ general phasing outline of structures, uses, rights-of-
222 way, sidewalks, dedications, public benefits, and future preliminary
223 and site plan applications.
- 224 (b) Procedure for a sketch plan:
- 225 (1) Before filing a sketch plan application, an applicant must comply
226 with the provisions of the Manual for Development Review
227 Procedures, as amended, that concern the following:
- 228 (A) notice;
- 229 (B) posting the site of the application submittal; and
- 230 (C) holding a pre-submittal meeting.

- 231 (2) A public hearing must be held by the Planning Board on each sketch
232 plan application no later than 90 days after the filing of an optional
233 method development application, unless a request to extend this
234 period is requested by the applicant, Planning Board staff, or other
235 interested parties. A request for an extension must be granted if the
236 Planning Board finds it not to constitute prejudice or undue hardship
237 on any interested party. A recommendation regarding any request for
238 extension must be acted upon~~[as a consent agenda item]~~ by the
239 Planning Board on or before the 90-day hearing period expires.
240 Notice of the extension request and recommendation by Staff must be
241 posted no fewer than 10 days before the item's agenda date.
- 242 (3) No fewer than 10 days before the public hearing on a sketch plan,
243 Planning Board staff must submit its analysis of the application,
244 including its findings, comments, and recommendations with respect
245 to the requirements and standards of this division and any other
246 matters that may assist the Planning Board in reaching its decision on
247 the application. This staff report must be included in the record of the
248 public hearing.
- 249 (4) The Planning Board must act within 30 days after the close of the
250 record of the public hearing, by majority vote of those present and
251 voting based upon the hearing record, to:
- 252 (A) approve;
- 253 (B) approve subject to modifications, conditions, or binding
254 elements; or
- 255 (C) disapprove.

- 256 (c) In approving a sketch plan, the Planning Board must determine~~[find]~~ that
257 the following elements are appropriate in concept and appropriate for
258 further detailed review at site plan. The Planning Board must find that the
259 sketch plan:
- 260 (1) ~~[The plan: (A)]~~meets the objectives, general requirements, and
261 standards of this Division;
- 262 (2) ~~[(B) will]~~furthers the objectives of the applicable master or sector
263 plan;~~[and (C) will provide more efficient and effective development~~
264 ~~of the site than the standard method of development;]~~
- 265 (3)~~[(2) — The proposed building massing and height and public use and~~
266 ~~other open spaces are located and scaled to]~~achieves compatible
267 internal and external relationships between~~[with each other and with~~
268 existing and proposed buildings, [and] open space, and uses
269 adjacent to the site and with adjacent communities];
- 270 (4)~~[(3)]~~ provides satisfactory~~[The]~~ general vehicular, pedestrian, and
271 bicyclist access, circulation, parking, and loading~~[-areas are adequate,~~
272 safe, and efficient];
- 273 (5)~~[(4)]~~ ~~[The]~~proposes~~[d]~~ an outline of public benefits that supports
274 the [and associated]requested incentive density~~[-will further the~~
275 ~~objectives of the applicable master or sector plan and the objectives~~
276 ~~of the CR zones]; and~~
- 277 (6)~~[(5)]~~ establishes a feasible and appropriate provisional~~[The general]~~
278 phasing plan for all [of]structures, uses, rights-of-way, sidewalks,
279 dedications, public benefits, and future preliminary and site plan
280 applications~~[s is feasible and appropriate to the scale and~~
281 ~~characteristics of the project.]~~

282 (d) During site plan review, the Planning Board may approve modifications to
283 the binding elements or conditions of an approved sketch plan.

284 (1) If changes to a sketch plan are requested by the applicant, notice of
285 the site plan application must identify those changes requested. The
286 applicant has the burden of persuading the Planning Board that such
287 changes should be approved.

288 (2) Other changes may be requested by Planning Board staff, the
289 Planning Board, or another interested party. If ~~[other]~~ changes are
290 recommended after the application is made but before posting of
291 Planning Board staff's recommendation, notice of the site plan
292 hearing must identify changes requested.

THESE
CHANGES
NEED
CONSENT
OF
APPLICANT.

293 (3) In acting to approve a sketch plan modification as part of site plan
294 review, the Planning Board must make the findings required under~~[in]~~
295 Section 59-C-15.43~~[2-]~~(c) in addition to those findings required
296 under~~[by]~~ Section 59-D-3.

297 **59-C-15.5. Land Uses.**

298 No use is allowed in the CRN, CRT, or CR zones except as indicated below:

299 - *Permitted Uses* are designated by the letter "P" and are permitted
300 subject to all applicable regulations.

301 - *Limited Uses* are designated by the letter "L" and are permitted
302 subject to all applicable regulations and the additional restrictions
303 under Section 59-C-15.51.

304 - *Special Exception Uses* are designated by the letters "SE" and may be
305 authorized as special exceptions under Article 59-G.

306

K (15)

Use	CR N	CR T	CR
(a) Agricultural			
Farm and country markets	<u>L</u>	<u>P</u>	P
Farm, limited to crops, vegetables, herbs, and ornamental plants	<u>P</u>	<u>P</u>	P
Nursery, horticultural – retail or wholesale		<u>P</u>	P
Seasonal outdoor sales	<u>P</u>	<u>P</u>	P
(b) Residential			
Dwellings	<u>P</u>	<u>P</u>	P
Group homes, small or large	<u>P</u>	<u>P</u>	P
Hospice care facilities	<u>P</u>	<u>P</u>	P
Housing and related facilities for senior adults or persons with disabilities	<u>P</u>	<u>P</u>	P
Life care facilities	<u>P</u>	<u>P</u>	P
Live/Work units	<u>P</u>	<u>P</u>	P
Personal living quarters	<u>P</u>	<u>P</u>	P
(c) Commercial Sales and Service			
Advanced technology and biotechnology		<u>P</u>	P
Ambulance or rescue squads, private	<u>SE</u>	<u>L</u>	P
Animal boarding places	<u>SE</u>	<u>SE</u>	SE
Automobile filling stations		<u>SE</u>	SE
Automobile rental services, excluding storage of vehicles and supplies	<u>P</u>	<u>P</u>	P
Automobile rental services, including storage of vehicles and supplies		<u>L</u>	<u>L</u>
Automobile repair and services	<u>L</u>	<u>L</u>	P
Automobile sales, indoors	<u>L</u>	<u>L</u>	P
Automobile sales, outdoors [except where a municipality prohibits the use within its jurisdiction by resolution]		<u>L</u>	P
Clinic	<u>L</u>	<u>P</u>	P
Conference centers		<u>P</u>	P
Eating and drinking establishments	<u>L</u>	<u>P</u>	P
Health clubs and gyms	<u>L</u>	<u>P</u>	P
Home occupations, major	<u>SE</u>	<u>SE</u>	SE
Home occupations, registered and no-impact	<u>P</u>	<u>P</u>	P
Hotels and motels	<u>L</u>	<u>P</u>	P
Laboratories		<u>P</u>	P
Dry cleaning and laundry pick-up stations	<u>P</u>	<u>P</u>	P
Offices, general	<u>P</u>	<u>P</u>	P
Recreational facilities, participatory	<u>L</u>	<u>P</u>	P
Research, development, and related activities		<u>P</u>	P
Retail trades, businesses, and services of a general commercial nature with each tenant footprint up to 5,000sf	<u>P</u>	<u>P</u>	P
Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 5,000sf and 15,000sf	<u>L</u>	<u>P</u>	<u>P</u>

5,001

Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 15,000 ^{15,001} sf and 60,000sf		P	P
Retail trades, businesses, and services of a general commercial nature with each tenant footprint over 60,000 ^{60,001} sf		L	P
Self-storage facilities		SE	SE
Veterinary hospitals and offices with boarding facilities	SE	L	P
Veterinary hospitals and offices without boarding facilities	P	P	P
Warehousing, not including self-storage, less than 10,000 square feet		P	P
(d) Institutional & Civic			
Charitable and philanthropic institutions	L	P	P
Cultural institutions	L	P	P
Day care facilities and centers with over 30 users	L	L	P
Day care facilities and centers with up to 30 users	P	P	P
Educational institutions, private	L	P	P
Hospitals		P	P
Parks and playgrounds, private	P	P	P
Private clubs and service organizations	L	P	P
Publicly owned or publicly operated uses	P	P	P
Religious institutions	P	P	P
(e) Industrial			
Manufacturing and production, artisan	P	P	P
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, and projects resulting from biotechnical and biogenetic research and development		L	P
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment		L	P
(f) Other			
Accessory buildings and uses	P	P	P
Bus terminals, non-public		P	P
Parking garages, automobile		P	P
Public utility buildings, structures, and underground facilities	P	P	P
Radio and television broadcast studios		P	P
Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms	P	P	P

307 **59-C-15.51. Limited Uses.**

308 **59-C-15.511. Applicability.** Uses designated by an "L" in the land use table must

309 comply with the requirements of this Section if they are on properties that are:

310 (a) Located adjacent to a property in an applicable residential or agricultural

311 zone, or

← THAT IS ZONED, USED, AND RECOMMENDED FOR SUCH USE IN THE ADOPTED MASTER OR SECTOR PLAN;

← USE DEFINED TERM

312 (b) Separated from such a property only by the right-of-way of a primary,
313 secondary, or tertiary residential street.

314 Where these circumstances do not apply, the use is considered a permitted use.

315 59-C-15.12. Restrictions and requirements of limited uses.

316 (a) No structures, parking spaces, or driveway entrances associated with a
317 limited use may be located within 100 feet of the adjacent agriculturally- or
318 residentially-zoned property line or, when separated by an applicable right-
319 of-way, within 100 feet of the confronting property line.

320 (b) When adjacent to an agriculturally- or residentially zoned property and not
321 separated by an applicable right-of way:

322 (1) the required 100-foot setback must contain at least an 8-foot evergreen
323 hedge or a 6-foot solid wall or fence ⁽ⁱⁱ⁾ plus 1 deciduous tree ⁽ⁱ⁾ planted at a
324 minimum of every 30 feet; and ^{AND (iii)}

325 (2) illumination levels may not exceed 0.1 footcandles at the subject
326 property line.

327 (3) For the 100-foot setback area, these requirements replace any
328 applicable surface parking landscaping requirements in Section 59-C-
329 15.635.

330 (c) If the required distance between a driveway entrance for a limited use and
331 the adjacent or confronting agriculturally- or residentially-zoned property
332 precludes access to the property, the driveway may be built closer than
333 100 feet subject to reasonable mitigating requirements above the
334 minimum standards under Section 59-C-15.12(b), such as additional
335 visual or noise buffering.

336 59-C-15.6. General Requirements.

USE DEFINED TERM
USE DEFINED TERM
ARE THESE TERMS SUPPOSED TO REFER TO THE R/W IN LINE 312 ABOVE?

337 Development in the CRN, CRT, and CR zones must comply with the following
338 requirements.

339 **59-C-15.61. Master Plan and Design Guidelines Conformance.**

340 Development that requires a site plan must be consistent with the applicable
341 master or sector plan, unless the Planning Board finds that events have occurred to
342 render the relevant master or sector plan recommendation no longer appropriate,
343 and must substantially conform to[address] any design guidelines approved by the
344 Planning Board that implement the applicable plan.

GOOD
ADDITIONAL
RECOGNIZES
THAT
TIMES
CHANGE
FASTER
THAN THE
MASTER
PLAN.

345 ~~[[59-C-15.62. Priority Retail Street Frontages.~~

346 ~~Development that requires a site plan and is located on a street identified as a~~
347 ~~priority retail street frontage in the applicable master plan, sector plan, or design~~
348 ~~guidelines must be developed in a manner that is consistent with the~~
349 ~~recommendations and objectives of the applicable plan and address any applicable~~
350 ~~design guidelines approved by the Planning Board that implement the applicable~~
351 ~~plan.~~

352 ~~59-C-15.63. Streetscape.~~

353 ~~Streetscape improvements must be consistent with the recommendations of the~~
354 ~~applicable master or sector plan and must address any Planning Board approved~~
355 ~~design guidelines that implement the applicable plan.]]~~

356 **59-C-15.62[4]. Bicycle Parking Spaces and Commuter Shower/Change
357 Facility.**

358 In place of the requirements of Article 59-E regarding bicycle parking spaces,
359 development in the CRN, CRT, and CR zones must comply with the following
360 provisions.

361 (a) Bicycle Parking Spaces

362

K (19)

<u>Use</u>	<u>Publicly Accessible Bike Spaces</u>	<u>Private, Secure Bike Spaces</u>
<u>(1) Residential</u>		
<u>In a building containing less than 20 dwelling units</u>	<u>2</u>	<u>4</u>
<u>In a building containing 20 or more dwelling units</u>	<u>0.1 per unit to a maximum requirement of 10</u>	<u>0.5 per unit to a maximum requirement of 100</u>
<u>In any group living arrangement expressly for senior citizens</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>
<u>(2) Non-Residential</u>		
<u>Total non-residential floor area under 10,000sf</u>	<u>2</u>	<u>2</u>
<u>Total non-residential floor area between 10,000sf and 100,000sf</u>	<u>2 per 10,000sf</u>	<u>1 per 10,000sf, not fewer than 2, to a maximum requirement of 10</u>
<u>Total non-residential floor area greater than 100,000sf</u>	<u>20</u>	<u>1 per 10,000sf, not fewer than 10, to a maximum requirement of 100.</u>

363 (b) For office uses with a total non-residential floor area of 100,000sf or
 364 greater, one shower/change facility is required for each gender available
 365 only to employees when the building is accessible.

366 [~~(a) Bicycle parking facilities must be secure and accessible to all residents or~~
 367 ~~employees of the proposed development.~~]

368 (b) ~~The number of bicycle parking spaces and shower/change facilities required~~
 369 ~~is shown in the following table (calculations must be rounded to the higher~~
 370 ~~whole number):~~

371

Bicycle and Shower/Change Facilities Required	
Use	Requirement
<i>Residential</i>	
In a building containing less than 20 dwelling units.	At least 4 bicycle parking spaces.
In a building containing 20 or more dwelling units.	At least 0.5 bicycle parking spaces per dwelling unit, not to be fewer than 4 spaces and up to a maximum of 100 required spaces.
In any group living arrangement expressly for senior citizens.	At least 0.1 bicycle parking spaces per unit, not to be fewer than 2 spaces, up to a maximum of 100 required spaces.
<i>Non-Residential</i>	
In a building with a total non-residential floor area of 1,000 to 9,999 square feet.	At least 2 bicycle parking spaces.
In a building with a total non-residential floor area of 10,000 to 99,999 square feet.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces.
In a building with a total non-residential floor area of 100,000 square feet or greater.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces. One shower/change facility for each gender available only to employees when the building is accessible.]

372

373 **59-C-15.63[5]. Parking.**

374 In place of the requirements of Article 59-E regarding parking space numerical
 375 requirements, landscaping, and surface parking design, development in the CRN,
 376 CRT, and CR zones must comply with the following provisions. All standards and
 377 requirements of Article 59-E that are not modified by this Section must be
 378 followed.

CONTINUE TO APPLY. ✓

K(21)

379 ~~[(a) (1) For projects that satisfy the requirements for transit proximity levels 1~~
 380 ~~or 2, the number of parking spaces provided on site must not exceed the~~
 381 ~~number required under Article 59 E, except that the maximum number of~~
 382 ~~parking spaces for general retail and restaurant uses is 4 spaces for every~~
 383 ~~1,000 square feet of gross leasable area, and no parking spaces are required~~
 384 ~~for restaurant outdoor patron areas.~~

385 ~~(2) All projects that do not satisfy the requirements for transit proximity levels~~
 386 ~~1 or 2 must meet the parking requirements established under Article 59 E,~~
 387 ~~except that the number of parking spaces for general retail and restaurant~~
 388 ~~uses in Subsection (a)(1) may be provided without a parking waiver.~~

389 ~~(b) Except for retail and restaurant uses that satisfy Subsection (a)(1) and~~
 390 ~~projects that do not satisfy transit proximity level 1 or 2, the ~~[[minimum]]~~~~
 391 ~~number of parking spaces required is based on a building's distance from~~
 392 ~~transit as follows:~~

393

Parking Requirements				
	Transit Proximity (Level 1 or 2)			
	1/4 mile from transit	1/4 to 1/2 mile from transit	1/2 mile to 1 mile from transit	1 mile from transit
Non-residential: the number of required spaces under Article 59 E multiplied by the following factor:	0.20	0.40	0.60	0.80

K(22)

Residential: the number of required spaces under Article 59-E multiplied by the following factor:	0.60	0.70	0.80	0.90
---	------	------	------	------

394

395 The appropriate parking rates apply to the gross floor area within each distance
396 category.]

397 **59-C-15.631. Parking Ratios.**

398 Parking spaces must be provided according to the following minimums and
399 maximums. The minimum number of spaces required is equal to the number of
400 parking spaces that would otherwise be required by Division 59-E-3 multiplied by
401 the applicable factor in the table, or to the ratio indicated. When maximums are
402 imposed, no more parking than would otherwise be required by Division 59-E-3
403 may be provided.

Use	CRN		CRT		CR			
	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
Distance from a level 1 or 2 transit station or stop	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
(a) Residential								
Maximum:	None	None	59-E	None	59-E	59-E	59-E	None

<u>Minimum:</u>	<u>0.8</u>	<u>1.0</u>	<u>0.7</u>	<u>0.8</u>	<u>0.6</u>	<u>0.7</u>	<u>0.8</u>	<u>0.9</u>
(b) <u>Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</u>								
<u>Maximum:</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.6</u>	<u>0.8</u>	<u>0.4</u>	<u>0.6</u>	<u>4 per 1,000 square feet</u>	<u>4 per 1,000 square feet</u>	<u>4 per 1,000 square feet</u>	<u>0.8</u>
(c) <u>All other non-residential uses</u>								
<u>Maximum:</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.6</u>	<u>0.8</u>	<u>0.4</u>	<u>0.6</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>

404 (d) The appropriate parking rates apply to the gross floor area of each use
 405 within each distance category.

406 **59-C-15.632. Accepted Parking Spaces**

ONE OR COMBINATION

407 [(e)] Parking requirements must be met by any of the following:

408 (a)[(1)] providing the spaces on site;

409 (b)[(2)] constructing publicly available on-street parking; or

410 (c)[(3)] participating in:

411 (1) a parking lot district;

412 (2) ~~or~~ a shared parking program established by municipal resolution or;

413 (3) entering into an agreement for shared parking spaces in a public or
 414 private facility within ¼ mile[1,000 feet] of the subject lot, if the off-
 415 site parking facility is not in an agricultural (Division 59-C-9),

K(23)

416 planned unit development (Division 59-C-7), or residential (Division
417 59-C-1) zone, unless otherwise allowed by this Chapter.

418 ~~[(d)]~~ Every "car-share" space provided reduces the total number of required
419 spaces by 6 spaces for a non-residential use or 3 spaces for a residential use.

420
421 *Example:* A non-residential project on a CR-zoned site requiring at least 100 spaces under
422 Article 59-E would be required to provide a maximum of 100 spaces on site. If that site was
423 within ¼ to ½ mile of a transit station, the minimum requirement for parking would be 40 spaces
424 (100 x 0.40 = 40). If 2 car-share spaces were provided, that requirement would be 28 for non-
425 residential use or 34 for residential use.

426 **59-C-15.633. Parking Space Location and Access.**

427 ~~[(e)]~~ The design of surface parking spaces~~[facilities]~~ must comply with the
428 following:

429 ~~(a)[(1)]~~ ~~[a]~~ parking spaces~~[facility at]~~ ^{SHOULD} on or above grade ~~must~~ not be located
430 between the street and the main front wall of the building or the side wall of
431 ~~[a]the main~~ building on a corner lot ~~[unless the Planning Board finds that~~
432 ~~safe and efficient circulation would be better served by a different~~
433 ~~arrangement]; and~~

434 ~~(b)[(2)]~~ if a site is adjacent to an alley, the primary vehicular access to the
435 parking facility ^{SHOULD} ~~must~~ be from that alley. ~~]; and~~

436 ~~(3)~~ ~~curb cuts must be kept to a minimum and shared by common ingress/egress~~
437 ~~easements whenever possible.]~~

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438 **59-C-15.634. Drive-Through Facility Design.**

TERMS SHOULD
BE THE SAME.

439 Any ^{SERVICE} ~~(drive-through facility)~~ must comply with the following:

440 ~~(a)[(f)]~~ no part of a ^{SERVICE} (drive-through service facility) including the stacking area,
441 may be located within 100 feet of a property line shared with an applicable
442 residentially-zoned property; ~~[The design of parking facilities with drive-~~
443 ~~through services must comply with the following; however, the Planning~~

USE DEFINED
TERM

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444 ~~Board may approve a design if it finds that the alternative design would~~
 445 ~~provide safer and more efficient circulation.]~~

446 (b)(1) ~~no drive-through service window, drive aisle, or stacking area may~~
 447 ~~be [the driveway must not be] located between the street and the main front~~
 448 ~~wall of the main [a-]building [or the side wall of a building on a corner lot];~~

449 (c)(2) ~~no [the-]drive-through service window, drive aisle, or stacking area~~
 450 ~~may [must] be located between the street and the [on the rear or-]side wall~~
 451 ~~of the main building on a corner lot unless [; any service window on the side~~
 452 ~~wall of a building must be] permanently screened from any street by a 5-foot~~
 453 ~~or higher wall or fence; and~~

454 (d) ~~any development with a drive-through service facility must submit a site~~
 455 ~~plan under Section 59-D-3. [(3) curb cuts to a street must be minimized to~~
 456 ~~one drive aisle of no more than 20 feet in width for two-way traffic or two~~
 457 ~~drive aisles each of no more than 10 feet in width for one-way traffic.]~~

458 **59-C-15.635. Landscaping and Lighting.**

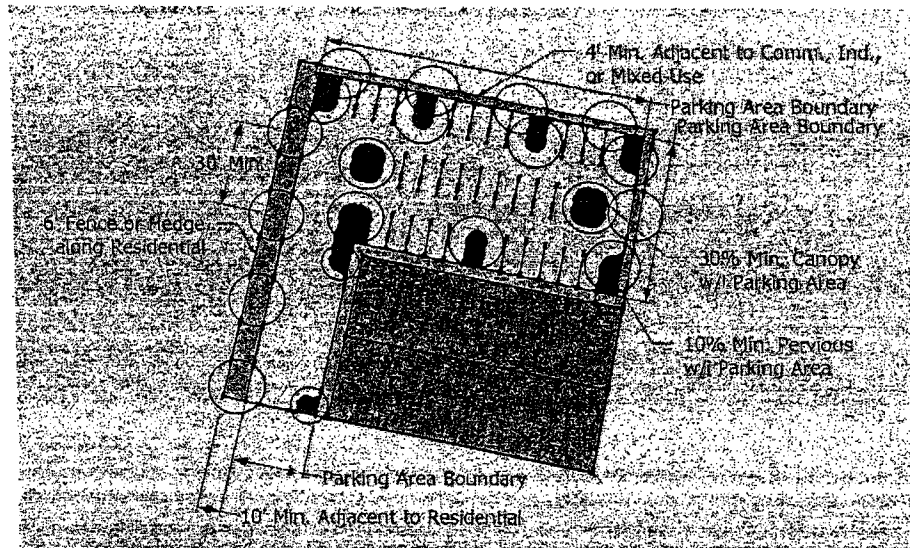
459 [(g)—]Except for areas used for internal driveway or sidewalk connections
 460 between lots or parcels that are not in applicable residential [(59-C-1) or
 461 agricultural (59-C-9)] zones, landscaping for surface parking spaces [facilities]
 462 must satisfy the following requirements: ↑
USE DEFINITION

463

Minimum Landscape Standards for Surface Parking	
Subject	Requirement
(a) <u>Property line adjacent to a right-of-way [Right of Way Screening]</u>	<u>No less than 6-foot wide [th of] continuous soil panel (excluding any easements) with [or] stormwater [management recharge-] facilities, [y (not including any PUE or PIE) with groundcover,] planting bed, or lawn including [;] a minimum 3-foot high continuous evergreen hedge or fence; [and] plus one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.</u>

(b) <u>Property line adjacent to a lot or parcel in an applicable residential zone</u>	No less than 10-foot width continuous soil panel (excluding any easements) with stormwater facilities, planting bed, or lawn including a minimum 6-foot high continuous evergreen hedge or fence; plus one deciduous tree per 30 feet of frontage.
(b)(c) <u>Property line [A]adjacent to a lot or parcel in any zone not subject to (b), above[Commercial, Industrial, or Mixed-Use Zone]</u>	No less than 4-foot width continuous soil panel (excluding any easements) with[er] stormwater [management recharge] facilities,[y with groundcover,] planting bed, or lawn; plus one deciduous tree per 30 feet[of frontage].
Adjacent to a lot or parcel in an Agricultural or Residential District	10-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; 6-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of frontage.
Internal Pervious Area	No less than 10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.
Tree Canopy Coverage	No less than 30 percent of the parking facility area (at 15 years growth).
<u>Lighting</u>	Per the Illuminating Engineering Society of North America standards, or County equivalent, with full or partial cut-off fixtures and no more than 0.5 footcandle illumination at any property line subject to (b), above.

464
465



Surface Parking Landscape Requirements Illustrative

466
467

59-C-15.636. Waiver of parking provisions.

468 The Director, Planning Board, or Board of Appeals may waive any requirement of
469 Section 59-C-15.63 not necessary to accomplish the objectives of this Division
470

471 and Section 59-E-4.2, and in conjunction with such a waiver may adopt reasonable
472 mitigating requirements above the minimum standards. At least 10 days notice of
473 any request for a waiver under this Section must be provided to all adjoining
474 property owners, affected citizen associations, and Planning Department Staff, if
475 applicable, before a decision may be made.

476 **59-C-15.7. Development Standards.**

477 Development in [any]the CRN, CRT, and CR zones must comply with the
478 following standards.

479 **59-C-15.71. Density and Height.**

480 Maximum density and height are specified by the zone established on the zoning
481 map under the provisions of Section 59-C-15.1.

482 ~~[(a) The maximum density for any standard method project is the greater of 0.5~~
483 ~~FAR or 10,000 square feet of gross floor area. Any single land use or any~~
484 ~~combination of land uses allowed in the zone may achieve the maximum~~
485 ~~density.~~

486 ~~(b) The maximum total density and mix of maximum non residential and~~
487 ~~residential density for any project using the optional method of development~~
488 ~~is specified by the zone.~~

489 ~~**59-C-15.72. Height.**~~

490 ~~(a) The maximum height for any building or structure in a standard method~~
491 ~~project is 40 feet.~~

492 ~~(b) The maximum height for any building or structure in an optional method~~
493 ~~project is determined by the zone.]~~

494 **59-C-15.72[3]. Setbacks.**

495 (a) Where a property is adjacent to [A building must not be any closer to] a lot
496 line shared with] a lot or parcel in an applicable residential zone

THAT IS ZONED, USDO AND
RECOMMENDED FOR
SUCH USE IN THE
ADOPTED MASTER OR
SECTOR
PLAN

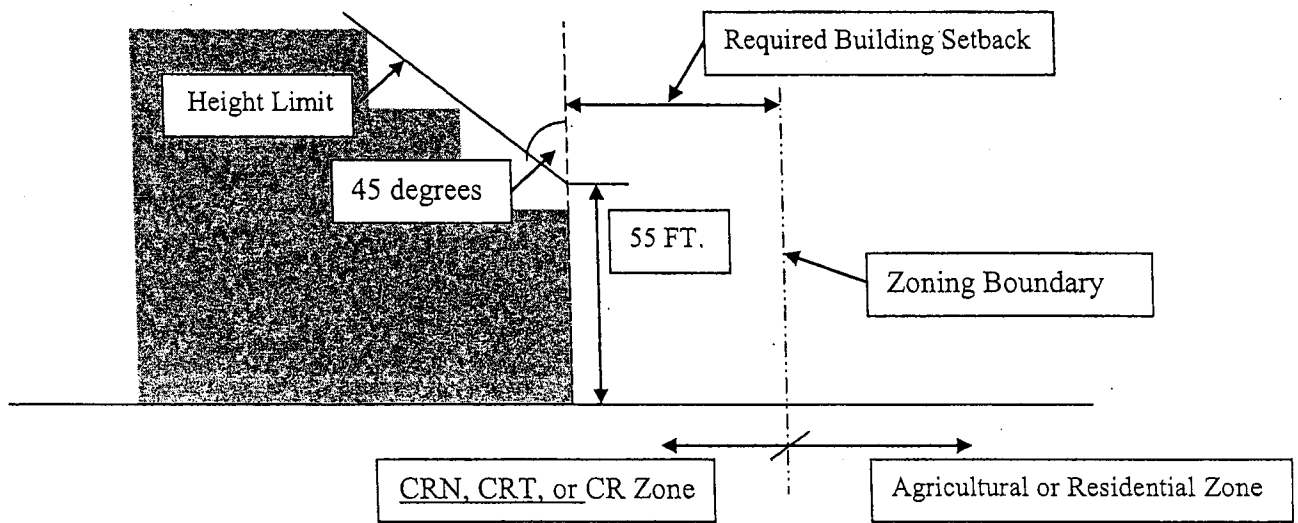
(SAME ISSUE AS
§15.511)

497 agricultural (Division 59 C 9) or residential (Division 59 C 1) zone than]
498 any building:

- 499 (1) must have a minimum setback of 25 feet or the setback required by
500 the adjacent property[lot], whichever is greater; and
501 (2) [~~the building~~] must not project beyond a 45 degree angular plane
502 projecting over the subject property[lot] measured from a height of 55
503 feet at the setback line determined above, with the exception of those
504 features exempt from height and setback restrictions under Section
505 59-B-1.

506 (b) The development of a new building in place of a building existing when
507 [~~the~~] a CRN, CRT, or CR zone is applied may be built to the previously
508 allowed[pre-existing] setback[s] if the height of the new building is not
509 increased above[over that] the height of the former building.

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511
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513
514
515

Angular Plan Setback Illustration

516 59-C-15.73[4]. Public Use Space.

517 (a) ~~(a)~~—Public use space is not required for any standard method project that
 518 does not require a site plan. If a site plan is required for the proposed
 519 project, ~~[then the minimum]~~public use space is ~~[10 percent of the project's~~
 520 ~~net land area]~~required as follows:[-]

<u>Gross Tract Area</u>	<u>Minimum Public Use Space</u>
<u>Up to 10,000sf</u>	<u>None</u>
<u>10,001sf up to 3 acres</u>	<u>10% of net tract area</u>
<u>Over 3 acres</u>	<u>10% of limits of disturbance</u>

THE AREA WITHIN THE

521

522 (b) Projects using the optional method of development must provide public use
 523 space as follows:

524

<u>Minimum Required Public Use Space (% of net tract area)</u>				
<u>Acres (Gross)</u>	<u>Number of Existing, Proposed, and Master-Planned Right-of-Way Frontages</u>			
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4+</u>
<u>< ½</u>	0	0	0	5
<u>½ - 1.00</u>	0	0	5	10
<u>1.01 - 3.00</u>	0	5	10	10
<u>3.01 - 6.00</u>	5	10	10	10
<u>6.01 +</u>	10	10	10	10

525

526 (c) Public use space must be:

527 ~~[(1)]~~—~~be calculated on the net tract area that was included in the sketch plan~~
 528 ~~application;~~

529 ~~(2)~~—~~be~~ ~~[(1)]~~ rounded to the next highest 100 square feet;

530 ~~(2)~~~~[(3)]~~ be easily and readily accessible to the public; and

531 ~~[(4)]~~—~~be distributed within the entire tract area included in the sketch plan~~
 532 ~~application; and~~

533 ~~(5)~~ (3) contain amenities such as seating options, shade, landscaping,
534 artwork, or fountains~~[other similar public benefits].~~

535 (d) Instead of providing on-site public use space~~[, for any site of 3 acres or less,~~
536 ~~a development may propose the following alternatives],~~ an applicant may
537 satisfy all or part of the requirement by one or more of the following means,
538 subject to Planning Board approval:

539 (1) implementing public park or public use space improvements of an
540 equal or greater size within or near the applicable master or sector
541 plan area~~[$\frac{1}{4}$ mile of the subject site]; or~~

542 (2) making a payment in part or in full~~[to the Public Amenity Fund~~
543 ~~under Section 59-D-2.31]~~ for design, construction, renovation,
544 restoration, installation, and/or operation within or near the applicable
545 master or sector plan area~~, if the payment is: [-]~~ ✓

546 (A) equal to the cost of constructing an equal amount of public use
547 space and associated amenities on-site per square foot plus the
548 fair market value of the application property per square foot;

549 (B) used to implement the open space, recreation, and cultural
550 goals of the applicable master or sector plan; and

551 (C) made within 30 days of the release of any building permit for
552 the subject application.

553 ~~[(e) A development on a site larger than 3 acres may only provide off-site public~~
554 ~~use space in order to provide master-planned open space improvements, or a~~
555 ~~payment under Subsection (d)(2), for an area of equal or greater size~~
556 ~~required on-site that is:~~

557 (1) ~~located within the same master plan area as the proposed development; and~~

558 (2) ~~indicated on the approved sketch plan.]~~

559 **59-C-15.74[5]. Residential Amenity Space.**

560 (a) Any building containing 20 or more dwelling units must provide amenity
561 space for its residents as follows:

562

Required Residential Amenity Space	
Type of Amenity Space	Area of Amenity Space
Indoor space in a multi-purpose room, fitness room, or other common community room(s), at least one of which must contain a kitchen and bathroom.	A minimum of 20 square feet per [dwelling]market-rate unit up to 5,000sf[square feet].
Passive or active outdoor recreational space.	A minimum of 20 square feet per [dwelling]market-rate unit, of which at least 400 square feet must adjoin or be directly accessible from the indoor amenity space, up to 5,000sf.

563

564 (b) Additional[The] amenity space is not required for Moderately Priced
565 Dwelling Units (MPDUs) or Workforce Housing Units (WFHUs) on a site
566 within a metro station policy area or where the Planning Board finds [that
567 there is]adequate recreation facilities and open space area available within
568 [a-]½ mile [radius-]of the subject site. If such a finding cannot be made,
569 amenity space must be provided for each MPDU and WFHU per the rate in
570 the table above.

571 ~~[(c) The amenity space requirement may be reduced by ½ for Workforce~~
572 ~~Housing Units (WFHUs) located within a metro station policy area or if the~~
573 ~~minimum public open space requirement is satisfied on site.]~~

574 (c)[(d)] The provision of residential amenity space may be counted towards
575 meeting the required recreation calculations under the M-NCPPC
576 Recreation Guidelines, as amended.

The following sections have not been reviewed by the Planning Board as of
the date of this posting.

REVISED
2/20/11
KOMINOS

59-C-15.8. Special Regulations for the Optional Method of Development

~~59-C-15.81. Incentive Density Provisions.~~

PART 2

This section establishes incentives for optional method projects to provide public benefits in return for increases in density and height above the standard method maximums~~[, consistent with the applicable master or sector plan,]~~ up to the maximum permitted by the zone.

59-C-15.81. Incentive Density Categories.

(a) — Public benefits must be provided that enhance or contribute to the objectives of the CRT and CR zones in some or all of the following^(SIX) categories:

- (a)~~(1)~~ ~~[Master planned m]~~ Major public facilities;
- (b)~~(2)~~ Transit proximity~~[for residents, workers, and patrons];~~
- (c)~~(3)~~ Connectivity between uses, ~~[and]~~ activities, and mobility options;
- (d)~~(4)~~ Diversity of uses and activities;
- (e)~~(5)~~ Quality of building and site design; and
- (f)~~(6)~~ Protection and enhancement of the natural environment~~[; and~~
- ~~(7) — Advanced dedication of right of way.]~~

Section[s] 59-C-15.85~~[2 through 59-C-15.88]~~ indicates the individual ~~[types of]~~ public benefits that may be accepted in each of these categories.

59-C-15.82. Public Benefits Required.

~~(a)~~ Any optional method development must provide public benefits from at least 4 of the 6 categories. IN SECTION 59-C-15.81, AND

K (32)

50 POINTS SEEMS TO HIGH, ESPECIALLY WITH THE REDUCED AMOUNT AVAILABLE THROUGH TRANSIT PROXIMITY FOR LEVEL 2 TRANSIT

Tuesday, February 15, 2011

CR Zones Zoning Text Amendment: Staff Recommendation Modifications for Sections 15.8-15.9

- 27 ^a ~~(b)~~ Development in the CRT zones must provide public benefits worth a ✓
- 28 ~~(b)~~ minimum total of 50 points, OR ✓
- 29 ^b ~~(c)~~ Development in the CR zones must provide BLTs required under Section ✓
- 30 59-C-15.856(a) for 5 points and additional public benefits worth a minimum
- 31 total of 95 points (100 minimum points in sum).

59-C-15.83. General Incentive Density Considerations.

~~[(b)]~~—In approving any incentive density based on the provision of public benefits, the Planning Board must consider:

~~(a)[(1)]~~ The policy objectives and priorities of the applicable master or sector plan;

~~(b)[(2)]~~ Any applicable design guidelines and any adopted public benefit standards and guidelines.

↑ WHY NOT REFER TO THE ACTUAL DOCUMENT THAT IS NOW ADOPTED?

~~(c)[(3)]~~ The size and configuration of the tract;

~~(d)[(4)]~~ The relationship of the site to adjacent properties; ~~HERE~~ "CRZ101G"

~~(e)[(5)]~~ The presence or lack of similar public benefits nearby; and

~~(f)[(6)]~~ Enhancements not listed in the individual public benefit descriptions or criteria that increase public access to or enjoyment of the benefit.

~~[(c)]~~ Any incentive density increase approved by the Planning Board for an optional method of development application must satisfy Subsection 59-C-15.87(a).]

59-C-15.84. CR Zones Incentive Density Implementation Guidelines.

~~[(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 be:

51 ~~(a)[(1) — be e]~~Consistent with the ~~[recommendations and]~~objectives of this
52 Division~~[e applicable master or sector plan and the purpose of the CR~~
53 zones]; and

54 ~~(b)[(2) — be i]~~In addition to any standards, requirements, or rules of incentive
55 density calculation included in this Division, but may not supersede those
56 provisions.~~;~~

57 ~~[(3) — allow any single feature of a project a density incentive from only 1 public~~
58 benefit;

59 ~~(4) — only address the public benefits listed in Sections 59 C 15.82 through 59 C~~
60 ~~15.88 and must not add a public benefit category; and~~

61 ~~(5) — include the criteria to determine when an early dedication of right of way~~ ~~to the~~
62 ~~qualifies for incentive density, and the amount of the incentive density~~ ~~council?~~
63 ~~permitted.]~~ ~~since they~~
~~specifically~~
~~added it~~
~~before?~~

64 **59-C-15.85. Individual Public Benefit Descriptions and Criteria.**

65 **59-C-15.851[2]. [Incentives for Master Planned]Major Public Facilities.**

66 Major public facilities ~~[such as schools, libraries, recreation centers, urban parks,~~
67 ~~and county service centers]~~ provide public services at convenient locations and
68 where increased density creates higher demand for civic uses and demands on
69 public infrastructure~~], centers for community meetings, and civic events].~~

70 (a) Major public facilities include, but are not limited to, such facilities as
71 schools, libraries, recreation centers, parks, county service centers, public
72 transportation or utility upgrades, or other resources delineated in an
73 applicable master or sector plan.

74 (b) If a major public facility is not recommended in the applicable master or
75 sector plan, the Planning Board must find that the facility or improvement

76 provides the community with a resource of particularly beneficial civic
 77 impact.

78 (a)(c) Because of their significance in place-making, the Planning Board may
 79 approve incentive density of up to ^(POINTS) ~~40 percent~~ in the CRT zones and 70
 80 ^(POINTS) ~~percent~~ in the CR zones for the conveyance of a site, floor area, and/or
 81 construction of a major public facility that is [~~designated on a master plan or~~
 82 ~~sector plan and is~~] accepted for use and/or operation by the appropriate
 83 public agency, community association, or nonprofit organization.

84 **59-C-15.852[3]. [~~Incentives for~~] Transit Proximity.**

85 Development near transit facilities [~~In order to~~] encourages greater use of transit,
 86 controls sprawl, and reduces vehicle miles traveled, congestion, and carbon
 87 emissions. [~~, the Planning Board may approve incentive density for transit~~
 88 proximity under this section. The percentage of incentive density awarded to a
 89 project for transit proximity is as follows] Transit proximity points are granted
 90 based on service level and CR context as follows:

Transit Proximity	Level 1	Level 2
Adjacent or confronting	50%	30%
Within ¼ mile	40%	25%
Between ¼ and ½ mile	30%	20%
Between ½ and 1 mile	20%	15%

92

<u>Proximity</u>	<u>Adjacent or confronting</u>	<u>Within ¼ mile</u>	<u>Between ¼ and ½ mile</u>	<u>Between ½ and 1 mile</u>

- SEEMS LOW, ESPECIALLY SINCE MOST CRT MAY NOT BE NEAR LEVEL 1 TRANSIT.
- WHY NOT 1/2 CR POINTS?

Tuesday, February 15, 2011

CR Zones Zoning Text Amendment: Staff Recommendation Modifications for Sections 15.8-15.9

<u>Transit Service Level</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>
<u>CRT</u>	<u>25</u>	<u>15</u>	<u>20</u>	<u>12.5</u> 10	<u>15</u>	10	<u>10</u>	7.5
<u>CR</u>	<u>50</u>	<u>30</u>	<u>40</u>	<u>25</u>	<u>30</u>	<u>20</u>	<u>20</u>	<u>15</u>

93 (a) A project is adjacent to or confronting a transit station or stop if it shares a
 94 property line, easement line, or is separated only by a right-of-way from an
 95 existing or planned transit station or stop and 100 percent of the gross tract
 96 area submitted in a single sketch plan application is within 1/4 mile of the
 97 transit portal OR STOP. ← SHOULD BE CONSISTENT

98 (b) For split proximity-range projects:

99 _____ (1) [~~For all other projects to qualify for incentive density availability at~~
 100 ~~the other distances,~~] If at least 75 percent of the gross tract area in a
 101 single sketch plan application is within the closer of two proximity
 102 ranges, the entire project may take the points for the closer range;
 103 but [must be within the range for which the incentive is proposed.]

104 (2) If [The incentive density for projects] less than 75 percent of the gross
 105 tract area in a single sketch plan is within the closer of two proximity
 106 ranges, the points [1 distance range] must be calculated as the
 107 weighted average of the percentage of area in each range.

108 **59-C-15.853[4]. [Incentives for] Connectivity and Mobility.**

109 [~~In order to~~] Development that enhances connectivity between uses and amenities
 110 and increase mobility options; encourages non-automotive travel [for short and

111 ~~multi-purpose trips as well as for commuting~~]; facilitates social [~~and commercial~~
112]interaction; provides opportunities for healthier living; and stimulates local
113 businesses~~]; the Planning Board may approve incentive density of up to 30% for a~~
114 ~~project that provides at least 2 of the following public benefits:].~~

115 (a) **Neighborhood Services:** At least 10 points for [S]safe and direct pedestrian
116 access to 10^(OR MORE)different retail services on site or within ¼ mile, of which at ✓
117 least 4 have a maximum retail bay floor area of 5,000 square feet.

118 (b) **Minimum Parking:** Up to 10 points for providing [Provision of the
119 minimum required]less than the maximum allowed number of parking
120 spaces, if applicable[for projects of one acre of gross tract area or more].

121 (c) **Through-Block Connections:** Up to 20 points for [S]safe and attractive
122 pedestrian connections between streets.

123 (d) **Public Parking:** Up to 25 points for providing [Provision of]up to the
124 maximum number of parking spaces allowed in the zone as public parking.

125 (e) **Transit Access Improvement:** Up to 20 points for [E]ensuring that access
126 to transit facilities meets County standards for handicapped accessibility.

127 (f) **Trip Mitigation:** At least 15 points for entering into a[A] binding and
128 verifiable Traffic Mitigation Agreement to reduce the number of weekday
129 morning and evening peak hour trips attributable to the site in excess of any
130 other regulatory requirement; the agreement must result in a non-auto driver
131 mode share of at least 50% for trips attributable to the site.

132 (g) **Grey-Field Redevelopment:** At least 5 points for the redevelopment of an] GOOD!
133 infill site.

134 (h) **Streetscape:** Up to 20 points for construction of off-site streetscape
135 excluding any streetscape improvements required by this Division.

K (37)

136 (i) Advance Dedication: Up to 30 points for dedicating or providing a
137 reservation for dedication for master-planned rights-of-way in advance of a
138 preliminary or site plan application.

139 ~~(f)(j)~~ Way-Finding: At least 5 points for design and implementation of a way-
140 finding system orienting pedestrians and cyclists to major open spaces,
141 cultural facilities, and transit opportunities.

GOOD
IDSA!

142 **59-C-15.854[5]. [~~Incentives for~~] Diversity of Uses and Activities.**

143 Development that [~~In order to~~] increases the variety and mixture of land uses,
144 types of housing, economic [~~diversity~~] variety, and community activities[;]
145 contributes to development of a more efficient and sustainable community;
146 reduces the necessity for automobile use; and facilitates healthier lifestyles and
147 greater social interaction. [~~, the Planning Board may approve incentive density of~~
148 up to 30% for a project that provides affordable housing or a public facility, as
149 described below, or at least 2 of the other following public benefits:]

150 (a) Affordable Housing:

151 (1) All residential development must comply with the requirements of
152 Chapter 25A for the provision of Moderately Priced Dwelling Units
153 (MPDUs) except that the percent bonus density achieved per the table in
154 Section 25A-5(c)(3) is equivalent to points required by this
155 Division. [~~and may provide Workforce Housing Units (WFHUs) under~~
156 Chapter 25B.

157 ~~(1)MPDU Incentive Density: Provision of MPDUs above the minimum~~
158 ~~required is calculated on the total number of dwelling units as required~~
159 ~~by Chapter 25A, and the percent of incentive density increase is based~~
160 ~~on the proposed FAR for the entire project.]~~

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Example: Provision of 14.5% MPDUs is awarded [an incentive density of] 20 points; provision of 13.0% MPDUs is awarded 5 points. [% (see 25A-5(e)(3)). In the case of a CR 4.5 zone that proposes 4.5 FAR, that equals 0.20 x 4.0 (the incentive density), which is 0.8 FAR.]

CONFUSING EXAMPLE

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(2) Up to 30 points for providing [WFHU Incentive Density: Provision of] Workforce Housing Units (WFHUs) at a rate of [-is calculated at the following rate:] 2 points [times] per the percentage of total units, excluding MPDUs[- provided as WFHUs].

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Example: Provision of 5% WFHUs is awarded [incentive density of] 10 points [%]; provision of 12% WFHUs is awarded [incentive density of] 24 points [%].

DOES NOT REALLY REQUIRE "RETENTION" OF EXISTING BUSINESSES; REALLY ALLOWS OPPORTUNITIES FOR BUSINESSES OF A CERTAIN SCALE.

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(a)(b) Adaptive Buildings: Up to 15 points for constructing commercial or mixed use buildings with [~~Provision of buildings with~~] minimum floor-to-floor heights of at least 15 feet on any floor that meets grade and 12 feet on all other floors. Internal structural systems must be able to accommodate various types of use with only minor modifications.

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(b)(c) Care Centers: Up to 20 points for constructing [C] child or adult day care facilities. The minimum care center that may qualify must provide spaces for at least 15 users. (OPPORTUNITIES)

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(e)(d) Small Business Retention: Up to 20 points for providing [~~Provision of~~] on-site space for small, neighborhood-oriented businesses.

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(d)(e) Dwelling Unit Mix: At least 5 points for integrating a mix of residential unit types with [~~Provision of~~] at least 7.5% efficiency units, 8% 1-bedroom units, 8% 2-bedroom units, and 5% 3-or-more bedroom units.

185
186

(f) Enhanced Accessibility for the Disabled: Up to 20 points for constructing [~~Provision of~~] dwelling units that satisfy American National Standards

187 Institute A117.1 Residential Type A standards or ~~[units that satisfy]~~ an
188 equivalent County standard.

189 (g) Diversity Ratio:

190 (1) 30 points for developments over 2.0 FAR that provide a minimum of
191 30% of the market rate units as rentals; 30% of the market rate units
192 for sale; 15% of the total units as MPDUs and/or WFHUs (rental or
193 for sale); and 10% of the total FAR as retail trades, businesses, and
194 services of a general commercial nature.

195 ~~(1)~~(2) 10 points for developments of up to 2.0 FAR that provide at least the
196 greater of 3 units or 10% of the total unit count as live/work units.

197 **59-C-15.855[6]. ~~[Incentives for]~~ Quality Building and Site Design.**

198 High quality design is especially important in urban, integrated-use settings to
199 ensure that buildings and uses are visually compatible with each other and
200 adjacent communities and to provide a harmonious pattern of development. Due to
201 ~~[the]~~ increased density ~~[of]~~ in these settings, buildings tend to be ~~[have]~~ highly
202 visibile~~[ity]~~ and ~~[H]~~ high quality design ~~[may]~~ helps ~~[to]~~ attract residents, patrons,
203 and businesses to ~~[locate in]~~ these areas~~[settings]~~. Location, height, massing,
204 façade treatments, and ornamentation of buildings affect sense of place,
205 orientation, and the perception of comfort and convenience. The quality of the
206 built environment affects light, shadow, wind, and noise, as well as the functional
207 and economic value of property. ~~[In order to promote high quality design, the~~
208 ~~Planning Board may approve incentive density of up to 30% to a project that~~
209 ~~provides at least 2 of the following public benefits:]~~

210 (a) **Historic Resource Protection:** Up to 20 points for the [P]preservation
211 and/or enhancement of, or payment towards preservation and/or
212 enhancement of ~~a~~ historic resource ~~[indicated on]~~ designated in the Master

AN INDIVIDUAL
OR PROPERTY WITHIN A DISTRICT

SUPPORT SITES THAT ARE IN A DISTRICT,
EVEN IF SECONDARY OR NON-CONTRIBUTING
RESOURCES.

213 Plan for Historic Preservation [~~in conformance with a plan approved by the~~
214 ~~Historic Preservation Commission. A fee in lieu for a specific preservation~~
215 ~~project may be paid to the Historic Preservation Division as specified in the~~
216 ~~Guidelines for Public Benefits~~].

217 (b) **Structured Parking:** Up to 20 points for placing [P]parking [provided]
218 within a above- or below-grade structures [~~or below grade~~].

219 (c) **Tower Step-Back[etback]:** At least 5 points for [Setback-of]stepping back
220 a building's upper floors by a minimum of 6 feet behind [~~yond~~] the first
221 floor façade at a maximum height of 72 feet. } STEP BACKS BELOW 72' ARE
222 } THOSE THAT QUALIFY?

222 (d) **Public Art:** Up to 15 points for installing [Provision-of]public art [must
223 be] reviewed for comment by, or paying a fee accepted by, the Public Arts
224 Trust Steering Committee. [~~A fee in lieu may be paid to the Trust as~~
225 ~~specified in the Guidelines for Public Benefits.~~]

↑
• MUST PATSC ACCEPT, OR
IS IT DISCRETIONARY?
• DUE PROCESS ISSUES.

226 (e) **Public Open Space:** Up to 20 points for providing, or making a payment
227 for, [Provision-of] open space in addition to the minimum public use space
228 required by this Division [~~e-zone. Public open space must be easily~~
229 ~~accessible to the public during business hours and/or at least from sunrise to~~
230 ~~sunset and must contain amenities such as seating, plantings, trash~~
231 ~~receptacles, kiosks, and water features~~].

232 [~~Streetscape: Construction of off site streetscape in addition to the~~
233 ~~requirements of this division.~~]

234 (f) **Exceptional Design:** Up to 10 points for building and/or site design whose
235 visual and functional impacts enhance the character of a setting per the
236 purposes delineated in this Section. [~~Building design that provides~~
237 ~~innovative solutions in response to the immediate context; creates a sense of~~
238 ~~place and serves as a landmark; enhances the public realm in a distinct and~~

} STILL
WOULD
LIKE
EXAMPLE

239 ~~original manner; introduces new materials, forms, or building methods; uses~~
240 ~~design solutions to make compact infill development living, working, and~~
241 ~~shopping environments more pleasurable and desirable; and integrates low-~~
242 ~~impact development methods into the overall design of the site and~~
243 ~~building.]~~

244 (g) Architctural Elevations: Up to 20 points for providing elevations of
245 architectural façades. Particular elements of design, such as minimum
246 amount of transparency, maximum separation between doors, and awning,
247 sign, or lighting parameters that affect the perception of mass and
248 neighborhood compatibility may be binding on the applicant.

249 ~~(f)~~(h) Public Charette: At least 10 points for conducting a public charette prior to
250 the required pre-submittal meeting for a sketch plan, ^{F P}during which input is
251 solicited from parties that are required to be noticed. Documentation and
252 discussion of promotion of the event, the process, and responses to input are
253 required.

254 **59-C-15.856[7]. [~~Incentives for~~]Protection and Enhancement of the Natural**
255 **Environment.**

256 Protection and enhancement of natural systems and decreases in energy
257 consumption help [~~In order to combat sprawl and~~]mitigate or reverse
258 environmental ~~impacts~~[~~problems~~] such as heat island effects from the built
259 environment, inadequate carbon-sequestration, habitat and agricultural land loss,
260 and air and water pollution caused by reliance on the automobile.~~], the Planning~~
261 Board may approve a density increase up to 30% for the public benefits in this
262 Subsection:]

263 (a) BLTs: Up to 30 points for the purchase of building lot termination (BLT)
264 [~~CR zones require the purchase of BLT~~]easements or payment to the

265 Agricultural Land Preservation Fund (ALPF). [~~for at least 5% but no more~~
266 ~~than 30% of the incentive density under the following conditions.~~]

267 (1) In the CR zones, development must purchase BLT easements or make
268 payments to the ALPF, in an amount equal to 5% of the incentive
269 density floor area under the following parameters:

270 (A) One BLT must be purchased or equivalent payment made for
271 every 20,000 square feet included in the 5% incentive density floor
272 area; and

273 (B) Any private BLT easement must be purchased in whole units;
274 or

275 (C) BLT payments must be made to the ALPF, based on the
276 amount established by Executive Regulations under Chapter 2B; if a
277 fraction of a BLT easement is needed, a payment based on the gross
278 square footage of incentive density must be made for at least the
279 fraction of the BLT easement.

280 (2) Up to 25 points for the purchase of BLTs, or equivalent payments to
281 the ALPF for any incentive density above 5%. Each BLT easement
282 purchase or payment is equal to 30,000 square feet of floor area, or
283 proportion thereof. This is converted into points by dividing the
284 incentive density floor area covered by the purchase or payment by
285 the total square feet of the incentive density area. [~~must be made to the~~
286 ~~Agricultural Land Preservation Fund, based on the amount~~
287 ~~established by Executive Regulations under Chapter 2B; if a fraction~~
288 ~~of a BLT easement is needed, a payment based on the gross square~~
289 ~~footage of incentive density must be made to the Agricultural Land~~
290 ~~Preservation Fund for at least the fraction of the BLT easement.~~

DISTINGUISH?

- CR = 5% @ 20K, THEN "ABOVE 5%" = 30K
- CAN CRT GO TO 30K DIRECTLY FOR THE FIRST 5%?

IS THIS ONLY APPLICABLE IN THE CR ZONE?
IN THE CRT, WHERE A BASE 5% IS NOT
REQUIRED, MUST ONE PURCHASE THE
FIRST 5% THROUGH BLTs IN ORDER
TO QUALIFY FOR THIS "ABOVE 5%"?

291 (3) ~~(A) For the first 5% of incentive density, each BLT easement~~
292 ~~purchase or payment allows 20,000 gross square feet of~~
293 ~~incentive density or a proportion thereof, allowed by a payment~~
294 ~~for a fraction of a BLT.~~

295 ~~(B) For the incentive density above 5%, each BLT easement purchase or~~
296 ~~payment allows 30,000 gross square feet of incentive density or a~~
297 ~~proportion thereof, allowed by a payment for a fraction of a BLT.]~~

298 Example: If a 50,000 square-foot CR3.0 site is fully developed, the
299 incentive density available to be earned equals 125,000sf (150,000sf -
300 25,000sf = 125,000sf). The 5% BLT requirement of 125,000sf equals
301 6,250sf, which equals 0.32 BLTs (6,250sf / 20,000sf = 0.32). If the
302 applicant seeks an additional 10 points through the purchase of BLTs, 10%
303 of the incentive density is calculated, which in this case is 12,500sf
304 (125,000sf x 0.10 = 12,500sf). Because 1 BLT, above the required 5%, is
305 equivalent to 30,000sf, the 12,500sf requires a payment for an additional
306 0.42 BLTs (12,500sf / 30,000sf = 0.42). Together the required and
307 incentive BLTs equal 0.74 BLTs for 10 points in the Environment category.

308 (b) **Energy Conservation and Generation** (At least 10 points for constructing
309 buildings that [Provision of energy efficiency that] exceed[s] the energy-
310 efficiency standards for the building type by 17.5% for new buildings or
311 10% for existing buildings. (At least 15 points for providing [,-or provision
312 of] renewable energy generation facilities on-site or within ½ mile of the
313 site for a minimum of 2.5% of the projected energy requirement for the
314 development.

315 (c) **Vegetated [Green] Wall** (At least 5 points for the [F] installation and
316 maintenance of a vegetated wall that covers at least 30% of any blank wall

ALLOWS ADDITIONAL POINTS
FOR GREATER COVERAGE
OR GREATER AREA, ETC....?

SQUARE



317 or parking garage façade that is at least 300 feet in area and is visible from a
318 public street or open space.

SAME ISSUE AS PRIOR PAGE.

319 (d) **Tree Canopy** At least 10 points for tree canopy [E] coverage at 15 years of
320 growth of at least 25% of the on-site open space.

321 (e) **Vegetated Area** At least 5 points for [F] installation of plantings in a
322 minimum of 12 inches of soil covering at least 5,000 square feet [of
323 previously impervious surfaces]. This does not include vegetated roofs.

324 (f) **Vegetated Roof** At least 10 points for installation [Provision] of a
325 vegetated roof with a soil depth of at least 4 inches covering at least 33% of
326 a building's roof, excluding space for mechanical equipment.

327 (g) **Cool Roof** At least 5 points for constructing any roof area that is not
328 covered by a vegetated roof with a minimum solar reflectance index (SRI)
329 of 75 for roofs with a slope at or below a ration of 2:12 and a minimum SRI
330 of 25 for slopes above 2:12.

331 (h) **Recycling Facility Plan** At least 5 points for providing a recycling facility
332 plan to be approved as part of a site plan for buildings that must comply
333 with Montgomery County Executive Regulation 15-04AM or Montgomery
334 County Executive Regulation 18-04.

335 ~~(f)~~(i) **Habitat Preservation and Restoration:** Up to 20 points for protection,
336 restoration, or enhancement of natural habitats onsite or within the same
337 local watershed that are in addition to requirements of the Forest
338 Conservation Law or other county laws.

339 ~~[59-C-15.88. Advanced dedication of right of way.~~
340 ~~When sketch plans or site plans are approved, the Planning Board may allow an~~
341 ~~incentive density not to exceed 30% for a prior dedication of rights of way for~~
342 ~~roadways, sidewalks, or bikeways recommended in the applicable master or sector~~

K 45

343 ~~plan, if the County or the State is responsible for constructing the facility on the~~
344 ~~right of way.]~~

345 **59-C-15.9. Existing Approvals.**

346 (a) One or more lawfully existing buildings or structures and the uses therein,
347 which predate the applicable sectional map amendment, are conforming
348 structures or uses, and may be continued, renovated, repaired, or
349 reconstructed to the same size and configuration, or enlarged up to a total of
350 10 percent above the total existing floor areas of all buildings and structures
351 on site or 30,000 square feet, whichever is less, and does not require a site
352 plan. Enlargements in excess of the limitations in this Subsection will
353 require compliance with the full provisions of this Division.

354 (b) A project that received an approved development plan under Division 59-D-
355 1 or schematic development plan under Division 59-H-2 before the
356 enactment of the CR zones may proceed under the binding elements of the
357 development plan and will thereafter be treated as a lawfully existing
358 building, and may be renovated or reconstructed under Subsection (a)
359 above. Such development plans or schematic development plans may be
360 amended as allowed under Division 59-D-1 or 59-H-2 under the provisions
361 of the previous zone; however, any incremental increase in the total floor
362 area beyond that allowed by Subsection (a) above or any incremental
363 increase in building height greater than 15 feet requires, with respect to the
364 incremental increase only, full compliance with the provisions of this
365 Division.

366 (c) At the option of the owner, any portion of a project subject to an approved
367 development plan or schematic development plan described in Subsection
368 (b) above may be developed under this Division. The remainder of that

369 project continues to be subject to the approved development plan or
370 schematic development plan, under Subsections (a) and (b).
371 (d) A project which has had a preliminary or site plan approved before the
372 applicable sectional map amendment may be built or altered at any time,
373 subject to either the full provisions of the previous zone or this division, at
374 the option of the owner. If built under the previous approval, it will be
375 treated as a lawfully existing building and may be renovated or
376 reconstructed under Subsection (a) above. If built with an incremental
377 increase over the previous approval, only that incremental increase must
378 comply with this Division.

ADD NEW SUBSECTION (e)

* * *

(e) An approved sketch plan may obtain approvals of implementing plans, and may be built, altered, amended, or modified at any time, subject to either: (1) the full provisions of the CR Zone that existed at the time of approval of the sketch plan, or (2) at the option of the owner, the full provisions of this Division at the time of any subsequent action. If implemented under the CR Zone at the time of sketch plan approval, all such development will be treated as a lawfully existing building, project, or site development, and may be renovated or reconstructed under Subsection (a) above. If built with an incremental increase over the previous approval, only that incremental increase must comply with the then-current provisions of this Division.

5 Jan 2011

To: Planning Board members

From: Pamela Lindstrom

Subject: ZTA proposing amendments to the CR zone

I have read much of this 42 page document and would like to offer detailed comments, but that is difficult to do with the ZTA in its present form. Furthermore, one must ask if it is worth our and the planners' and elected officials' time to do the work needed to understand the implications, when the Zoning Rewrite will soon be addressing the same subject.

The document is not in the usual zoning amendment form that shows the current text with the changes inserted. Thus, unless one has memorized the CR zone, one would have to compare the two documents in detail to note the changes that are proposed. That I have not done.

Several initial observations:

1. The addition of two lighter mixed use zones is good. Stretching the single CR zone to accommodate such a wide range of land uses forced the zoning code to use very general language, which does not necessarily cover all situations.
2. An example is the CR zone's treatment of transit availability. The code says nothing about location of the denser zones in Metro station areas or even set standards for transit service. That is understandable if the zone is to apply in outer Germantown or Olney as well as White Flint. But if the CR zone is distinguished from other zones, and is intended to apply to "Metro" areas (to quote the staff report), then the zoning code should say so.
3. The three proposed zones need separate "Description and objective" sections. With no language to distinguish its Applicability from the CRT and CRN zones, the CR zone can potentially be proposed anywhere.
4. The CR zones (all of them) need to be used where applied in a master plan. I am interested in staff's proposal for converting mixed-use zoned land to CR outside of master plans. But that is a complex issue, and may be needed for other conversions in the Zoning Code rewrite. It is not necessary for the current master plans, so it should be discussed in the context of the rewrite.
5. There needs to be more thought given to public benefits that are required, vs. benefits that are optional for obtaining more density.
6. The parking requirements and uses should be considered in the context of the Zoning Code rewrite.

The staff introduction to the ZTA states that the relevant master plan amendments will be completed before the ZTA can be adopted. The CR zone parameters proposed in the plans are designed to be converted to a new CRN or CRT zone. This is all the more reason to give more time and consider the CR zone as part of the comprehensive zoning code rewrite.

L (1)

Pamela Lindstrom

11 Jan 2011

To: Montgomery County Planning Board

Comments on the ZTA amending the CR zone

This memo offers some detailed comments on the ZTA, but like Planning Board members I'm sure, I don't fully comprehend the implications of creating the two new zones, nor of the exact standards proposed for the three CR zones. What, for instance, is the relationship between the densities allowed by CRT and the TOMX and other new mixed use zones for use at Metro stations? What is the proper maximum density for CRT the "next to densest" zone? It is proper for the CR zone to have a very high maximum, since it was expected to apply to the densest centers in the County – the CBDs and first tier Metro stations like White Flint. The broad applicability of the CR, down to shopping centers in Germantown, means that specific guidelines about location, transit service, etc. are not appropriate. All this changes with breaking up the CR zone into zones with differing density caps.

The addition of two lighter mixed use zones is good. But if the CR zone is distinguished from other zones, then other distinctions need to follow. Some of the issues are listed below.

1. One presumes the CR zone, termed by the draft the "CR Metro" zone, is intended to replace zones like CBD, TS, TOMX and TMX. All of them contain language that limits their use to Metro station areas or at least areas with full-service transit. The CR zone also needs such a distinction. Or is CRT more appropriate for lower tier Metro stations like Twinbrook?
2. The three proposed zones need separate "Description and objective" sections. With no language to distinguish Applicability of CR from the CRT and CRN zones, thus the CR zone can potentially be proposed anywhere.
3. The applicability (locations where the zone should be applied), relation to transitways needs to be specified for each zone. An example is the CR zone's treatment of transit availability. The draft code currently says nothing about location of the denser zones in Metro station areas, nor does it set standards for transit service.

The draft CR zones' treatment of transit availability causes paradoxes both with parking requirements and with bonus densities. The draft treats current and "planned" transit service as equivalent, though master plans are laced with transitways that won't be built or even funded for years. It is unfair to award bonus densities and parking reductions based on these paper transitways. The zoning law must qualify locations based on when transit is actually there to use.

5. There needs to be more thought given to which public benefits are required, vs. benefits that are optional for obtaining more density.
6. The parking requirements and uses should be considered in the context of the Zoning Code rewrite. These are complex topics that need to be reviewed for all zones, not just the CR family of zones.

L(2)

Comments on Sections 15.4 and 5, CR ZTA

From Pamela Lindstrom

If officials are going to undertake the big task of amending the CR zone at this time, they should take care to produce a zone that is better than the current zone, not worse.

Section 15.4 Methods of Development and Applicability

The big problem with this section is that it gives so little guidance on applicability and form of development in the zones. There needs to be a hierarchy of locations where the zones are applicable. As drafted, there is *no* zone equivalent to the CBD, TMX etc. zones, limited to the densest centers well served *currently* by transit, requiring urban style development, etc. The CR zone would allow big box retail, shopping centers and automobile dealers in suburban configurations. It would also permit high rise dense urban centers that are dependent on big roads, not transit. Such development would not be allowed by the CBD or TMX zones. Furthermore, such projects would be permitted by the *standard method* requirements and development review.

The base densities for standard method are too high for the CR zones. The CBD, TMX, TOMX, and CR zones are used for large areas of Germantown, Shady Grove, Gaithersburg West, Twinbrook, outer areas of White Flint, Bethesda, Silver Spring, Wheaton, and others for properties with FAR of 1.5-2. Using the new CR and CRT zones in that density range gives major problems. The base density cap of 1.5 allows almost the maximum development density to be achieved in standard method. Many developments in that density range do not aspire to more than 80 or 65 foot height. Furthermore, the CRN zone allows up to FAR 2 density and 80 feet height under standard method.

Under standard method, these larger projects would require site plans, but no sketch plan, no public benefits to achieve the maximum densities. The ZTA makes little reference to public benefit requirements required of all projects, except reference to the MPDU law, assuming I guess that most projects will choose optional method. Transportation and other facilities, environmental features, variety of housing types, convenient retail, even urban design are treated as optional benefits for bonus density under optional method. Why would a developer trade so much added cost and process for an additional half FAR?

Perhaps it was assumed that in the areas where FAR of 1.5-2.5 is the desired result, the base density would be set well below the maximum. Yet there is no such guidance in the ZTA for setting the base density or the spread between base and optional. It is left to zoning individual properties in master plan amendments. But with no criteria in the law, why should a landowner with property in the Twinbrook sector plan area or near a "planned transit station" in Germantown settle for a low base density and have to buy their way to the maximum allowed by the master plan?

Zoning code guidance for locating big box stores and shopping centers is also worse in the amended CR zones than in C2, RMX and such zones used now. Placing those zones in a master

plan presumably was done on appropriateness of the location for vast retail establishments. According to the ZTA their location is up for grabs wherever any CR zone is applied.

The bottom line. These changes to the ZTA are needed to correct the problems identified above:

- Distinct sections on appropriate locations of the three zones.
- Lower maximum base densities.
- Guidance as to how to set allowed base densities below the maximum, and for the width of the gap to be filled with public benefits in optional method projects.

The staff memo of November 23 suggests a ways to handle the distinctions proposed above, but I see nothing in the ZTA that carries out their suggestion. Arbitrary case by case decisions on each property at each master plan amendment, with no established rational criteria, prey to anyone's lobbying, is not the way to do this.

- A better definition of transit-accessible land use.
- More thought and specificity on location of big car-oriented retail uses.

Section 15.5. Land Uses

The CR zones need to allow more industrial and quasi-industrial uses. In older cities and European cities, one finds useful establishments like plumbing contractors, bakeries, printers, building contractors fitting into urban areas, usually on the ground floor of mixed use buildings. Yet they are not allowed either in the current urban transit station zones or in the proposed CR zones.

There is no logical reason for prohibiting such local serving businesses, yet allowing automobile dealers; drug, cosmetic and biomedical manufacturing; and laboratories. Auto repair establishments are allowed; they serve the local community but cause considerable pollution, grime and traffic.

Part of the goal of the CR zones and other recent planning initiatives has been to encourage complete communities. It is not reasonable to exclude some useful activities that do no damage or no more than some permitted activities. These quasi -industrial business occur prominently near the Twinbrook and White Flint stations. They were so valued by planners and County Council that they retained the I-4 zone in prime Metro locations. There are definitely places in all the redeveloped urban corridors that would benefit from such businesses on the ground floor of mixed use buildings. Near the railroad tracks along Rockville Pike is a perfect example.

The zoning code can allow such uses in urban areas if their form, and the form of all development, is channeled into urban form by urban design standards. Urban design standards are also missing from the CR zones as shown by the ZTA. Industrial uses on the lower levels of mixed use buildings can be required in appropriate places, such as the industrial edges of sector plan areas, by master plans. This would be similar to the current treatment of ground floor retail.



February 15, 2011

Montgomery County Civic Federation Comments to Planning Board on Proposed CR Zones Zoning Text Amendment (Item 6 on the Board's February 17, 2011 agenda)

At the start of these comments, we wish to thank the Planning Board and Department for allowing members of the public the unique opportunity to weigh in during the drafting process for the proposed CR Zones Zoning Text Amendment. These comments reflect the majority position of the Civic Federation's Planning and Land Use Committee. The committee will wait until the ZTA has been introduced in the County Council to formally transmit our recommendation to the Federation's full delegate assembly for adoption of an official MCCF position. We make the following recommendations to try and insure that the character and quality of life in existing residential neighborhoods are protected:

Sec. 59-C-15.121. Density and Height Limits.

The MCCF Planning and Land Use Committee's preference is that no minimum heights or densities be specified for the CR, CRT or CRN zones. We recommend the following maximums:

CRN	Max. 1.0 FAR	Max. 45' building height
CRT	Max. 4.0 FAR	Max. 90' building height
CR	Max. 8.0 FAR	Max. 300' building height (currently in law)

Sec. 59-C-15.41. Standard Method.

We support retention of maximum standard method density and height for CR zone that are currently in law--0.5 FAR or 10,000 sq. ft. of gross floor area (whichever is greater) and 40' building height. We also recommend these standards be applied to the CRT zone.

and 59-C-15.41(d)(1).

We also strongly support the proposed requirement that site plan approval be required for any standard method development project "that is adjacent to or confronting a property that is in an agricultural (under Division 59-C-9) or single-family residential (under Division 59-C-1) zone".

Sec. 59-C-15.5. Land Uses.

The MCCF PLU Committee believes some uses being proposed as Permitted, Limited, or Special Exception uses in the CRN Zone should not be allowed under any circumstances. If the CRN Zone is being created as a transition zone for application to properties located between more developed areas and existing residential neighborhoods, we assert that the following uses are not compatible with the character of residential neighborhoods and should be disallowed:

- Automobile rental services
- Automobile repair and services
- Automobile sales, indoor
- Automobile sales, outdoor
- Eating and drinking establishments
- Health clubs and gyms
- Retail trades, businesses and services (of any size)
- Rooftop mounted antennas and related unmanned equipment buildings, cabinets or rooms

Sec. 59-C-15.641. Parking ratios.

The committee believes the multiplication factor for parking required of all CRN uses "greater than 1/2 mile from a level 1 or 2 transit station or stop" should be 1.0. The 1/2 mile or greater distance from station or stop decreases the likelihood of transit use to reach these CRN zoned properties, and increases the likelihood that a user will travel by personal vehicle. And, since the location of 1/2 mile or greater from transit station or stop increases the chances that these CRN properties are on the fringes of a residential edge neighborhood, we want to try to insure that our neighborhood streets will not be "parked up" and that sufficient parking will be provided by any allowed CRN use.

Sec. 59-C-71(a)(2). Angular plane setback

The committee believes that measuring the 45 degree angular plane from a height of 55 feet is reasonable for the CR Zone, where a 300' maximum building height is already allowed in law. Since we are advocating lower-than-proposed maximum building heights for the CRT and CRN Zones (CRT at 90', CRN at 45'), we recommend the 45 degree angular plane be measured from a lower height for these two zones: 40' for CRT, and 25' for CRN.

Thank you again for this opportunity to comment during the drafting phase for this ZTA.

Respectfully submitted,
Jim Humphrey
Chair, Planning and Land Use Committee, Montgomery County Civic Federation
(301)652-6359 day/evening/weekends
email - theelms518@earthlink.net

MCP-CTRACK

From: Pat Mulready [mulready@earthlink.net]
Sent: Thursday, January 13, 2011 7:03 PM
To: MCP-Chair
Subject: Object to CR-N being more than 20'

RECEIVED
0036
JAN 14 2011

OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

10233 Capitol View Avenue
Silver Spring, MD 20910
January 13, 2011

RE: CR Transition Zones—Proposed Neighborhood CR Zone Should Be Limited to 20'

Dear Chair Carrier and Planning Commission:

I wrote to you last month in support of the proposed CR Transition Zones, apparently without reading the fine print. I am outraged that 80' is the limit; what I had suggested as a Transition Zone was no more than 20' or two stories.

Specifically, in the proposed Kensington Sector Plan the CR Zone would allow buildings either 45' or 60' along Metropolitan Avenue, depending on the side of the street; one developer has already proposed requesting a variance for 90' on our (east) side of Metropolitan.

Any CR or other development would abut Capitol View Park (CVP) Historic District, a residential community; there are also residences in Kensington which would be affected.

Many CVP residents and I are already opposed to any development greater than 45' along Metropolitan Avenue—and this development should be closer to Connecticut Avenue—since more buildings means more traffic along Capitol View Avenue. Many CVP residents believe this push for the CR zone—now proposed for 80' instead of 45'/60'—to be the County's way to pressure having our historic road straightened. The ONLY thing 99% of CVP residents agree on is the road should not be straightened.

Eighty feet limits are not a transition zone for neighborhoods, indeed it is more than half the size of most of the development along Rockville Pike. While this letter focuses on how these new CR zones would impact CVP and the eastern part of Kensington I am outraged it would be used for any residential neighborhood.

The CR-Neighborhood Zone should be part of the Zoning Code—and not left to various Sector Plans—and made for the minimum of 20' and then let developers try to get variances instead of citizens finding out when the bulldozers arrive that an 80' building is being built in their side yards.

The Sector Plans would be a second line of defense, forcing CR development away from residential neighborhoods and more towards the main arteries. Then each block in the direction of residential neighborhoods should be of lower height; i.e., 60', then 45', then 30', then 20'. In areas where townhomes are already 40' high, then perhaps that should be the lower limit instead of 20', which would be included in the Sector Plans. I have not thought of a way to write this into Code, but I would be happy to work on it.

The in-County residential areas should not be forced to urbanize because of Rollin Stanley's and developers' goals of paving us over, ignoring historic designations (as Mr. Stanley publicly stated, December 2008), etc. The argument development will go to Virginia is now moot, as there were recent news reports that northern Virginia locales are also fighting to restrict development.

* I am sorry I missed the Hearings regarding this—I have the flu and thought infecting community activists, Planning Commissioners, and staff would not be productive.

Thank you.

Best regards,

Patricia M. Mulready, M.S., M.Phil.

(For ID only: CKC Representative and former VP, Capitol View Park Citizens' Association)

Cc: Carol Ireland, Chair, CVPCA Historic Preservation Committee

Lorraine Pearsall, President, P

RECEIVED
FEB 16 2011

Garcia, Joyce

OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PLANNING COMMISSION

From: Ben Ross [ben@disposalsafety.com]
Sent: Wednesday, February 16, 2011 11:16 AM
To: MCP-Chair
Subject: Public comment - Definition of transit-served area for CR Zone & Zoning Code rewrite
Attachments: 101608_BusPriorityNetwk.pdf

I understand that an issue has arisen as to the definition of transit-served areas in the CR Zone and in the rewrite of the zoning code. In particular, the minimum level of bus service to enable transit-oriented development has been hard to define.

This issue was recently addressed by WMATA and the Planning Board should make use of their work.

Clearly, the highest category of transit service should be rail stations with frequent all-day service that are in existence or funded for construction. "Planned" rail stations should not be eligible - there is a long history of transitways on maps that were not built, such as the North Bethesda transitway and the US 29 transitway.

A lesser category of transit-oriented development should be based on bus service. WMATA recently identified what it calls "priority corridors." Page 15 of the attached WMATA presentation gives the criteria for identifying them. These corridors already have frequent all-day service, and WMATA intends add limited-stop buses in rush-hour and implement bus priorities on the roads. Density bonuses should kick in only when the priority corridor treatment has been implemented, including both limited-stop service and priority treatments on the roads.

The designated corridors are Georgia Ave., Veirs Mill Road, University Blvd east of Wheaton, East-West Highway/University Blvd, New Hampshire Ave. as far as White Oak, and US 29. The planning board should make an exception and not designate the East-West Hwy/University Blvd corridor, because in the medium term it will be replaced by the Purple Line.

In the future, the county's bus rapid transit initiatives might make additional corridors eligible for this treatment. However, BRT corridors should not automatically be designated for transit-oriented development; the Planning Board should defer to WMATA on corridor identification. Transit-oriented development is only possible in corridors that really have frequent two-way service (as opposed to commuter buses passing by during rush hour without stopping, which is a significant focus of the BRT initiative).

Ben Ross
4710 Bethesda Ave. #819
Bethesda 20814
202-293-3993 (daytime)

Note: This comment is submitted as an individual.

RO



Planning, Development and Real Estate Committee

Board Action Item VII-C

October 16, 2008

**Approval of Priority Corridor Network Report
and Implementation Strategy**

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100111	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

Approval of Priority Corridor Network Plan

PURPOSE:

Approval of the Metrobus Priority Corridor Network Plan list of corridors and near term schedule for project planning and implementation of Metrobus service adjustments, MetroExtra service additions and coordinated capital investment programs by jurisdictional stakeholders.

DESCRIPTION:

The Metrobus Priority Corridor Network Plan reflects a strategy for improving bus service travel times, reliability, capacity, productivity and system access and is consistent with the Regional Transportation Vision, Regional Bus Study, Core Capacity Study and APTA Peer Review. The included service and capital projects would constitute a six-year implementation program affecting 24 corridors across the region and impacting half of all bus riders in the current Metrobus system.

Staff, working with jurisdictional stakeholders, have prepared comprehensive Corridor Plans to provide for integrated service and capital investments, including new MetroExtra routes and to improve the performance of all routes in the corridors. Implementation will include investments in bus stops, running way enhancements, street operations management and safety and security strategies to reduce travel times and provide more reliable and safe service.

A focus on Priority Corridors will benefit the most riders in the shortest time-frame; improve Metrobus customer service, reliability, quality and performance; build transit markets; and influence development patterns. A defined plan will also facilitate fleet acquisition and address garage capacity issues by establishing a time frame for performance of necessary coordination.

The service zone described by the 24 corridors currently encompasses nearly 750,000 households with 1.8 million residents and 1.6 million jobs. By 2015, this market is anticipated to grow by 14%. The proposal includes 246 line miles of

service and would provide capacity to serve an additional 10 million riders per year.

The Regional Bus Study evaluated corridors throughout the region and identified those with sufficient current or future potential to warrant running way improvements to support faster and more reliable transit services. Corridors with daily transit ridership over 5,000 per day were considered as candidates. Out of 31 corridors studied, a sub-group of 16 were recommended for "Rapid Bus" (MetroExtra) treatment. Since the Regional Bus Study was completed, some of the corridors on the final list have been consolidated while others have been separated to facilitate implementation. Changes in jurisdictional priorities and development patterns have also necessitated a revision of the list to the current recommended 24.

FUNDING IMPACT:

There is no funding impact from accepting recommendations to implement the Priority Corridor Network Plan. Final individual project recommendations will be returned to the Board for consideration prior to implementation. The funding impact will be determined at that time.

RECOMMENDATION:

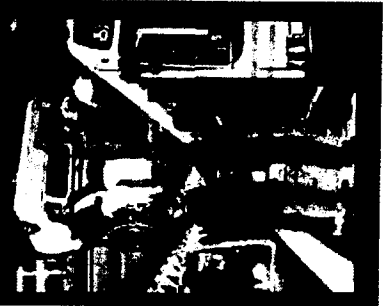
Accept recommendations for the Priority Corridor Network Plan subject to future Board review and approval prior to implementation of individual service enhancements.

Metrobus Priority Corridor Network and Implementation Schedule

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

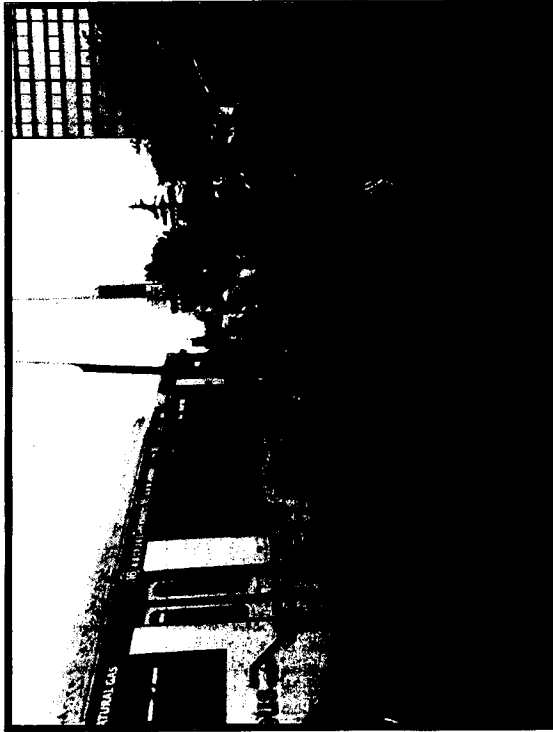
October 16, 2008





Purpose

Acceptance of the Metrobus Priority Corridor Network Plan list of corridors and near-term schedule for project planning and implementation.



Pike Ride passengers at Pentagon City



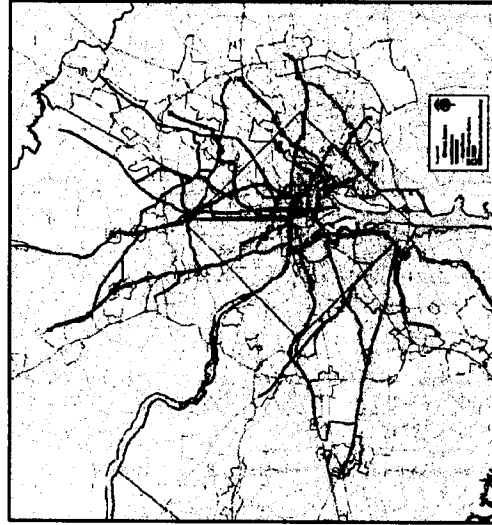
30s Line passenger at Eastern Market



Background

- Staff proposed in May 2008 a process for studying and improving bus service along high-ridership corridors throughout the region
- Board concurred and asked staff to confirm list of corridors and work with jurisdictions regarding sequencing of project implementation.

Priority Corridor Network Implementation Sequence							
Projects	Study/Implementation						
	< 2009	2010	2011	2012	2013	2014	2015
Previous							
Year 1							
Year 2							
Year 3							
Year 4							
Year 5							





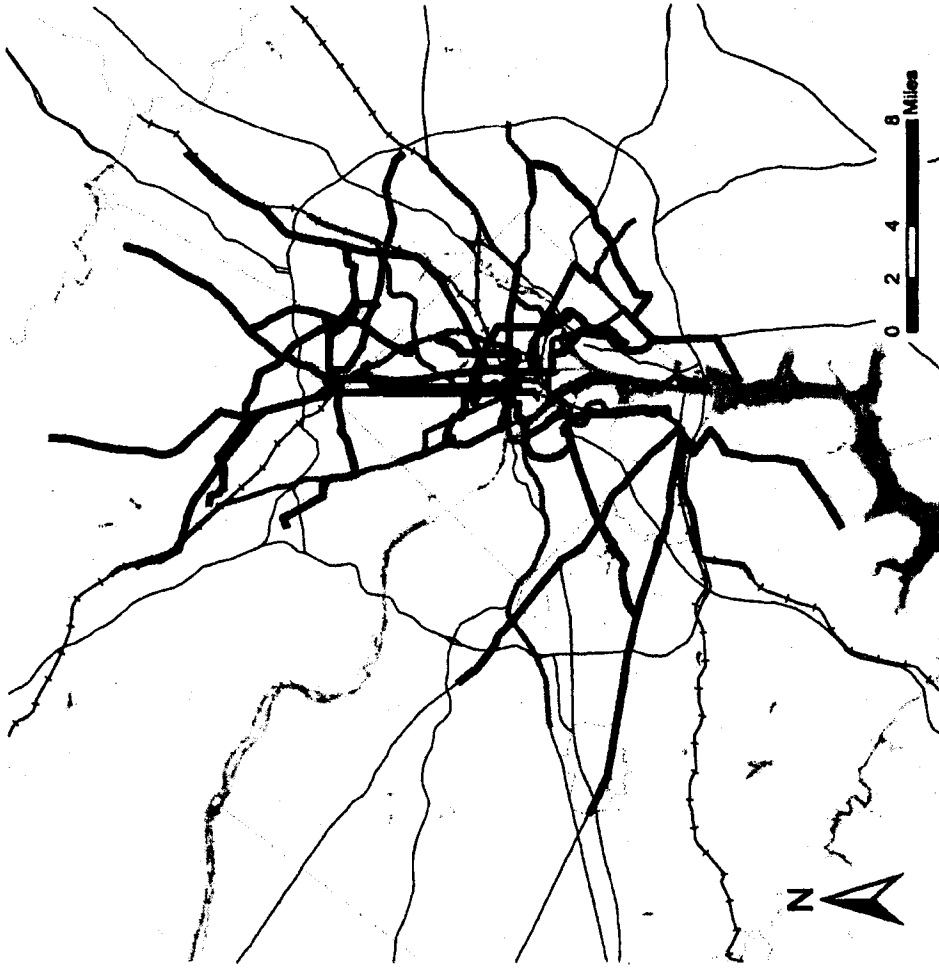
Actions Since May 2008 Presentation

- WMATA Board:
 - Accepted Bus Network Evaluation findings documenting need for 135 Metro Matters expansion buses at June 2008 Board meeting
 - Approved implementation of 30s Line recommendations
- Staff worked with Jurisdictional Coordinating Committee (JCC) to review Plan details:
 - July, August and October 2008 meetings
 - JCC provided comments regarding timing of corridors, funding concerns and identification of additional and emerging corridors
- Staff made presentations seeking input from Transportation Planning Board, Board of Trade, interest groups and local boards and commissions
- List of corridors remains the same, sequencing adjusted slightly to reflect actual dates and local plans, initiatives and priorities.



Metrobus Priority Corridor Network Plan

1. Columbia Pike (Pike Ride)
2. Richmond Highway Express (REX)
3. Georgia Ave./7th St.
4. Crystal City-Potomac Yard
5. Southern Ave. Metro-National Harbor
6. Wisconsin Ave./Pennsylvania Ave.
7. University Blvd./East-West Highway
8. Sixteenth St. (DC)
9. Leesburg Pike
10. Veirs Mill Rd.
11. New Hampshire Ave.
12. H St./Benning Rd.
13. Georgia Ave. (MD)
14. Greenbelt-Twinbrook
15. East-West Highway (Prince George's)
16. Anacostia-Congress Heights
17. Little River Tpke./Duke St.
18. Rhode Island Ave. Metro to Laurel
19. Mass Ave./U St./Florida Ave./8th St./MLK Ave.
20. Rhode Island Ave.
21. Eastover-Addison Rd. Metro
22. Colesville Rd./Columbia Pike - MD US 29
23. Fourteenth St. (DC)
24. North Capitol St.





Near-Term Sequence of Corridors

Sixteenth St. (DC)	Plan/ Implement			
Veirs Mill Rd.	Plan	Implement		
Leesburg Pike	Plan	Implement		
New Hampshire Ave.		Plan	Implement	
H St./Benning Rd.		Plan	Implement	
Georgia Ave. (MD)		Plan	Implement	
Little River Tpke./Duke St.			Plan	
East-West Highway (Prince George's)			Plan	
Greenbelt-Twinbrook			Plan	
Anacostia-Congress Heights			Plan	



Recommendation

Accept the Metrobus Priority Corridor Network Plan list of corridors and schedule for near-term planning and implementation.

Note: Adoption of Metrobus Priority Corridor Network is for planning purposes only and does not obligate the Authority or Board to satisfy the plan's projected requirements; therefore, there is no funding impact.



Next Steps

- Present Sixteenth Street Corridor Plan
- Present regional Street Network Plan
- Present 2010 Budget inclusive of recommended operating proposals
- Plan will be updated prior to any bus procurements, facility projects, or service implementation

Sixteenth St. Corridor





Appendix

- Priority Corridor Network Plan
- Requested Emerging Corridors
- Priority Corridor Network Candidate Description



Priority Corridor Network Plan

October 16, 2008

Corridor Description	Line/Route Description	Status	Juris.	Study Year (FY)	Impl. Year (FY)	Average Weekday Ridership	Annual Platform Hours	
1 Columbia Pike (Pike Ride)	16ABDEFJ 16GHKW 16L 16Y	I	VA	2002	2003	13,300	99,500	
2 Richmond Highway Express (REX)	REX	I	VA	2003	2004	3,700	33,800	
3 Crystal City-Potomac Yard	9A 9E 9S	I	VA	2005	2006	3,200	33,400	
4 Georgia Ave./7th St. (DC)	70 71 79	I	DC	2006	2007	18,400	99,500	
5 Southern Ave. Metro - National Harbor	NH-1	I	MD	2007	2008	900	New	
6 University Blvd./East-West Highway	J1 J2 J3 J4	P	MD	2007	2009	7,800	68,000	
7 Wisconsin Ave./Pennsylvania Ave.	30 32 34 35 36	I	DC	2008	2009	20,700	162,000	
8 Sixteenth St.	S1 S2 S4	P/I	DC	2008	2009	15,000	111,900	
9 Leesburg Pike	28AB 28FG 28T	P/I	VA	2009	2009	7,400	52,500	
10 Veirs Mill Rd.	Q2	P	MD	2009	2010	10,500	75,400	
11 New Hampshire Ave.	K6	P	MD	2010	2011	6,300	40,500	
12 H St./Benning Rd.	X2	P	DC	2010	2011	13,700	65,300	
13 Georgia Ave. (MD)	Y5 Y7 Y8 Y9	P	MD	2010	2011	7,600	57,600	
14 Greenbelt-Twinbrook	C2 C4	P	MD	2011	2012	14,200	99,700	
15 East-West Highway (Prince George's)	F4 F6	P	MD	2011	2012	8,300	52,000	
16 Anacostia-Congress Heights	A2 6 7 8 42 46 48	P	DC	2011	2012	11,900	77,500	
17 Little River Tpke./Duke St.	29KN 29CEGHX	P	VA	2011	2012	3,200	40,800	
18 Rhode Island Ave. Metro to Laurel	81 82 83 86 87 88 89 89M	P	MD	2012	2013	6,900	57,500	
19 Mass Ave./ U St./ Florida Ave./ 8th St./ MLK Ave.	90 92 93	P	DC	2012	2013	14,700	106,400	
20 Rhode Island Ave.	G8	P	DC	2012	2013	3,800	34,200	
21 Eastover-Addison Road Metro	P12	P	MD	2013	2014	5,600	44,600	
22 Colesville Rd./Columbia Pike - MD US 29	Z2 Z6 Z8 Z9 Z11,13	P	MD	2013	2014	10,100	97,100	
23 Fourteenth St.	52 53 54	P	DC	2013	2014	15,000	98,200	
24 North Capitol St.	80	P	DC	2014	2015	8,500	60,800	
Total Priority Corridor Network							230,800	1,668,200



Requested Emerging Corridors

- Corridors for future consideration as Priority Corridor Network candidates.
- Local concept development studies are to be conducted to refine proposals for future consideration before implementation as part of WMATA plan.

Emerging Corridors	Status	Juris.	Study Year (FY)	Impl. Year (FY)
K Street Busway	Plan	DC	2008	TBD
Mn. Ave./Congress Heights/MLK Ave./Southern Ave.	Plan	DC	2009	2010
Kingstowne-Pentagon	Plan	VA	2009	2010
Woodley Park/Irving St./Michigan Ave.	Plan	DC	2010	2011
Military Rd./Missouri Ave.	Plan	DC	2012	2013

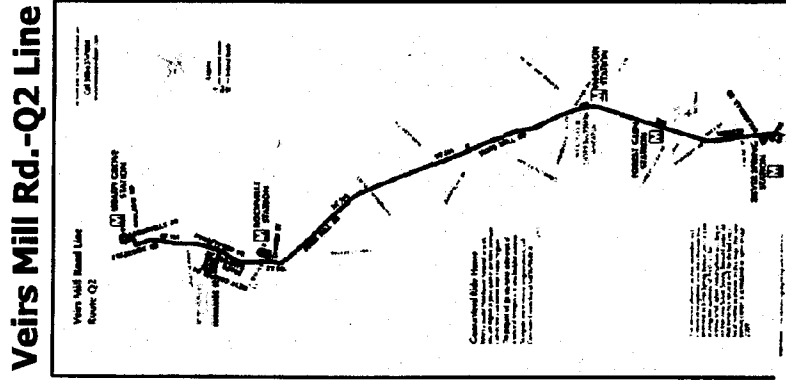


Priority Corridor Network Candidates

- Characteristics of recommended corridors
 - Existing high priority Metrobus route
 - High ridership, productivity, frequency, mode share and bus use
 - Long spans of service provided seven days per week
 - Major Arterial TOD corridors with mixed-use development and continuing growth anticipated

- Ridership sufficient to support market-oriented service choices:

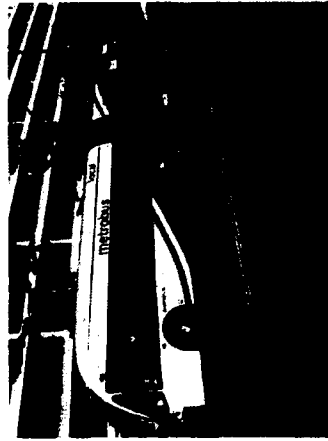
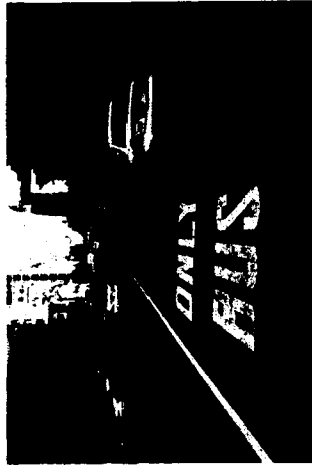
- Local Metrobus
- Express Metrobus
- MetroExtra (Rapid Bus)
- Neighborhood shuttles





Priority Corridor Network Candidates

- Sufficient benefits to warrant capital program investments
 - Customer facilities
 - Buses and technology
 - Roadway and streetscape improvements
 - Traffic system management



PRESENTED AND ADOPTED:

SUBJECT: METROBUS PRIORITY CORRIDOR NETWORK PLAN

**PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, A Regional Bus Study was conducted with jurisdictional input from 2000-2003 to develop coordinated operating and capital strategies for the region's bus systems; and

WHEREAS, A six-year Capital Improvement Program was prepared for inclusion in the Metro Matters Funding Agreement to provide for Bus Customer Facility projects, replacement of up to 500 buses and expansion of the fleet by an additional 185 buses to meet Metrobus operating and expansion objectives; and

WHEREAS, A Bus Network Evaluation Report was prepared by WMATA staff in FY 2007 and accepted by the Board of Directors in June 2008, validating the need for all 185 standard transit coaches for fleet expansion called for in the Metro Matters Funding Agreement; and

WHEREAS, WMATA staff proposed the Metrobus Priority Corridor Network Plan in May 2008, to guide and prioritize staff efforts over a six-year period to evaluate and improve bus services and coordinate capital projects and fleet expansion to the benefit of half of the Metrobus system ridership; and

WHEREAS, The Metrobus Priority Corridor Network Plan represents a comprehensive strategy for improving customer experiences, bus service quality, safety, travel times, reliability, capacity, productivity and system access throughout the region structured around high-ridership corridors throughout the region; and

WHEREAS, The Metrobus Priority Corridor Network also represents the cornerstone for organizational, management and technological innovations to improve Metrobus services and re-establish bus as a mode of choice throughout the region; and

WHEREAS, The Metrobus Priority Corridor Network Plan dated October 16, 2008, documents the final list forming and this critical backbone of bus transit service in the region; and

2(18)

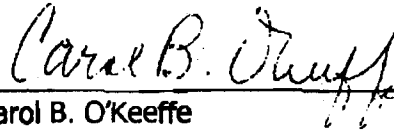
WHEREAS, The adoption of the Metrobus Priority Corridor Network Plan is for planning purposes only and does not obligate WMATA to the Plan's projected requirements; and

WHEREAS, The Metrobus Priority Corridor Network Plan will be updated on an annual basis to reflect completed projects and changes in project readiness and regional priorities and prior to any corridor-related bus procurements, facility projects or service implementation; now, therefore be it

RESOLVED, That the Board of Directors accept the Metrobus Priority Corridor Network Plan list of corridors and schedule for near-term planning and implementation dated October 16, 2008; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Carol B. O'Keeffe
General Counsel

January 26, 2011

Lydia Sullivan
10310 Detrick Avenue
Kensington, MD 20895

Chair Francoise Carrier
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD

Re: CR Zones ZTAs Jan. 27, 2011 worksession

Ms. Carrier:

I appreciate that the Planning Board agreed to further discuss the CR zones before transmitting them to the County Council, and that you addressed density and height concerns somewhat. However, the CRN zones and Standard Method densities and heights are especially problematic and do not protect neighborhoods.

I have some comments and questions (missed the last meeting and haven't had a chance to ask):

DENSITY and HEIGHT:

- CRN Zones building heights are still too high. A range that goes to 65 feet is not neighborhood transitional. As was discussed at the Zoning Advisory Panel last week, even on an arterial, higher density or commercial next to homes creates a cascade effect; it affects the layer behind the commercial building (no one wants to live next to one) and so on for several houses, encroaching into the single-family neighborhood.

Recommendation:

a.) Lower the building height in CRN to maximum 45 feet, similar to the C-T, if adjacent to single-family residential – or,

b.) create an entirely new, protective transitional zone that is 45 feet maximum, and save the higher height for sites adjacent to, for instance, large townhome developments.

- Standard Method (59-C-15.41) – 1.5 FAR is too dense for Standard Method, in which applicants don't have to provide a sketch plan or Public Benefits. It is a three-fold increase from the .5 FAR in the existing CR Zone. With most densities around 2.0 FAR in the Kensington Sector Plan, it is very possible that most of Kensington would be developed under Standard Method. Why should commercial property owners receive such high density as a giveaway? Kensington property owners could avoid public input and would not have to provide our Town with the niceties – the bike racks, green walls, and connectivity –that would make a development fit into an historic small town. The main selling point of the CR Zone to the County and Kensington residents was that the

Town and County would have more review and we would get useful and pleasant development.

Recommendation: Reduce the Standard Method FAR in CRN and CRT to FAR .5 and height to 45 feet.

EXPECTATIONS and PUBLIC REVIEW:

• Sketch plan conformance – If the community and the Planning Board base their comments and approval of a project on the sketch plan, the burden should be on the developer to retain those elements. If the Planning Board may approve modifications, and Binding Elements are not “set in stone,” how can citizens have a reasonable expectation of consistency?

- I understand the applicant’s dilemma of wanting to go above 100 percent and dialing back benefits, but the burden should be on them to prove why altering the sketch plan should result in the density that was approved at sketch plan. The balance between flexibility and public expectation should weigh in the favor of consistency. Public Benefits promised should be Public Benefits realized.

• Public Benefits – If the Planning Board can decide that “alternatives, additions and deletions” are appropriate at site plan, what goes into determining whether they are appropriate and whether they meet the master plan and zone requirements? Where are the maximums and minimums written?

• Locking in important benefits – Planning Board should make a determination that some Public Benefits are more important to a particular community than others and lock them in. (The process of a developer determining which benefits to apply and then getting approval from the Board seems backward.)

Recommendation: The Planning Board provides the developer a long list of benefits most appropriate to the site, from which the developer can choose, retaining the diversity of benefits.

• Building heights must be locked in at sketch plan, as they most affect the community.

• As in the first three White Flint sketch plans, public benefits always should track per stage of development to ensure the community receives benefits at the same time the builder does.

• Exceptional design – Did I hear that a developer won’t be able to show this until they have enough units leased? Yet they received density for it? (Maybe I heard this wrong.) This should not be allowed. I agree with one of the speakers that this particular Public Benefit should be used sparingly.

OTHER:

Transit Proximity - Measurement of "portal" seems vague. For instance, does the parking lot of the MARC station in Kensington count as the portal? Or is it the loading platform or the center point of the building?

I have other comments, too, and hope that I and other citizens will be given the time to fully comment on all aspects of the proposed zones.

Lastly, the White Flint sketch plans show – even in an almost wholly commercial area – that the issues that came up will keep coming up, as this is all new. Takoma Park and Kensington will have even more issues. As a Town of Kensington council member (speaking on my own behalf), I urge you: Please take more than 3 or 4 meetings to consider this issue that will affect us in Montgomery County for decades. Please protect our quality of life and our neighborhoods.

Thank you.

Respectfully,

Lydia Sullivan

RECEIVED
FEB 16 2011

Page 1 of 1

Françoise -

OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Hi. (I'm impressed with myself for figuring out how to do a cedilla on my keyboard!) Attached are my comments on the CR zones for the Feb. 17, 2011 worksession. They are only partial comments, as I wanted to emphasize the issues that are most important to me from what I am hearing from Kensington and surrounding communities.

Also, my comments are based on the Jan. 13, 2011 worksession documents that were on the Feb. 17 agenda until sometime around noon today. However, when I just checked the agenda, I see that five *new* documents have been attached to the agenda item! As I can't possibly review and comment on documents that have been posted only a few hours before the written submission deadline, I will have to read the new attachments today and tomorrow and will incorporate them into my public spoken comments.

This raises a serious and ongoing process issue, when even those of us who are following this closely are unsure what documents we should be working from. For the general public, it's nearly impossible to follow - and for us to explain to them.

Can I please ask also, that as soon as possible after Thursday's hearing, you ask planners to post the *complete* (not just sections) and most updated versions in clean and red-line format. Thanx.

And see you Thursday. Methinks it will be a long one...

Lydia

Lydia Sullivan
sullivan.flyger@verizon.net
cell 301.758.1892

February 15, 2011

Lydia Sullivan
10310 Detrick Avenue
Kensington, MD 20895

Chair Francoise Carrier
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD

Re: CR Zones ZTAs Feb. 17, 2011 worksession

Ms. Carrier:

As I am talking to more and more citizens about the development in Kensington, and in downcounty, the same concerns come up again and again. They ask: "Why is the County doing this?" and, "How can we protect our communities and single-family neighborhoods?" Maybe you can answer the first question, but I have some suggestions for the latter.

Main concerns (these are only partial comments – there are many other concerns but these are my main concerns):

GENERAL

- **Protect neighborhoods** – CR zones, as currently written, are unacceptably unprotective of single-family neighborhoods, the backbone of Montgomery County. Commercial intrusion on single-family neighborhoods must be minimized. The proposed CR zones place greater priority on future residents and maximized density than on existing residents and Montgomery County's current high quality of life.
- **Ensure the primacy of master plans over zones** – Throughout the CR zones, the language must be made very clear in stating provisions lie "in the applicable master or sector plan." Or use another mechanism ensuring that the higher density zones do not somehow predominate in Montgomery County – through future appeals or legal challenges – because of lack of

specificity or clarity of language. (I'm not a lawyer, so don't know how to suggest that language.)

- **Advance notice/public input** – The original promise of the CR Zone was to allow community input earlier in the process, through sketch plans on all but very small developments. In the new zones, Standard Method density increases and too-high site plan thresholds essentially remove notice to neighborhoods affected most by close-by development.

STANDARD METHOD

Summary: Many properties in Kensington could develop under Standard Method, without a sketch plan, site plan or public benefits. Rubber stamp development is not good development.

- Standard Method density in CRN and CRT is too high (59-C-15.41) – Applicants don't have to provide a sketch plan or public benefits, yet can build to 1.5 FAR. 1.5 FAR is dense, especially when replicated over and over in a small community with many narrow properties. It is a three-fold increase from the .5 FAR in the existing CR Zone. Where is the benefit to the community?

In the Kensington Sector Plan, where most densities are either 1.5 FAR or 2.0 FAR (plus five blocks of 2.5 FAR), **it is very possible that *most* of Kensington could be developed under Standard Method.** Kensington commercial property owners could avoid advance public input. And they would not have to provide our Town with any of the niceties we were shown in the Sector Plan mock-ups – the bike racks, green walls, and pedestrian improvements that would make a development fit into an historic small town. The main selling point of the CR Zone to the County and Kensington residents was that the Town and County would have more review and we would get useful and pleasant development. Why should commercial property owners receive such high density as a giveaway?

Recommendation: Reduce the Standard Method FAR in CRN and CRT to FAR .5 and height to 45 feet.

- Standard Method Site Plan thresholds are too high [59-C-15.41(d)] – The four requirements for site plan approval are too permissive. For instance, “(1) Is adjacent to or confronting a property in an applicable residential or agricultural zone *and* requests a maximum total density exceeding 0.5 FAR.” – [italics mine] At very least this must be split, so that **ANY** project

adjacent or confronting residential must require a site plan, period, especially considering many also would not have sketch plans.

And, a 10,000 square foot building is not small in a town like Kensington or Takoma Park or Wheaton. Reduce this to 5,000 square feet.

HEIGHT AND DENSITY

- **CRN Zones building heights are too high** [59-C-15.121 (a)].

A CRN building height range that goes to 65 feet is unacceptable. This is a major concern. A 65-foot building is *not* neighborhood transitional. A 65-foot building is large, and has traffic, trash, natural light reduction, storm water and other impacts on nearby homes. Even on an arterial, a large building next to single-family homes creates a cascade effect; it affects the layer behind the large building (no one wants to live next to one) and so on for several houses, encroaching into the single-family neighborhood. This would encourage neighborhood turnover and lessen stability.

The 40-foot minimum in the maximum height range is problematic, as it appears a 25-foot or 35-foot maximum (or other protective height limitation desired by communities) could not be mapped into a sector plan.

Recommendation:

1. a. **Lower the building height in CRN to maximum 45 feet, as it will placed adjacent to single-family residential, or,**
b. **Create an entirely new, protective transitional zone that is 40-45 feet maximum (similar to the C-T)**
2. **Remove “40 feet” from the chart, under “Max H (feet).”**

- **Remove MARC from Level 2 Transit Proximity.** MARC does not take many cars off the roads. As MARC carries limited morning and afternoon schedules (no mid-day) and passengers (for ex., only 125-150 passengers a day to/from Kensington), no incentive density or parking reductions should accrue to nearby development. (Or the percentages and points must be reduced further and significantly.)

From the County Council staff memo, April 2010 PHED, Kensington Sector Plan analysis: **“Since MARC provides only limited service, it is unclear whether any reduction in parking requirements (or bonus density) should be associated with its presence.”**

- Building heights must be locked in at sketch plan, so the community can have a reasonable expectation of a site's impact in advance of site plan.

PUBLIC REVIEW

- **Design Guidelines must be moved into the sector plans themselves, and be reviewed at the same time as the sector plans.** Add language saying design guidelines must not be amended or waived by the Planning Board without opening up the applicable sector plan. The public must review Design Guidelines at the same time as the sector plan itself, for a complete picture and certainty.
- As in the first three White Flint sketch plans, public benefits always should track per stage of development to ensure the community receives benefits at the same time the builder does.

[OTHER: As the Board discussed at the Feb. 3, 2011 meeting, please ensure language exists allowing the Planning Board ability to deny an application (something to do with the word "consider" in 15.83).]

CONCLUSION:

People in my own community and surrounding neighborhoods are interested in this issue – and intimidated by the complexity and the speed of the CR zones process. (In Kensington, we have the especially ridiculous situation of not having underlying zones, mapping or design guidelines so we can share visuals with the community!)

Residents are only vaguely aware that this affects them. But they *are* keenly aware of and vocal about they *do* want from their Montgomery County:

- Schools that remain excellent, without further overcrowding
- Roads that work and adequate transportation
- Neighborhoods that are buffered from commercial incursion

The CR zones as written will deny them that Montgomery County. (What happens when short-sighted goals of tax revenue are supplanted by

urban problems? People will start leaving the County. I'm hearing that from many people – that they'll just leave MoCo if it gets too urban.)

It's an overused phrase (my English professor father would have objected to its use), but please protect our *quality of life*. Make significant changes to the CR zones. Thank you for listening.

Respectfully,

Lydia Sullivan

November 30, 2010

By email

Françoise Carrier, Esq., Chair
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910-3780

RE: Proposed Wheaton Sector Plan-Generated Amendments to CR Zone
Agenda Item #3, Planning Board Agenda of December 2, 2010

Dear Madame Chair and Members of the Planning Board:

On behalf of the 11250 Veirs Mill Road, LLC properties of Lindsay Ford in Wheaton, Maryland ("Lindsay"), a stakeholder and substantial property owner and employer in Wheaton, we wish to express certain generic concerns with the proposed Wheaton Sector Plan-generated amendments to the CR Zone raised in the November 23, 2010 Staff Report to the Planning Board.

In its current form, we believe that the CR zone offers great promise for bringing about the transit-oriented redevelopment that the County both needs and desires. However, we are very concerned with the possibility of significant changes being made to the CR zone before it has even been used in the County, let alone given the opportunity to withstand the test of time.

The amendments being proposed in conjunction with the Wheaton Sector Plan would be imposed on all CR-zoned properties throughout the County. As proposed, these amendments do not give consideration or protection to the multitude of existing developed properties that would be made non-conforming were the amendments to be adopted. Additionally, the Wheaton-related amendments would make certain land uses that are currently permitted as a matter of right in the existing CR zone virtually impossible to use. This would occur despite the fact that the fundamental purpose of the CR zone is to provide the certainty and flexibility necessary to accommodate a mix of uses on a given property along with development standards and incentives that enable the zone to function in a transitional capacity.

As an example of our concerns, the proposed amendment that would require access to certain enumerated uses to be setback one-hundred feet from residential zoning would prevent such uses altogether unless they have frontage on a street that does not abut residential zoning or where the residential-abutting street itself exceeds a width of one-hundred feet. In other words, even if the use could meet the one-hundred foot setback, access to the property would likely be impossible under the proposed amendment. Alternatively, access could be possible, but the lack of sufficient property depth may make provision of the one-hundred foot setback physically impossible to achieve. Further, the proposed amendment does not make exceptions for abutting residentially-zoned properties that are either undeveloped or that are being used for permitted non-residential purposes. Our example illustrates but a few of the unforeseen consequences of the proposed amendment.

In sum, the Wheaton-related proposed amendments are likely in the long run to undermine both the credibility and usability of the very same CR zone that holds so much promise for the County.

Thank you in advance for your consideration of the concerns we have raised in connection with Agenda Item #3 of the Planning Board's December 2nd Worksession.

Very truly yours,
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: Anne Marie Vassallo
Anne Marie Vassallo

cc: Chair and Members of the Planning Board
Mr. Joshua Sloan
Ms. Sandra Tallant
Mr. Chris Lindsay
David D. Freishtat, Esq.

Josh,

We responded to Sandy yesterday with some comments on the proposed CR and its CRT and CRN variations, in relation to the Lindsay property, and she suggested we also pass these comments along to you.

Presently, we are not completely certain which zones are to be applied to the overall property, so our brief comments have a somewhat more general scope:

Assuming that our proposed use of inventory storage is a limited use (as you had indicated when we spoke with you), we appreciate that the use is possible, but it really must be possible and not just theoretical. We are glad the revision attempted to address the access issue (i.e. how even to access a property where the ROW didn't allow one to meet the 100 feet setback and a property which is not on a corner) is a good addition, but turning to site plan to evaluate access (especially to evaluate an *existing* access) is problematic. We continue to believe that existing access should continue to be useable.

In addition, proposed Section 59-C-15.41 should be clarified such that all three factors must be present to require site plan. If a proposal has no development in that there are no verticals and no structures it therefore has no FAR and no density. Thus, there is little to evaluate via site plan and requiring site plan even for standard method (i.e. by right) does little to provide efficiency to the process which is supposed to be one of the goals of the revisions. Essentially, when there is no development, all that is to be evaluated are plans for landscaping and lighting, which can be done by Staff following notice to the neighbors. If for some reason, the matters cannot be resolved with the Staff then it can go to the Board. In sum, we believe that site plan for a project involving no structure is unduly burdensome.

Indeed, the aspects of fencing, planting buffering and lighting for a limited use are denominated and should be more clearly denominated by the zone as proposed in Section 59-C-15.512. In the project we would propose, the landscaped area would be a public benefit (albeit in the absence of any structure) although it is provided without receiving the usual "incentives" that prompt public benefits under existing zoning rubric.

Thanks for your time and we look forward to joining Staff and the Board at the Planning Board discussion.

--Anne Marie

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V (3)

January 19, 2011

By delivery

Françoise Carrier, Esq., Chair
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910-3780

RE: CR Zone Amendments: Support for establishing a baseline level of permitted standard method of development that does not require 59-D-3 site plan approval

Dear Madame Chair and Members of the Planning Board:

This letter is submitted on behalf of 11250 Veirs Mill Road, LLC, owner of the Lindsay Ford properties in Wheaton, Maryland ("Lindsay") as part of the record in the CR/CRN/CRT zones amendments and alterations to those zones. We note that the proposals in respect to the CR/CRN/CRT zones are next scheduled for additional discussion by the Planning Board on January 20, 2011.

We wish to lend our support to Chair Carrier's idea, raised at the January 13, 2011 Planning Board Worksession, to establish a modest threshold of standard method development below which Planning Board review of site plan would not be required. The Chair suggested this standard method threshold might be 0.5 FAR on a given property. The Chair's comments arose during the point in Joshua Sloan's PowerPoint presentation addressing "public benefits versus revitalization" which noted that there is "balance sought based on the lowest amount of density that ensures flexibility and economic viability."

We support this concept on the basis that the costs, process time, and consultant efforts occasioned by site plan preparation, submission and review serve to discourage modest or interim uses on properties in the emerging areas of the County where the new CR zone and its CRT and CRN variations are proposed. Given economic conditions and the economic reality of the foreseeable future, these areas are unlikely to embrace full-scale redevelopment for many years and without some streamlined level of development opportunity available through standard method the properties will not undertake improvement for some time. These modest density standard method developments will not occasion the substantive issues that the Planning Board typically addresses and decides at site plan, and an applicant's project evaluation can be thoroughly handled at the Staff level.

Moreover, regardless of site plan, the applicable standards of the zone are laid out in the zone itself and these standards must still be met by the applicant even if the review is conducted by Planning Staff and/or by the Department of Permitting Services. From a procedural standpoint, a notice requirement to neighbors could be applied as part of a Staff level review to enable additional input.

Attached for your consideration are appropriate pages from the January 13, 2011 "redline" to establish changes to the existing CR zone as well as new CRT and CRN zones. We have inserted recommended changes, handwritten, to accomplish a baseline threshold of standard method density that does not require Section 59-D-3 site plan and can be implemented through Staff review. These recommended changes insert clarifying language in Section 59-C-15.41, Standard Method; and in Section 59-C-15.511, Applicability. In addition, we have recommended an insertion to the "Existing Approvals" section of the CR zone (59-C-15.9) noting that this grandfathering section appears to have overlooked protection for existing non-structural uses.

Thank you for your consideration.

Very truly yours,
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: Anne Marie Vassallo
Anne Marie Vassallo

Attachment

cc: Chair and Members of the Planning Board
Mr. Joshua Sloan
Ms. Sandra Tallant
Mr. Chris Lindsay
Larry A. Gordon, Esq.

Notwithstanding the other provisions of Section 59-C-15.41(d), no site plan review or approval under Division 59-D-3 shall be required for a standard method development with an FAR of 0.5 or less.

Zoning Text Amendment No. 11-

180 (d) A site plan approval under Division 59-D-3 is required only for a standard
181 method development ~~that~~[project only if]:

182 (1)~~(a)~~ Is adjacent to or confronting a property that is in an
183 agricultural (under Division 59-C-9) or single-family residential (under
184 Division 59-C-1) zone;

Comment [JCS32]: New provision providing extra protection for compatibility at the interface between residential neighborhoods and mixed use/commercial areas.

185 (2) Requests a [the] gross floor area exceeding[s] 10,000 square feet;

186 (3) Requests a building height exceeding 40 feet; or

Comment [JCS33]: New review protection due to higher standard method allowances.

187 (4)~~(b)~~ [any building or group of buildings e]Contains 10 or more
188 dwelling units.

Comment [JCS34]: Unnecessary - "development" covers all buildings.

189 59-C-15.42. Optional Method.

Comment [JCS35]: First sentence is unnecessary as noted in 15.41 above. Results of the rest of this section are retained in new language below broken out into outlined provisions.

190 ~~[Optional method development must comply with the general requirements and~~
191 ~~development standards of the CR zones and must provide public benefits under~~
192 ~~Section 59-C-15.8 to obtain greater density and height than allowed under the~~
193 ~~standard method of development. A sketch plan and site plan are required for any~~
194 ~~development using the optional method. A sketch plan must be filed under the~~
195 ~~provisions below; a site plan must be filed under Division 59-D-3. Any required~~
196 ~~preliminary subdivision plan must not be submitted before a sketch plan is~~
197 ~~submitted.]Optional method development is allowed under the following~~
198 limitations and requirements.

199 (a) ~~(a)~~ The maximum total density, non-residential density, residential
200 density, and height for any project is set by the zone.

Comment [JCS36]: Keeps format consistent with 15.41 above.

201 (b) A sketch plan must filed under the provisions below. Future site plan(s)
202 must be submitted for any development on a property with an approved
203 sketch plan.

Comment [JCS37]: New sections below replace and clarify previous deleted language.

204 (c) Public benefits must be provided under the provisions of Section 59-C-15.8.

205 59-C-15.43. Sketch Plan.

310 59-C-15.511. Applicability. Uses designated by an "L" in the land use table must
311 comply with the requirements of this Section if they are on properties that are:

- 312 (a) Located adjacent to a property in an agricultural (under Division 59-C-9)
313 or single-family residential (under Division 59-C-1) zone; or
314 (b) Separated from such a property only by the right-of-way of a primary,
315 secondary, or tertiary residential street.
316 (c) Where these circumstances do not apply, the use is considered a
317 permitted use.

318 59-C-15.12. Restrictions and requirements of limited uses.

- 319 (a) No structures, parking spaces, or driveway entrances associated with
320 limited uses may be located within 100 feet of the adjacent agriculturally-
321 or residentially-zoned property line or, when separated by an applicable
322 right-of-way, within 100 feet of the confronting property line.
323 (b) When adjacent to an agriculturally- or residentially zoned property and
324 not separated by an an applicable right-of way:
325 (1) The required 100-foot setback must contain at least an 8-foot
326 evergreen hedge, a 6-foot solid wall or fence, and 1 deciduous tree
327 planted at a minimum of every 30 feet; and
328 (2) Illumination levels may not exceed 0.1 footcandles at the subject
329 property line.
330 (3) These requirements replace any applicable surface parking
331 landscaping requirements in Section 59-C-15.645.
332 (c) If the required distance between a driveway entrance for a limited use and
333 an adjacent or confronting agrilturally- or residentially-zoned property
334 precludes access to the property, the driveway ~~may be~~ built closer than
335 100 feet subject to reasonable mitigating requirements ~~above the~~

shall be permitted
to be

upon review and
approval by Planning
Board Staff which
process shall include
notice to adjoining
and confronting
property owners.

336 ~~minimum standards imposed through site plan approval by the Planning~~
337 ~~Board.~~

338 **59-C-15.6. General Requirements.**

339 Development in the CRN, CRT, and CR zones must comply with the following
340 requirements.

341 **59-C-15.61. Master Plan and Design Guidelines Conformance.**

342 Development that requires a site plan must be consistent with the applicable
343 master or sector plan and must address any design guidelines approved by the
344 Planning Board that implement the applicable plan.

345 ~~**59-C-15.62. Priority Retail Street Frontages.**~~

346 ~~Development that requires a site plan and is located on a street identified as a~~
347 ~~priority retail street frontage in the applicable master plan, sector plan, or design~~
348 ~~guidelines must be developed in a manner that is consistent with the~~
349 ~~recommendations and objectives of the applicable plan and address any applicable~~
350 ~~design guidelines approved by the Planning Board that implement the applicable~~
351 ~~plan.]~~

Comment [JCS59]: Redundant in practice with 15.61 above.

352 **59-C-15.62[3]. Streetscape.**

353 ~~Development that requires a site plan must improve the [S]streetscape along the~~
354 ~~property's frontage [improvements must be] consistent with the recommendations~~
355 of the applicable master or sector plan and must address any Planning Board
356 approved design guidelines that implement the applicable plan.

Comment [JCS60]: Any master plan reference should be with regard to projects that require a site plan.

357 **59-C-15.63[4]. Bicycle Parking Spaces and Commuter Shower/Change**
358 **Facility.**

359 ~~In place of the requirements of Article 59-E regarding bicycle parking spaces,~~
360 ~~development in the CRN, CRT, and CR zones must comply with the following~~
361 ~~provisions.~~

Comment [JCS61]: New introduction to section to clarify relationship to 59-E.

✓ (2)

892 with a slope at or below a ration of 2:12 and a minimum SRI of 25 for
893 slopes above 2:12.

894 (h) Recycling Facility Plan: 5 points for providing a recycling facility plan to
895 be approved as part of a site plan for buildings that must comply with
896 Montgomery County Executive Regulation 15-04AM or Montgomery
897 County Executive Regulation 18-04.

898 (i) Habitat Preservation and Restoration: Up to 20 points for protection,
899 restoration, or enhancement of natural habitats onsite or within the same
900 local watershed that are in addition to requirements of the Forest
901 Conservation Law or other county laws.

902 ~~59-C-15.88. Advanced dedication of right-of-way.~~

903 ~~When sketch plans or site plans are approved, the Planning Board may allow an~~
904 ~~incentive density not to exceed 30% for a prior dedication of rights of way for~~
905 ~~roadways, sidewalks, or bikeways recommended in the applicable master or sector~~
906 ~~plan, if the County or the State is responsible for constructing the facility on the~~
907 ~~right of way.~~

Comment [ICS116]: Moved to connectivity category.

908 **59-C-15.9. Existing Approvals.**

909 (a) One or more lawfully existing buildings or structures and the uses therein,
910 which predate the applicable sectional map amendment, are conforming
911 structures or uses, and may be continued, renovated, repaired, or
912 reconstructed to the same size and configuration, or enlarged up to a total of
913 10 percent above the total existing floor areas of all buildings and structures
914 on site or 30,000 square feet, whichever is less, and does not require a site
915 plan. Enlargements in excess of the limitations in this Subsection will
916 require compliance with the full provisions of this Division.

as well as any lawfully existing non-structural use,

February 17, 2011

By hand-delivery

Françoise Carrier, Esq., Chair
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910-3780

RE: CR, CRT and CRN Zones and Amendments

Dear Madame Chair and Members of the Planning Board:

This letter is submitted on behalf of 11250 Veirs Mill Road, LLC, owner of the Lindsay Ford properties in Wheaton, Maryland ("Lindsay") for inclusion in the record in the CR/CRN/CRT zones and the proposed amendments thereto. All references in this letter are to the latest Planning Staff Draft Redlines of February 15th to be addressed by the Board on February 17, 2011. We anticipate testifying at the Board's February 17th worksession.

59-C-15.41(c)(1). Standard Method Site Plan Review (Attachment "C", Pg. 7, Lines 178-179)

We fully support the Planning Board's determination that no site plan review is required for standard method development that is both below a 0.5 FAR and which adjoins or confronts a residential property. As Staff advised the Planning Board on February 3rd, the threshold of 0.5 FAR is analogous to what can already be built on an R-60 lot.

59-C-15.5(c). Land Uses, Commercial Sales and Service (Attachment "C", Pg. 13) and 59-C-15.3. Definitions (Attachment "B", Pg. 6, Line 136)

We do not support the Planning Board's proposal to eliminate "auto sales, outdoor" as a Limited Use in the CRN zone. As an alternative to this deletion, we suggest the inclusion in the CR, CRT and CRN of a more passive vehicle-related Limited Use.

Specifically, we recommend that "Vehicle Inventory Storage" be added to the list of Limited Uses permitted in the CR, CRT and CRN zones. This use category could be defined in the CR Zone definition section as: "A lot or structure used for storage of inventory vehicles on which no sales, service or repairs are allowed."

As proposed, this use category would allow only for storage of inventory vehicles on properties. This is a reasonable and necessary interim use both to support the existing Lindsay automobile business and given that this property's redevelopment is still many years in the future. The use would not allow customers to enter the site. Rather, inventory vehicles would be stored in a low-activity, well-screened area until such time as a customer wants to see a specific vehicle that has been stored on the property. An employee of the associated

dealership would then retrieve the vehicle and drive it to the primary sales facility for the customer to inspect. Thus, no sales activity would occur on the inventory vehicle storage site.

In the instance of the Lindsay properties on East Avenue, we note that vehicle trailers cannot access that road due to the steepness of the topography. Thus, the delivery of vehicle inventory by trailer is not a concern for that location. Moreover, the zone dictates the standards for lighting, screening, and buffering: all with the objective of making the use as unobtrusive as possible. If the property can meet the standards, the Limited Use should be permitted.

As a Limited Use with an existing access point less than one-hundred feet (albeit separated by East Avenue) from the closest residential property, the Lindsay property would not only have to satisfy the specific design requirements of Section 59-C-15.12, but would actually have to exceed these requirements. Any structures or parking of stored vehicles would have to be setback at least 100 feet from the nearest residential property. Further, in addition to the minimum design requirements consisting of an eight-foot evergreen hedge, six-foot solid wall or fence, one deciduous tree per thirty feet, and footcandles not exceeding 0.1 at the property line; the use would also have to provide additional visual or noise buffering. For example, lighting on the Lindsay property could be provided by box lights with cut-off fixtures no higher than the evergreen hedge, by bollard lights, etc. Noise would be minimal because the only onsite activity would be the limited entry of inventory vehicles for storage or exit of vehicles to be shown to customers elsewhere. Additionally, the requisite landscaping and buffering would screen visibility of stored vehicles from neighboring residences.

59-C-15.9. Existing Approvals (Conforming Uses), (Attachment "D", Pg. 11, Line 258)

We recommend inserting specific protective language for all existing uses, both structural and non-structural, into the "Existing Approvals" section. We note that this grandfathering section appears to have overlooked protection for existing non-structural uses. **Specifically, we suggest adding the phrase, "as well as any lawfully existing non-structural uses" at the end of the first line of text in Section 59-C-15.9.**

Thank you for your consideration.

Very truly yours,
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: Anne Marie Vassallo
Anne Marie Vassallo

cc: Chair and Members of the Planning Board
Mr. Joshua Sloan
Ms. Sandra Tallant
Mr. Chris Lindsay
Larry A. Gordon, Esq.

Item #9: Amendments to the CR Zone
January 13, 2011

My name is Meredith Wellington, and I am speaking as an individual.

I. Please suspend consideration of these amendments in order to restore certainty and confidence in the zoning process. Instead rely on existing zones to address the needs of the Kensington, Takoma-Langley, and Wheaton CBD Master Plans. Given the complexity and confusion created by the CR zones, they should be amended through the Zoning Re-write process.

Last year, the County Council spent months working out the legislation that is the current CR Zone. The CR Zone was pulled out of the Zoning Re-Write process in order to facilitate the White Flint Master Plan, and last year there was much concern about that. Now the problem has been exacerbated. The CR zone was supposed to be seamless and deal with every mixed use zoning issue. That has not happened. Instead, the existing CR zone is being substantially rewritten to accommodate three other master plans. Meet the new zone, same as the old zones.

Moreover, the timing could not be worse. These amendments come just a week before the Planning Board considers some important sketch plans. The Board has not had the experience of taking one project through the new process created by the CR zone, and Staff is proposing major amendments—including amendments to the findings that the Board must make in approving a sketch plan! In addition, according to Staff, the Zoning Re-write is supposed to consider mixed-use zones in March, at the time that the County Council might be considering these amendments. Does this make sense? This is a waste of Commission and County Council resources and time, at a time when we have neither resources nor time to waste.

II. The amendments ignore the clear directive of the Council to support master plans by deleting most of the important references to the master plan, creating uncertainty as to the role of master plans, and substituting nothing in its place other than the administrative discretion of the Staff and ultimately the Planning Board. Please restore all references to the master plan that the draft deletes, and restore enacted provisions that the draft weakens.

Last year the Planning Board proposed that the CR zones be implemented by sectional map amendment only, and the Council put in the CR zones that they “can only be applied when specifically recommended by an approved and adopted master or sector plan and only by the sectional map amendment process.” Last week, Staff again tried to take out this provision. It was mysteriously returned, but the other sections where the Staff deleted or watered down the master plan remain. **We ask that the Planning Board reject these amendments and retain the current CR zone requirements, as follows:**

- I. **Retain Sec. 59-C-15.13 permanently—Please don't keep deleting it.** Staff deleted and then restored the requirement that the CR zones must be specifically recommended in a master or sector plan—please keep it.
2. **Retain Sec. 59-C-15.42 (c) (4) master plan standard for sketch plan approval.** Enacted Sec. 59-C-15.42 (c) (4) provides as follows:
In approving a sketch plan, the Planning Board must find the following elements are appropriate in concept and appropriate for further detailed review at site plan:
(4) “The proposed public benefits and associated requested incentive density will further the objectives of the applicable master or sector plan and the objectives of the CR zones...” (Emphasis added.) **versus** the amended version, Sec. 59-C-15.43 (c):

In approving a sketch plan, the Planning Board must find the following elements are appropriate in concept and appropriate for further detailed review at site plan. The sketch plan must:

(5) Delineate an outline of public benefits that compensate for the requested incentive density;

3. **Retain Sec. 59-C-15.62. Priority Retail Street Frontages.**

The enacted section provides as follows:
Development that requires a site plan and is located on a street identified as a priority retail street frontage **in the applicable master plan, sector plan, or design guidelines must be developed in a manner that is consistent with the recommendations and objectives of the applicable plan** and address any applicable design guidelines approved by the Planning Board that implement the applicable plan. (Emphasis added.)

The proposed amendment deletes this provision in its entirety.

4. **Retain Sec.59-C-15.63 Streetscape. The CR zone presently provides that all streetscape in any proposed development must be consistent with the recommendations of the applicable master or sector plan.**

“Streetscape improvements must be consistent with the recommendations of the applicable master or sector plan and must address any Planning Board approved design guidelines that implement the applicable plan.”

The proposed amendment changes that, and only requires master plan consistency if site plan is required, and only along the property's frontage. The new section provides as follows:

“Development that requires a site plan must improve the streetscape along the property’s frontage consistent with the recommendations of the applicable master or sector plan and must address any Planning Board approved design guidelines that implement the applicable plan.”

This section is important because it assures that standard method developments will also comply with the master plan, and that there will not be gaps in streetscape.

5. Retain the current Public Use Space requirement contained in enacted Sec. 59.15.74(e).

This provision provides as follows:

“(e) A development on a site larger than 3 acres may only provide off-site public use space in order to provide master-planned open space improvements, or a payment under Subsection (d)(2), for an area equal or greater size required on site that is:

- (1) located within the same master plan area as the proposed development; and
- (2) indicated on the approved sketch plan.”

The proposed amendment deletes this provision in its entirety.

6. Last, but certainly not least, the amendments delete or weaken the entire section of the CR zone on the public benefits in return for increased density. Retain the current “Special regulations for the optional method of development” contained in Sec. 59-C-15.8.

This section must be read in its entirety to understand the harm it does to the original scheme for public benefits that was approved by the Council. Much of the discussion of this issue at the PHED Committee had to do with assuring that developers would have incentives to build master-planned public facilities. The example that was used was the recreation center at Friendship Heights **that was recommended in the Friendship Heights Sector Plan**, and subsequently built to County recreation center specifications by New England Development at Wisconsin Place. In the Council’s opinion, it notes that the PHED recommended “a maximum 70 percent density increase for major public facilities” to “allow the opportunity for a repeat of the type of recreation center at Friendship Heights.” p. 5.

Accordingly, the language in Sec. 59-C-15.81 provided that “This section establishes incentives for optional method projects to provide public benefits...consistent with the applicable master or sector plan...”

To that end, “Master planned major public facilities” was one category in the seven categories of public benefits that “must be provided”, and was a separate section, Sec. 59-C-15.82. The current draft deletes both of those references to the master plan. The category is now “Major public facilities...” This is a major denigration of a very important public benefit—the master-planned public facility.

In enacted Sec. 59-C-15.83 (d) (1) dealing with the CR incentive density guidelines, the current law requires that the guidelines be “consistent with the recommendations and objectives of the applicable master or sector plan and the purpose of the CR zones...”

The proposed amendment creates a new section on guidelines—Sec. 59-C-15.84 that deletes the references to the master plan, and states that “Guidelines must be: Consistent with the objectives of this Division...” **These changes fly in the face of the Council’s mandate last March, and serve no purpose other than to insure that facilities like the community center will not be built.**

III. The Council struggled with a serious illegal delegation issue, concerning delegating to the Planning Board the development of guidelines that would not be approved by the Council. The amendments go back to the kind of language that created the problem in the first place.

1. Where is this problem? Look at new Sec. 59-15.83 (f), stating that the Planning Board, in approving any incentive density based on public benefits, must consider “Enhancements not listed in the individual public benefit descriptions or criteria that increase public access to or enjoyment of the benefit.” The underlined portion was added in the amendment. The enacted version is the same as that quoted, but without that phrase. Then, in new Sec. 59-C-15.85, where the caption “Incentives for Master-Planned Facilities” is deleted, the amendments give examples of public facilities, adding “but not limited to”. Without the finite list of public facilities in the master plans, and by adding the “not limited to” language, the Planning Board can approve public benefits for added density that do not come from the delegation of authority from the Council.

2. The last straw is in new Sec. 59-15.84 on the incentive density guidelines. The amendments delete the directive of the enacted legislation that “The guidelines must...only address the public benefits listed in Sections 59-C-15.82 through 59-C-15.88 and must not add a public benefit category...” Current Sec. 59-15.81(d) (4).

Again, this flies in the face of Council action last March. At p. 6 of the Opinion, the Council stated that

Standards were provided [by the Council] for Planning Board approved guidelines. The standards include a provision so that guidelines could only address the listed public benefits and may not add more public benefit categories. (Emphasis added.)

The amendments have deleted the very language that Council inserted to address the illegal delegation question.

IV. The amendments significantly broaden “by right” development—standard method—and yet appear to take the position that standard method development does not have to be consistent with the master plan unless the standard development requires a site plan.

The streetscape amendment changed the current law that provides that all streetscape must be consistent with the applicable master plan, and limited it to streetscape in a development that “requires a site plan...” Sec. 59-C-15.62, The note in the margin says “Any master plan reference should be with regard to projects that require a site plan.” Given the expansion of standard method in these amendments, adoption of this view could result in patchwork development that does not reflect an overall planning concept. **Please make clear to the Staff that the master plan does apply to standard method development with or without site plan.**

Exactly, how much is the expansion of by right development? Last week, the Board discussed a maximum 2.5 FAR and a height of 80 feet. This week’s draft reduces the FAR to 2.0 and keeps the 80’ height. This density, even with the reduced FAR, is too great for the standard method. **Please return to the densities and heights in the current CR zone for standard method.**

But the amendments also add some new criteria to Sec. 59-C-15.41 that was not in the text last week. For the CRN zone, the maximum height and density are set by the zone. The CRT and CR zones are treated differently. It provides that “If either the maximum non-residential or residential density specified by the zone is greater than the standard method density, then up to the maximum total density allowed may be developed with that use.” This is hard to understand. One interpretation, however, is that the developer can apply for standard method and still get the extra density in the zone, but not the height. **Can Staff please clarify what this section, Sec. 59-C-15.41 (b) and (c) means?**

Conclusion

These amendments are presently not ready for Council consideration. Instead, the amendments should be sent to the Zoning Re-write Project to be discussed in March as part of the section on mixed-use zones. If the Planning Board nevertheless chooses to send the amendments to the Council, please change the amendments as set out above. Thank you very much for considering this testimony.

To: Francoise Carrier, Chair
Montgomery County Planning Board

From: Meredith Wellington

Cc: Rollin Stanley, Josh Sloan, Carol Rubin, David Lieb

Subject: Item #11--Pending Amendments to the CR Zones

Date: January 26, 2011

The more one reads the CR zones with the proposed amendments the less understandable they become from the perspective of their regulatory effectiveness. The sum of all of the subtractions and additions reduces the zones to a kind of "rulemaking", where the only entity in the process with any sizable discretion and control is the developer. This is the result of multiple causes. It is caused by the removal of many of the references to the applicable master plan that had placed the proposed development in a context; the deletion of important standards for the Board's review of the sketch plan that make it very difficult for the Board to have meaningful review; and the reduction of public benefits to a laundry list of things, most of which would have happened any way in a major project, or which add very little value to the project. For example, the addition of a public charette is not of lasting value to the new development. That should either be required in the process for obtaining approval or deleted.

As it stands, if these amendments were to be enacted, only the site plan findings would give the Board the appropriate authority to review proposed development:

The Planning Board must not approve the proposed site plan if it finds that the proposed development would not achieve a maximum of compatibility, safety, efficiency, and attractiveness. **The fact that a proposed site plan may comply with all applicable development standards or other specific requirements of the applicable zone does not, by itself, create a presumption that the proposed site plan is, in fact, compatible with surrounding land uses and, in itself, is not sufficient to require the Planning Board to approve the proposed site plan.** Sec.59-D-3.4 (d), emphasis added.

This Board has an opportunity to amend the CR zones to make them procedurally and substantively workable. Right now, many changes are moving backwards towards last year's battles. This Board must move the CR zones forward to zones that are administratively efficient, provide meaningful Planning Board and public participation, and protect single family communities through, inter alia, master plan and compatibility requirements.

The following are the bare minimum for putting some meat on the bones of the CR zones, as proposed to be amended:

1. **Restore the current CR zones' references to the master plan—most importantly in the section on public benefits, Sec. 59-C-15.8.** See also Secs. 59-C-15.42 (c (4)); 59-C-15.62; 59-C-115.63; and 59-C-15.74(e). I have attached my testimony of January 13th with the specific problems with each deletion.
2. **Retain Sec. 59-C-15.13—the requirement that the CR zones must be specifically recommended in an approved master or sector plan.**
3. **Do not add to Sec. 59-C-15.61 Master Plan and Design Guidelines Conformance the qualifier that “unless the Board finds that events have occurred to render the applicable Master Plan no longer appropriate.”** This would make the section virtually meaningless. Change “consistent” to “conforms”.
4. **Reject the Staff Draft's changes to Sec. 59-C-15.2 Descriptions and Objectives of the CR Zones. Strengthen the current statement of the objectives of the CR zones. Right now the description states the objectives of the zone better than the objectives section does.** The objectives need to be fleshed out. See Exhibit 1 for a rewrite of the enacted section. The objectives then need to be tied to the Board's findings re sketch plan, so that the Board clearly finds that the proposed development meets the objectives of the zone.
5. **The standard method, as currently proposed, allows too much height and too much density in all three zones. The standard method should not be available for any project in a CR zone that exceeds an FAR of 0.5, a height of 40', or 10,000 square feet of gross floor area.** This is so because the standard method does not require sketch plans, public benefits, or in many cases public use space, and site plan, when required, is simply too late in the process to permit meaningful participation by affected communities.
6. **Because the CR zones are supposed to be used for infill development near established communities, sketch plan and site plan should be required for all CR projects, standard and optional. If, however, the Board is going to follow the scheme proposed by Staff, then Sec. 59-C-15.41 (d), as amended in the new amendments proposed for this work session, needs to be changed.** In the newly amended draft, Sec. 59-C-15.41 (d) requires site plan approval for the standard method in four different situations, the first one being, if the development “is adjacent to or confronting a property in an applicable residential or agricultural zone” and

“requests a maximum total density exceeding 0.5 FAR”. What does “applicable” mean? Why is the density added, so that both requirements have to be met? This provision does not give adequate protection to existing neighborhoods.

7. **Change Sec. 59-C-15.42 Optional method to strengthen, not weaken, the requirements for the sketch plan application, and the findings that the Planning Board must make before it approves the sketch plan. Delete references to “binding elements”, since that is a term used in rezoning cases, and it is confusing in the context of a different regulatory scheme. I have attached Exhibit 2, with suggested changes to the enacted section.**
8. **Make changes to Sec. 59-C-15.8, the section on public benefits. Delete all incentive density categories that are already required by law or of no real benefit to the project and/or to the community. Delete all new incentive densities in the amendments. I have attached Exhibit 3, with suggested changes and deletions to the enacted section. In addition to the deleted incentive densities in Exhibit 3, other deletions should include transit access improvements, trip mitigation, advance dedication, grey-field development, public use space, architectural elements, and public charette.**

Thank you very much for your consideration of these matters.

Item 6--CR Zones ZTA
February 17, 2011

Comments and Testimony of Meredith Wellington

Thank you very much for the opportunity to submit comments and to testify. Thank you, too, for extending the period of time in which you are reviewing the ZTA.

This ZTA further weakens an already flawed group of zones, and requires many changes before the zones can achieve the goals for which they were written.

Question: Are we better off now with the new CR zones than we were with some of the old zones?

Answer: No. In terms of administering the zones, assuring meaningful public participation, development standards like streetscape, overall compatibility, and public benefits, we were better off under the CBD and CT zones, then we are either with the CR zones as currently enacted or as proposed in the ZTA. In fact, the ZTA, by, inter alia, increasing the amount of development allowed by standard method, and decreasing the role of the master plans in the zoning and development processes, has weakened a law that was already substantially flawed.

I have submitted many previous comments during the Board's review of the ZTA, and I incorporate them into this statement. Today, I will present an overview of my concerns.

I. STANDARD METHOD. The ZTA reduces the role of the Planning Board in the planning process by increasing the amount of development allowed in "by-right" standard method.

A. As I have stated before, because the CR zones are designed for infill development, the process for standard and optional methods should be the same—sketch plan and site plan.

B. Even if there is greater review, however, the density and heights of developments that can be built under the standard method should be greatly reduced so long as there are no public benefits for standard method. Right now, the differences between standard and optional method are, in my opinion, greater than the differences between the three zones.

II. OPTIONAL METHOD—The ZTA reduces the role of the Planning Board in the planning process by using confusing standards for review under the optional method. The Board needs to clarify the ZTA so that it is crystal clear

that the Planning Board has absolute authority to reject applicants' sketch plans. It also needs to clarify the grounds on which it would do so.

A. First, the Board needs to reexamine the objectives of the zone. Right now, the main focus of the objectives is to encourage a mix of uses, and reduction of dependency on the automobile. There is now a compatibility requirement that is a major improvement, but then Staff added the new wiggle language of "parameters" instead of "requirements" for public benefits. Where are the objectives for high quality development that enhance the quality of life of residents in other respects? The descriptive sentence re "The zones promote economically, environmentally and socially sustainable development patterns..." sounds good, but it should be incorporated in the objectives, otherwise it has little value. Sec. 59-C-15.2.

B. Second, the Board needs to resolve the head-scratching disconnect between the process for sketch plan and the process for site plan. Sketch plan is a sketch, it's illustrative, it's conceptual, it's an outline. But as fluid as things are at sketch plan, at site plan there is an elaborate notice process for changes, and a question has even been raised as to whether the Planning Board can make changes.

C. What happened between sketch plan and site plan that made these matters carved in stone? Nothing. In my opinion, the sketch plan is not nearly as fluid as some would like it to be. The key here is to look at the Board's authority at sketch plan to "approve; approve subject to modifications, conditions, or binding elements; or disapprove." Sec. 59-C-15.43 (a) (4). **If the Board adds conditions, then those conditions must be met at the time of site plan. The conditions are therefore requirements that the applicant must meet in order to obtain site plan approval.** The Board should delete the term "binding elements" because that is a term with a special meaning for development plans that is not applicable to this process. If the term is not deleted, it must be defined for the CR zones.

D. If the objectives are better defined; if it is clarified that the Planning Board, not the applicant, decides which public benefits it will accept in return for the added density; and if the Board imposes conditions to reflect these matters, then the sketch plan will have true value and significance.

III. There are many new development standards that are vague and subjective, and of little use to the Planning Board in making necessary findings.

- A. New Sec. 59-C-15.2 (e) Descriptions and Objectives of the CR Zones. New "parameters" v. current "requirements."**
- B. As mentioned earlier, the sketch plan submissions and findings in Sec. 59-C-15.43: adding "outline" to the phasing plan. Sec. 59-C-15.43 (a) new (4).**
- C. In Sec. 59-C-15.43 (c), new (4), the substitution of "satisfactory" for "adequate, safe, and efficient." What does satisfactory mean in this context? Is it the same as adequate?**

- D. In same section, new (5), adds “outline” of public benefits, in the place of “proposed public benefits”.
- E. In same section, new (6) “establishes a feasible and appropriate provisional phasing plan, “ instead of “The general phasing plan...is feasible and appropriate to the scale and characteristics of the project.”
- F. Same section, (d) (2)—the new provision that lumps the Planning Board with Staff and interested parties, is extremely confusing. The Planning Board should not be included with Staff and interested parties. The Planning Board deliberates in public after notice of the hearing and after the Staff has issued its report. It may impose conditions (“changes”) at the hearing after it has heard all of the testimony and read the submissions.
- G. Sec. 59-C-15.636—allows the Planning Director, the Planning Board, and DPS to waive parking provisions. This is a virtual guarantee of arbitrary results. A similar issue arose when DPS and the Planning Board had different standards for measuring building height. There is also an issue re allowing the Planning Director to grant the waiver. When would this occur? If it’s standard method, it goes to DPS. If it’s standard method with site plan, or optional method, it goes to the Planning Board.
- H. Sec. 59-C-15.73 Public Use Space. Again, this is weaker than the current public use space requirements in CR zones and other zones. What is the public policy interest, for example, in deleting (e), requirements for public use space on sites larger than 3 acres?

IV. There are special concerns with the master plan changes and the diluting of the public benefits section.

In other comments, I have already discussed the deletion of the references to the master plan, and the problems with giving added density because a development is near transit, abides by the law, or puts items into the project that it would do anyway irrespective of density incentives. See February 8 comments of Julie Davis and me.

There is new concern raised by the Board’s decision to alter Sec. 59-C-15.61 Master Plan and Design Guidelines Conformance, by adding that the master plan can be abrogated if the Board finds that “events have occurred to render the relevant master or sector plan recommendation no longer appropriate.” (Mysteriously, the development must still “substantially conform” to any design guidelines—even though one would think that the design guidelines flow from the master plan.)

What kind of events? Would increased costs make recommendations no longer appropriate? How much of an increase? Who would make that determination? Could these events occur within a year or so of the approval of the plan? What does

“appropriate” mean? This phrase can mean many different things to many different people, and, therefore, no real standard is established, only the subjective judgment of a Planning Board that is regularly changing.

Similarly, the new amendments make the decisions about public benefits more subjective and amorphous. In Sec. 59-C-15.851 (new), the Board is no longer looking primarily for master-planned major public facilities. Instead, “major public facilities provide public services at convenient locations and where increased density creates higher demand for civic uses and demands on public infrastructure.”

They include, “but are not limited to, such facilities as schools, libraries, recreation centers, parks, county service centers, public transportation or utility upgrades, or other resources delineated in an applicable master or sector plan.” In other words, there are major public facilities that are yet to be determined, but can be approved if the Planning Board finds that “the facility or improvement provides the community with a resource of particularly beneficial impact.” What would that be? This standard is vague and subjective. Moreover, this is exactly the kind of illegal delegation that the Council sought to avoid by making its delegation specific, and not permitting the Planning Board to create its own public benefits. With all of these changes, the likelihood of obtaining master-planned major public facilities is greatly reduced, as well as the likelihood of any major public facilities, as the term was understood until now.

Given what happened in the White Flint sketch plans under the current CR zones, one would have expected Staff to suggest clarifying language that increased the likelihood that there would be public master-planned benefits from enormous developments like those at issue there. Instead, if these amendments are enacted, there will be more reliance on the subjective decisions of Staff rather than the approved and adopted master and sector plans. The master and sector plans have been reviewed and approved by Council; the unknown public benefits have not.

The public benefits section must be changed so that the public is assured that the benefits that it has been promised (often after substantial community participation) in the master or sector plan are not crowded out by a host of small things that the developer is already required to do by law, or would do any way as necessary to the completion of the development, or that come out of left field and replaces public benefits that have already been vetted.

I respectfully request this Board to make substantial changes in the ZTA before sending it to the Council. These changes are set out in my comments on January 13, January 26, February 8, and above.

Thank you very much for your consideration of these matters.

To: Françoise Carrier
Chair
Montgomery County Planning Board

From: Meredith Wellington

Re: CR Zones ZTA and Amendments

Date: February 22, 2011

I am writing about two matters: 1) the “objectives” clause, and 2) binding elements. I ask that this memo be included with the record for the CR Zones ZTA.

1. “Objectives” Clause

I am attaching a draft with revisions to Sec. 59-C-15.2 Description and Objectives of the CR Zones. Along with other changes that I have suggested in my other submissions, I believe changes of this nature are needed in order to establish standards for the Board to make a required determination that the sketch plan meets the “objectives” of the “Division”, i.e., zones. Sec. 59-C-15.43 (c) (1). These changes cure the one problem, but not the larger problem that the CRN and CRT zones have a different overarching objective from the CR zone—revitalization.

2. Binding Elements

Secondly, at the work session there was testimony that the District Council, in enacting the CR zones last March, intended that only the applicant could make changes in binding elements at site plan.

The District Council’s Opinion that issued last March at the time of final passage of the CR Zones is to the contrary, as is the language of the ZTA itself.

Sec. 59-C-15.3 (d) currently provides that “During site plan review, the Planning Board may approve modifications to the binding elements and conditions of an approved sketch plan.” This sentence states that the Planning Board may approve modifications to the binding elements, with no limitation on who may propose modifications or when those modifications may be proposed.

Sections (d) (1), (2), and (3) establish notice requirements for modifications by the applicant and the Planning Board before and during the site plan hearing. Sections (d) (1) and (2) deal, respectively, with changes that are proposed (1) before the site plan application, and (2) after the site plan application. Section (d) (3) deals with changes that are proposed at the site plan hearing: “In acting to approve a sketch plan modification as part of site plan review, the Planning Board must make the findings required in Section 59-C-15.42 (c) [sketch plan findings] in addition to those required by Section 59-D-3 [site plan findings].” The Planning Board’s making the necessary findings for sketch plan and site plan, is the only condition precedent to the Planning

Board making changes at the site plan hearing.

The Opinion discusses Sec. 59-C-15.3 (d) in two different places. First, on page 3, last box, the Opinion summarizes the PHED Committee's recommended revision of ZTA 09-08 as introduced, the reason for the PHED Committee's revision, and alternatives that were rejected, as follows:

"PHED Recommended Revision—Revise the Planning Board's authority to amend a sketch plan (2-1, Councilmember Knapp opposed to a unilateral change)

Reason for the revision—The Planning Board should have the discretion to judge new information when a site plan is approved; discrepancies from the sketch plan should be noted in the staff's report

Alternative considered—Require applicant's consent to change the essential elements"

Second, on page 6, the District Council states that it agrees "with the recommendations of the Planning, Housing, and Economic Development Committee, except as follows :

.....

"2) The process for modifying the binding elements or conditions of an approved sketch plan was clarified to provide for amendments proposed by the applicant or by Planning staff."

Thus, the District Council intended that the Planning Board can make changes in binding elements at the time of site plan, with or without the consent of the applicant.

Finally, I believe that the Planning Board should, nevertheless, delete the term "binding elements" from the ZTA, because it is a term of art for rezoning, and, therefore, confusing in this context. But, whether deleted or not, the Board currently has the authority to make changes to binding elements at site plan.

Thank you for your consideration of these matters.

Meredith Wellington

Sec. 59-C-15.2, as revised by Board Staff on 2/17/11
Changes in Black are by Board Staff; Changes in Red are by Author

59-C-15.2. Description and Objectives of the CR Zones.

The CRN, CRT, and CR zones permit a mix of residential and non-residential uses at varying densities and heights. The objectives of the zones are to promote economically, environmentally, and socially sustainable development [patterns] where people [can] live, work, recreate, and have access to services and to public benefits and amenities. [~~while minimizing the need for automobile use.~~][~~The application of the CR zones is appropriate where ecological impacts can be moderated by co-locating housing, jobs, and services.~~][~~The~~] Additional objectives of the CRN, CRT, and CR zones are to:

- (a) implement the [policy] recommendations of applicable master and sector plans;
- (b) [target] create opportunities for redevelopment of commercial single-use areas and surface parking lots with a mix of uses;
- (c) reduce dependence on the automobile by encouraging development that integrates a balanced combination of housing types, mobility options, commercial services, and public facilities and amenities;
- (d) ensure compatibility with existing, adjoining neighborhoods by requiring [allow] a [flexible] mix of uses, densities, and building heights appropriate to [various contexts to ensure compatible relationships with] existing, adjoining neighborhoods; and[~~encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;~~];
- (e) ~~establish the maximum density and building height for each zone, while retaining appropriate development flexibility within those limits; and~~
- ~~(f)~~(e) [standardize] improve optional method development by establishing

~~[minimum parameters]~~ requirements for the provision by the developer of
~~[the]~~public benefits and amenities that will create an enhanced environment
that both supports and ameliorates the impacts of the greater densities and
intensities. ~~[that will~~
~~support and accommodate density above the standard method limit]~~.

CLERK'S NOTE: Technical corrections made to lines 101-102, 461, 1060, and 1107.

CORRECTED

Ordinance No: 16-44

Zoning Text Amendment No: 09-08

Concerning: Commercial/Residential
(CR) Zones - Establishment

Draft No. & Date: 9 - 3/02/10

Introduced: September 22, 2009

Public Hearing: October 27, 2009

Adopted: March 2, 2010

Effective: March 22, 2010

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Establish Commercial/Residential (CR) zones; and
- Establish the intent, allowed land uses, development methods, general requirements, development standards, density incentives, and approval procedures for development under the Commercial/Residential zones.

By adding the following Division to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-15 "COMMERCIAL/RESIDENTIAL ZONES"
Sections 59-C-15.1 through 59-C-15.9

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

OPINION

Zoning Text Amendment No. 09-08 was introduced on September 22, 2009 at the request of the Planning Board, to establish CR zones.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved with amendments.

The County Council held a public hearing on October 27, 2009 to receive testimony concerning the proposed text amendment. The Council received a significant amount of testimony, both in support of and in opposition to ZTA 09-08. The Executive expressed general support for ZTA 09-08 but had some concerns about the ZTA that were discussed during worksessions, including the delegation of authority to the Planning Board with insufficient standards, and density incentives that require ongoing monitoring or are already required by the County Code.

As a general characterization, the development community was generally in support of the ZTA with amendments to clarify the zone's intent, allow flexibility from specific standards, and change transit proximity standards. The civic community expressed concerns about how the zone would be applied to property, the sketch plan process (particularly its ability to provide adequate information to the community), the value to the community of some density increasing attributes, and the ability of communities to negotiate for major public facilities and open spaces. Some testimony suggested using the TMX zone with amendments instead of creating a new CR zone. This testimony questioned the need for the new CR zones in advance of the Zoning Ordinance Re-write project. The City of Takoma Park raised concerns about the impact of the CR zones on small lots. Questions about the zones' legality were also raised.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation. The Committee received briefings from the Planning Department, both before and after the introduction of ZTA 09-08, on July 27, 2009 and on October 13, 2009. In 2009, the Committee conducted worksessions on ZTA 09-08 on November 2, 9, 17, and 23. In 2010, the Committee conducted worksessions on January 11 and 25. Planning Board and Planning Staff recommendations changed over this time period. The Committee allowed interested parties to speak and participate during its worksessions.

On January 25, 2010 the Committee (2-1, Councilmember Elrich opposed) recommended approval of ZTA 09-08 with amendments. A majority of the Committee believed that the ZTA would aid in the implementation of the Gaithersburg West Sector Plan, the White Flint Sector Plan, and other master and sector plans. Councilmember Elrich believed that existing zones could be amended to implement the plans before the Council.

The following table summarizes the Committee's recommended changes from ZTA 09-08 as introduced.

PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow density averaging between different CR zones (line 28) (2-1, Councilmember Elrich would allow density transfers only from a lower to a high density zone)	Density averaging allows for greater design flexibility	Allow density averaging only from a lower density zone to a higher density zone
Apply a CR zone only if it is specifically recommended in a master plan instead of in conformance with a plan	The master plan process allows for a careful consideration of properties; a conformance requirement would allow a sectional map amendment to replace current zones with CR zones	
Delete the definition of locally owned small business	Creating a density incentive for small retail spaces instead would be more easily enforced	
Revise the definition of recreation	Simplifies the allowable land uses	
Add definitions of renovation and reconstruction	This clarification was requested by the City of Takoma Park	
Revise the definition of transit proximity (2-1, Council President Floreen would allow a transit proximity density increase for bus service)	Bus service changes over time and therefore should not justify decreased parking and increased density; proximity should be determined by the building's distance to transit	Create 3 levels of transit proximity; allow some density increase for bus stop proximity
Delete a site plan requirement caused only by trip productions	Buildings smaller than 10,000 feet of floor area should not warrant site plan review in CR zones	
Require a sketch plan application before or with a preliminary plan application	The sketch plan should be the starting point for subsequent applications	
Defined sketch plan process	The process and requirements for approval were not clearly defined; clarification was requested by civic communities	Require a single sketch plan for land under single ownership
Revise the Planning Board's authority to amend a sketch plan (2-1, Councilmember Knapp opposed to a unilateral change)	The Planning Board should have the discretion to judge new information when a site plan is approved; discrepancies from the sketch plan should be noted in the staff report	Require applicant's consent to change the essential elements

PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow Planning Board to adopt design guidelines that implement the master plan; applicant must address the guidelines at site plan	The Planning Board's guidelines can respond to changing circumstances	Require Council approved regulations instead of guidelines
Allow Planning Board guidelines to designate priority retail streets	The Planning Board's guidelines can respond to changing circumstances	Designate priority retail streets in a master plan or in Council approved regulations
Revise the requirement for bike parking	The requirements should be amended to be progressive with the size of buildings; references for free parking should be deleted	
Reduce the number of parking spaces for retail and restaurants (lines 306-315)	The current parking requirements are too high; 4 spaces for every 1,000 square foot of leasable space is sufficient	
Apply parking rates to the gross floor area within each distance category	The distance from transit should determine the parking reduction, not a single categorization of a large site	
Allow drive-through service windows on side walls, if screened	The visual objections to service windows can be mitigated with screening	
Delete the landscaping requirement for internal streets and sidewalks	No buffering should be required internally	
Amend the floor area allowed as a standard method development (the larger of .5 FAR or 10,000 square feet of floor area)	Buildings less than 10,000 sq. ft. are too small to invoke the optional method of development process	
Allow for retaining existing setbacks	Setbacks for existing buildings have established the neighbors' expectations	
Amend public use space requirements and apply the requirement to the total area within a sketch plan application; limit off-site public use space	Open space on an individual lot is unimportant; the amendment would simplify differences to 5% between classifications; allow small developments (less than 10,000 square feet that do not require site plan approval) to have no public use space; large sites should have on-site public use space	Do not require any standard method project to provide public use space; some optional method projects would not be required to provide public use space

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PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow the Planning Board to adopt guidelines to determine the density increase for every criteria	Planning Board guidelines can change with changed circumstances	Determine the maximum density increase in the text of the zone or in Council approved regulations
Allow a maximum 70 percent density increase for major public facilities or sites	Major public facilities can be a justification for greater density than other density-increasing criteria; allow the opportunity for a repeat of the type of recreation center in Friendship Heights	
Amend the density increase for proximity to transit	The relative difference of transit ridership for dedicated transitways is closer to heavy rail than was reflected in the Planning Board's numbers as introduced	Do not allow any density increase for transit proximity
Apply density increase for proximity to transit proportionally	The distance from transit should determine the density increase, not a single categorization of a large site	
Amend the BLT provisions to make the purchase of BLT easements in exchange for additional density optional	Requiring BLTs would reduce development in the CR zone by increasing costs; allow 20,000 sq. ft. of floor area per BLT purchased as an option without any requirement; allow payment for a partial BLT	
Prohibit density increases from community gardens, floor plate size, bio-retention and stormwater recharge, rainwater reuse, dark skies, or LEED ratings (2-0, Council President Floreen absent)	These attributes duplicate similar attributes for which there may be density increases, some attributes that can be addressed by other laws or regulations; "Dark Skies" interjects standards on single projects that are effective only when applied to all projects	
Amend the grandfathering provisions	The CR zones should not invalidate approved plans or the conforming status of existing structures; only non-grandfathered increments should be subject to the standards of the CR zone	Provide grandfathering for additions of 30,000 square feet without any FAR limit

The District Council reviewed Zoning Text Amendment No. 09-08 at worksessions held on February 9, February 23, and March 2, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, except as follows:

- 1) Although density may be averaged between different CR zones, the density of a lot or parcel adjoining or confronting one-family residentially zoned or agriculturally zoned lots or parcels may not be increased.
- 2) The process for modifying the binding elements or conditions of an approved sketch plan was clarified to provide for amendments proposed by the applicant or by Planning staff.
- 3) Standards were provided for Planning Board approved guidelines. The standards include a provision so that guidelines could only address the listed public benefits and may not add more public benefit categories.
- 4) The method of determining transit proximity was revised to allow a project that was at least 75 percent of its land area in a single category to be classified in that category.
- 5) Because increased development increases the demand for housing in the Agricultural Preserve, the purchase of Building Lot Termination (BLT) easements was made a requirement for optional method projects; the provisions for the optional purchase of BLT easements were modified to make the option more attractive to applicants.
- 6) In order to address transportation issues, 2 public benefits were added for dedication of rights-of-way in advance of a sketch plan application and for a binding trip mitigation agreement.
- 7) In order to address the need for wheelchair accessible dwellings, the Council added a public benefit for the voluntary provision of such housing.
- 8) The Council allowed outdoor automobile sales to be prohibited by municipalities.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-08 will be approved as amended.

The Council was aware of the Zoning Ordinance Re-write project and it intends to apply CR zones only by the specific recommendations of a master plan or sector plan.

Exhibit 1

59-C-15.2 Description and objectives of the CR zones.

The **CRN, CRT, and CR** zones permit a mix of residential and non-residential uses at varying densities and heights. The **objectives of the zones are to** promote economically, environmentally, and socially sustainable development patterns where people can live, work, and have access to services and amenities while minimizing the need for automobile use[.], **and to apply** [The application of] the CR zones [is appropriate] where ecological impacts can be moderated by co-locating housing, jobs, and services. [The] **Additional** objectives of the CR zones are to:

(a) implement the policy recommendations of applicable master and sector plans;

(b) target opportunities for redevelopment of single-use areas and surface parking lots with a mix of uses;

(c) reduce dependence on the automobile by encouraging development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities;

(d) encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;

(e) establish the maximum density and building height for each zone, while retaining appropriate development flexibility within those limits; and

(f) standardize optional method development by establishing minimum requirements for the provision of the public benefits that will support and accommodate density above the standard method limit.

(Legislative History: Ord. No. 16-44, § 1.)

Exhibit 2

59-C-15.42. Optional method.

Optional method development must comply with the general requirements, [and]development standards, **and objectives** of the CR zones and must provide public benefits under Section 59-C-15.8 to obtain greater density and height than allowed under the standard method of development. A sketch plan and site plan are required for any development using the optional method. A sketch plan must be filed under the provisions below; a site plan must be filed under Division 59-D-3. Any required preliminary subdivision plan must not be submitted before a sketch plan is submitted.

(a) A sketch plan application must contain:

(1) a justification statement that addresses how the project meets the requirements and standards of **the zone and of this Division** for optional method development and describes how the development will [further the objectives of] **will conform to the applicable master or sector plan[;] , and further the objectives of the CR zones.**

(2) an illustrative plan or model that shows the maximum densities for residential and non-residential uses, massing, and heights of buildings; locations of public use and other open spaces; and the relationships between existing or proposed buildings on adjoining tracts;

(3) an illustrative diagram of proposed vehicular, pedestrian, and bicycle access, circulation, parking, and loading areas;

(4) a table of proposed public benefits and the incentive density requested for each; and

(5) the general phasing of structures, uses, public benefits, and site plan applications.

(b) Procedure for a sketch plan:

(1) Before filing a sketch plan application, an applicant must comply with the provisions of the Manual for Development Review Procedures, as amended, that concern the following:

(A) notice;

(B) posting the site of the application submittal; and

(C) holding a pre-submittal meeting.

(2) A public hearing must be held by the Planning Board on each sketch plan application no later than 90 days after the filing of an optional method development application, unless a request to extend this period is requested by the applicant, Planning Board staff, or other interested parties. A request for an extension must be granted if the Planning Board finds it not to constitute prejudice or undue hardship on any interested party. A recommendation regarding any request for extension must be acted upon as a consent agenda item by the Planning Board on or before the 90-day hearing period expires. Notice of the extension request and recommendation by Staff must be posted no fewer than 10 days before the item's agenda date.

(3) No fewer than 10 days before the public hearing on a sketch plan, Planning Board staff must submit its analysis of the application, including its findings, comments, and recommendations with respect to the requirements and standards of this division and any other matters that may assist the Planning Board in reaching its decision on the application. This staff report must be included in the record of the public hearing.

(4) The Planning Board must act within 30 days after the close of the record of the public hearing, by majority vote of those present and voting based upon the hearing record, to:

(A) approve;

(B) approve subject to modifications, conditions, [or binding elements]; or **DELETE "BINDING ELEMENTS."**

(C) disapprove.

(c) In approving a sketch plan, the Planning Board must find that the following elements are appropriate in concept and appropriate for further detailed review at site plan:

(1) The plan: (A) meets the requirements and standards of **the zone and of** this Division; (B) will [further the objectives of] **conform to** the applicable master or sector plan; **(C) will further the objectives of the CR zones;** and [(C)] **(D)** will provide more efficient and effective development of the site than the standard method of development;

(2) The proposed building massing and height and public use and other open spaces are located and scaled to achieve compatible relationships with each other and with existing and proposed buildings and open space adjacent to the site and with adjacent communities;

(3) The general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading areas are adequate, safe, and efficient;

(4) The proposed public benefits and associated requested incentive density will further the objectives of the applicable master or sector plan and the objectives of the CR zones; and

(5) The general phasing of structures, uses, public benefits, and site plans is feasible and appropriate to the scale and characteristics of the project.

(d) During site plan review, the Planning Board may approve modifications to the [binding elements or] conditions of an approved sketch plan.

DELETE "BINDING ELEMENTS."

(1) If changes to a sketch plan are requested by the applicant, notice of the site plan application must identify those changes requested. The applicant has the burden of persuading the Planning Board that such changes should be approved.

(2) If other changes are recommended after the application is made, notice of the site plan hearing must identify changes requested.

(3) In acting to approve a sketch plan modification as part of site plan review, the Planning Board must make the findings required in Section 59-C-15.42(c) in addition to those required by Section 59-D-3.

(Legislative History: Ord. No. 16-44, § 1.)
Bookmark59-C-15.5. Land uses.

Exhibit 3

59-C-15.8. Special regulations for the optional method of development.

59-C-15.81. Incentive density provisions.

This section establishes incentives for optional method projects to provide public benefits in return for increases in density and height above the standard method maximums, [consistent] **in conformance** with the applicable master or sector plan, up to the maximum permitted by the zone.

(a) Public benefits must be provided that enhance or contribute to the objectives of the **CRT and CR zones** in **some or all of** the following categories:

- (1) Master-planned major public facilities;
- (2) Transit proximity for residents, workers, and patrons;
- (3) Connectivity between uses and activities and mobility options;
- (4) Diversity of uses and activities;
- (5) Quality of building and site design;
- (6) Protection and enhancement of the natural environment; and
- (7) Advanced dedication of right-of-way.

Sections 59-C-15.82 through 59-C-15.88 indicate the types of public benefits that may be accepted in each of these categories.

(b) In approving any incentive density based on the provision of public benefits, the Planning Board must consider:

- (1) The [policy objectives] **recommendations** and priorities of the applicable master or sector plan;
- (2) Any applicable design guidelines and any adopted public benefit standards and guidelines;
- (3) The size and configuration of the tract;
- (4) The relationship of the site to adjacent properties;
- (5) The presence or lack of similar public benefits nearby; and

(6) Enhancements that increase public access to or enjoyment of the benefit.

(c) Any incentive density increase approved by the Planning Board for an optional method of development application must satisfy Subsection 59-C-15.87(a).

(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:

(1) [be consistent with] **conform to** the recommendations and objectives of the applicable master or sector plan and the purpose of the CR zones;

(2) be in addition to any standards, requirements, or rules of incentive density calculation included in this Division, but may not supersede those provisions;

(3) allow any single feature of a project a density incentive from only 1 public benefit;

(4) only address the public benefits listed in Sections 59-C-15.82 through 59-C-15.88 and must not add a public benefit category; and

(5) include the criteria to determine when an early dedication of right-of-way qualifies for incentive density, and the amount of the incentive density permitted.

59-C-15.82. Incentives for master-planned major public facilities.

Major public facilities such as schools, libraries, recreation centers, urban parks, and county service centers provide public services at convenient locations, centers for community meetings, and civic events. Because of their significance in place-making, the Planning Board may approve incentive density of up to 70 percent for the conveyance of a site and/or construction of a major public facility that is designated on a master plan or sector plan and is accepted for use and operation by the appropriate public agency, community association, or nonprofit organization.

59-C-15.83. Incentives for transit proximity.

REDUCE THE AMOUNT OF INCENTIVE DENSITY GIVEN FOR TRANSIT PROXIMITY.

In order to encourage greater use of transit, control sprawl, and reduce vehicle miles traveled, congestion, and carbon emissions, the Planning Board may approve incentive density for transit proximity under this section. The percentage of incentive density awarded to a project for transit proximity is as follows:

Transit Proximity

Level 1

Level 2

Adjacent or confronting

50%

30%

Within $\frac{1}{4}$ mile

40%

25%

Between $\frac{1}{4}$ and $\frac{1}{2}$ mile

30%

20%

Between $\frac{1}{2}$ and 1 mile

20%

15%

(a) A project is adjacent to or confronting a transit station or stop if it shares a property line, easement line, or is separated only by a right-of-way from an existing or planned transit station or stop and 100 percent of the gross tract area submitted in a single sketch plan application is within $\frac{1}{4}$ mile of the transit portal.

(b) (1) For all other projects to qualify for incentive density availability at the other distances, at least 75 percent of the gross tract area in a single sketch plan application must be within the range for which the incentive is proposed.

(2) The incentive density for projects less than 75 percent of the gross tract in 1 distance range must be calculated as the weighted average of the percentage of area in each range.

59-C-15.84. Incentives for connectivity and mobility.

REDUCE THE AMOUNT OF INCENTIVE DENSITY GIVEN FOR CONNECTIVITY AND MOBILITY.

In order to enhance connectivity between uses and amenities and increase mobility options; encourage non-automotive travel for short and multi-purpose trips as well as for commuting; facilitate social and commercial interaction; provide opportunities for healthier living; and stimulate local businesses, the Planning Board may approve incentive density of up to 30% for a project that provides at least 2 of the following public benefits:

(a) Neighborhood Services: Safe and direct pedestrian access to 10 different retail services on site or within ¼ mile, of which at least 4 have a maximum retail bay floor area of 5,000 square feet.

(b) Minimum Parking: Provision of the minimum required parking for projects of one acre of gross tract area or more.

(c) Through-Block Connections: Safe and attractive pedestrian connections between streets.

(d) Public Parking: Provision of up to the maximum number of parking spaces allowed in the zone as public parking.

(e) Transit Access Improvement: Ensuring that access to transit facilities meets County standards for handicapped accessibility.

(f) Trip Mitigation: A binding and verifiable Traffic Mitigation Agreement to reduce the number of weekday morning and evening peak hour trips attributable to the site in excess of any other regulatory requirement; the agreement must result in a non-auto driver mode share of at least 50% for trips attributable to the site.

59-C-15.85. Incentives for diversity of uses and activities.

DELETE INCENTIVES FOR DIVERSITY OF USES AND ACTIVITIES THAT ARE ALREADY REQUIRED BY OTHER LAWS.

In order to increase the variety and mixture of land uses, types of housing, economic diversity, and community activities; contribute to development of a more efficient and sustainable community; reduce the necessity for automobile use; and facilitate

healthier lifestyles and social interaction, 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:

(a) **Affordable Housing:** All residential development must comply with the requirements of Chapter 25A for the provision of Moderately Priced Dwelling Units (MPDUs) and may provide Workforce Housing Units (WFHUs) under Chapter 25B.

(1) **MPDU Incentive Density:** Provision of MPDUs above the minimum required is calculated on the total number of dwelling units as required by Chapter 25A, and the percent of incentive density increase is based on the proposed FAR for the entire project.

Example: Provision of 14.5% MPDUs is awarded an incentive density of 20% (see 25A-5(c)(3)). In the case of a CR 4.5 zone that proposes 4.5 FAR, that equals 0.20×4.0 (the incentive density), which is 0.8 FAR.

(2) **WFHU Incentive Density:** Provision of WFHUs is calculated at the following rate: 2 times the percentage of units provided as WFHUs.

Example: Provision of 5% WFHUs is awarded incentive density of 10%; provision of 12% WFHUs is awarded incentive density of 24%.

(b) **Adaptive Buildings:** Provision of buildings with minimum floor-to-floor heights of at least 15 feet on any floor that meets grade and 12 feet on all other floors. Internal structural systems must be able to accommodate various types of use with only minor modifications.

(c) **Care Centers:** Child or adult day care facilities.

(d) **Small Business Retention:** Provision of on-site space for small, neighborhood-oriented businesses.

(e) **Dwelling Unit Mix:** Provision of at least 7.5% efficiency units, 8% 1-bedroom units, 8% 2-bedroom units, and 5% 3-or-more bedroom units.

(f) **Enhanced Accessibility for the Disabled:** Provision of dwelling units that satisfy American National Standards Institute A117.1 Residential Type A standards or units that satisfy an equivalent County standard.

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

High quality design is especially important in urban, integrated-use settings to ensure that buildings and uses are compatible with each other and adjacent communities and to provide a harmonious pattern of development. Due to the increased density of these settings, buildings tend to have high visibility. High quality design may help to attract residents and businesses to locate in these

settings. Location, height, massing, facade treatments, and ornamentation of buildings affect sense of place, orientation, and the perception of comfort and convenience. The quality of the built environment affects light, shadow, wind, and noise, as well as the functional and economic value of property. In order to promote high quality design, the Planning Board may approve incentive density of up to 30% to a project that provides at least 2 of the following public benefits:

(a) Historic Resource Protection: Preservation and/or enhancement of a historic resource indicated on the Master Plan for Historic Preservation in conformance with a plan approved by the Historic Preservation Commission. A fee-in-lieu for a specific preservation project may be paid to the Historic Preservation Division as specified in the Guidelines for Public Benefits. **DELETE HISTORIC RESOURCE PROTECTION INCENTIVE DENSITY.**

(b) Structured Parking: Parking provided within a structure or below-grade. **DELETE -WILL BE BUILT ANYWAY.**

(c) Tower Setback: Setback of building by a minimum of 6 feet beyond the first floor facade at a maximum height of 72 feet.

(d) Public Art: Provision of public art must be reviewed for comment by the Public Arts Trust Steering Committee. A fee-in-lieu may be paid to the Trust as specified in the Guidelines for Public Benefits.

(e) Public Open Space: Provision of open space in addition to the minimum required by the zone. Public open space must be easily accessible to the public during business hours and/or at least from sunrise to sunset and must contain amenities such as seating, plantings, trash receptacles, kiosks, and water features.

(f) Streetscape: Construction of off-site streetscape in addition the requirements of this division.

(g) Exceptional Design: Building design that provides innovative solutions in response to the immediate context; creates a sense of place and serves as a landmark; enhances the public realm in a distinct and original manner; introduces new materials, forms, or building methods; uses design solutions to make compact infill development living, working, and shopping environments more pleasurable and desirable; and integrates low-impact development methods into the overall design of the site and building. **DELETE OR REVISE—TOO LAX AND SUBJECTIVE.**

59-C-15.87. Incentives for protection and enhancement of the natural environment.

In order to combat sprawl and mitigate or reverse environmental problems such as heat from the built environment, inadequate carbon-sequestration, and pollution caused by reliance on the automobile, the Planning Board may approve a density increase up to 30% for the public benefits in this Subsection:

(a) CR zones require the purchase of BLT easements or payment to the Agricultural Land Preservation Fund for at least 5% but no more than 30% of the incentive density under the following conditions.

RETAIN AND STRENGTHEN THE BLT REQUIREMENTS.

(1) Any private BLT easement must be purchased in whole units; or

(2) BLT payments must be made to the Agricultural Land Preservation Fund, based on the amount established by Executive Regulations under Chapter 2B; if a fraction of a BLT easement is needed, a payment based on the gross square footage of incentive density must be made to the Agricultural Land Preservation Fund for at least the fraction of the BLT easement.

(3) (A) For the first 5% of incentive density, each BLT easement purchase or payment allows 20,000 gross square feet of incentive density or a proportion thereof, allowed by a payment for a fraction of a BLT.

(B) For the incentive density above 5%, each BLT easement purchase or payment allows 30,000 gross square feet of incentive density or a proportion thereof, allowed by a payment for a fraction of a BLT.

FOR THE SIX DENSITY INCENTIVES LISTED BELOW, DELETE THOSE THAT ARE ALREADY REQUIRED BY OTHER LAWS.

(b) Energy Conservation and Generation: Provision of energy-efficiency that exceeds standards for the building type by 17.5% for new buildings or 10% for existing buildings, or provision of renewable energy generation facilities on-site or within ½ mile of the site for a minimum of 2.5% of the projected energy requirement.

(c) Green Wall: Installation and maintenance of a vegetated wall that covers at least 30% of any blank wall or parking garage facade visible from a public street or open space.

(d) Tree Canopy: Coverage at 15 years of growth of at least 25% of the on-site open space.

(e) Vegetated Area: Installation of plantings in a minimum of 12 inches of soil covering at least 5,000 square feet of previously impervious surfaces. This does not include vegetated roofs.

(f) Vegetated Roof: Provision of a vegetated roof with a soil depth of at least 4 inches covering at least 33% of a building's roof, excluding space for mechanical equipment.

59-C-15.88. Advanced dedication of right-of-way.

When sketch plans or site plans are approved, the Planning Board may allow an incentive density not to exceed 30% for a prior dedication of rights-of-way for

roadways, sidewalks, or bikeways recommended in the applicable master or sector plan, if the County or the State is responsible for constructing the facility on the right-of-way.

(Legislative History: Ord. No. 16-44, § 1.)