ATTACHMENT A

MCP-CTRACK

From: Khan, Trudye <Trudye.Khan@montgomerycountymd.gov> on behalf of Ahluwalia, Uma <Uma.Ahluwalia@montgomerycountymd.gov>
Sent: Wednesday, June 24, 2015 3:42 PM
To: MCP-Chair
Subject: Definition of Group Living | Section 3.3.2 A of the Zoning Code
Attachments: Document (321).pdf

Good Afternoon Mr. Anderson,

Please find attached a letter from the Director of the Montgomery County Department of Health and Human Services, requesting a revision of the language regarding length of tenancy in the above referenced section of the Code. Thank you for the consideration given this request. It is greatly appreciated.

Trudye Khan on Behalf of
Uma S. Ahluwalia, Director
Department of Health and Human Services
Rockville, Maryland 20850

ATTACHMENT A

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Isiah Leggett
County Executive

Uma S. Ahluwalia
Director

June 24, 2014

Mr. Casey Anderson, Chair
Montgomery County Planning Board
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Via email: MCP-Chair@mncppc-mc.org

Dear Chairman Anderson:

As Director of the Montgomery County Department of Health and Human Services, I am writing to ask that the Planning Board modify the definition of Group Living found in Section 3.3.2.A of the Zoning Code.

The Department houses the Core Service Agency (CSA) for Montgomery County. The CSAs are the local mental health authorities responsible for planning, managing, and monitoring public mental health services at the local level. They exist under the authority of the State Department of Health and Mental Hygiene (DHMH) and also are agents of the County government, which approves their organizational structure.

In our capacity as the local CSA, we plan, develop, and manage a full range of treatment and rehabilitation services for Montgomery County residents with serious mental illness, including submitting comments in support or dissent of approving a license for mental health group homes issued by DHMH.

Our concern is with the language that defines group living as a situation *"where tenancy is arranged on a monthly or longer basis."* This limitation did not exist in the old Zoning Code and was not identified for discussion during the Council's review of the new Code. Unfortunately, we did not recognize that this language could be interpreted in a way that would prevent certain mental health group homes from being sited in residential zones by right.

While we do not believe that the Council intended to legislate away the ability to locate important state-licensed, short-term residential group homes (including facilities such as hospice) where care may be provided for less than a month, we do think an amendment clarifying Group Living to include short-term residential care or support will be helpful and assure the continuing ability to meet the need for such residential care.

ATTACHMENT A

Currently we have two group homes (housing 8 or fewer individuals) that provide residential crisis services to people with serious mental illness where residents typically stay for less than 30 days. These homes are licensed both by the State and the County and are a critical element in the continuum of services offered through our crisis response system.

These group homes serve individuals experiencing a psychiatric crisis, but who do not require hospitalization. The goal is to provide supervised treatment in the least restrictive environment. Residents are admitted voluntarily and in most instances return to the community after completion of therapy in the group home. Crisis residential group homes are an integral element in a continuum of care that includes national and local hotlines, crisis beds, and other support systems.

Community-based alternatives provide the most appropriate level of care for those with co-occurring illnesses and there is an ongoing unmet need for short-term residential treatment. If the monthly restriction remains in the Zoning Code it will seriously impede the ability of providers to offer much-needed behavioral health treatment to Montgomery County residents.

We respectfully request that you removing the language regarding length of tenancy in Section 3.3.2.A. in the Zoning Code.

Sincerely,

Uma S. Ahluwalia

Uma S. Ahluwalia
Director

USA:tjk

c: Bonnie Kirkland, Assistant Chief Administrative Officer

ATTACHMENT B

Tettelbaum, Emily

From: Grossman, Martin <Martin.Grossman@montgomerycountymd.gov>
Sent: Thursday, June 04, 2015 2:12 PM
To: Murph, Alexanderia; Afzal, Khalid; Boyd, Fred; Conlon, Catherine; Dunn, Pamela; Freeman, Katherine; Hanna-Jones, Sarah; Krasnow, Rose; Kreger, Glenn; Kronenberg, Robert; Lazdins, Valdis; Robeson, Lynn; Rubin, Carol; Sturgeon, Nancy; Tettelbaum, Emily; Weaver, Richard; Whipple, Scott; Wise, Jennifer
Cc: Russ, Gregory; Zyontz, Jeffrey; Snuggs, Clarence J.; DeJesus, Ada; McHugh, Dan; Royalty, Clifford
Subject: RE: ZTA 15-09 for Review and Comments; and New OZAH Proposal to Eliminate the Accessory Apartment CU
Attachments: Microsoft Word - ZTA 15-09.larcomments.corrected.pdf; Marty Grossman Comments to Planning Board's ZTA 15-09 - Omnibus Corrections to New ZO.pdf

Hi Alexanderia et al,

Just realized that I sent the last email to you with the "In Re" pertaining to ZTA 15-08. It should have referenced ZTA 15-09.

The following proposal is in response to the Planning Board's suggested change to the Accessory Apartment CU (Section 3.3.3.A.2.c.) on page 9 of proposed ZTA 15-09.

The Planning Board's suggested changes in ZTA 15-09 to the accessory apartment conditional use got me thinking beyond the comments I previously sent you.* It appears to me from ZTA 15-09 that the Planning Board wants to eliminate the usual review of the Section 7.3.1.E standards for an accessory apartment conditional use, and that makes sense to me since the only accessory apartment conditional use cases occur when there is either inadequate on-site parking or inadequate distance from another accessory apartment (Section 3.3.3A.2.b).

Given that limited universe, the Accessory Apartment CU was always an odd duck that resembled a waiver request more than a CU. Considering the Accessory Apartment CU's limited application, I agree with the Planning Board that it is unnecessary to review the application under Section 7.3.1.E, It follows that it is unnecessary to have a Technical Staff review of the application.

Instead, I would propose to eliminate the Accessory Apartment CU and make any challenge to a license rejection by DHCA based on the lack of onsite parking or proximity to other accessory apartments the subject of the existing Objection process by which Accessory Apartment license applicants (or opponents) challenge finding of the DHCA Director.

Objections on these grounds would still be handled by OZAH (as with other DHCA objection cases), but it would be DHCA that would supply the knowledge and expertise about adequate or inadequate on-street parking and the proximity of other accessory apartments. The Hearing Examiner would still be able to assess the impact on the community from the DHCA information and the testimony of the applicant and opposition.

The benefits of this procedural change would be manifold:
1. It would remove some burden from Technical Staff;
2. DHCA would already know the case since they would have investigated it based on the license application, and therefore the procedural change would not create significant extra work for DHCA inspectors;

3. The time lag for setting a hearing date would be reduced from 4 months to the 20-day period established under the current Objection procedure;
4. It would simplify the accessory apartment process and make it easier to understand for the general public. The current dichotomy between the Objection process and the CU process is difficult for people to grasp, as is the rationale for adding a 4 month delay over an issue of as simple as on-street parking availability; and
5. It is unlikely to change the outcome of the Hearing Examiner review.

I am sending this proposal to DHCA, as well as to the usual ZTA reviewers, because it involves DHCA's operations, in addition to the Zoning Ordinance.

* My previous comment was to note that the Planning Board's proposed change for attached accessory apartments would eliminate considerations such as compatibility and Master Plan consistency included in Section 7.3.1., and that the proposed changes for attached accessory apartments did not appear to cover detached accessory apartments under Section 3.3.3.C.2.b.

Martin L. Grossman
Director
Office of Zoning and Administrative Hearings

From: Grossman, Martin
Sent: Wednesday, June 03, 2015 6:08 PM
To: 'Murph, Alexanderia'; Afzal, Khalid; Boyd, Fred; Conlon, Catherine; Dunn, Pamela; Freeman, Katherine; Hanna-Jones, Sarah; Krasnow, Rose; Kreger, Glenn; Kronenberg, Robert; Lazdins, Valdis; Robeson, Lynn; Rubin, Carol; Sturgeon, Nancy; Tettelbaum, Emily; Weaver, Richard; Whipple, Scott; Wise, Jennifer
Cc: Russ, Gregory; Zyontz, Jeffrey
Subject: RE: ZTA 15-09 for Review and Comments

Hi Alexanderia et al.,

Lynn and I reviewed proposed ZTA 15-09 independently to try to catch as much as possible. Attached hereto are our comments in two documents.

In the interest of saving trees and being merciful to you, we have included only the pages of the Planning Board draft on which we had comments or proposed changes.

Martin L. Grossman
Director
Office of Zoning and Administrative Hearings

From: Murph, Alexanderia [mailto:alexanderia.murph@montgomeryplanning.org]
Sent: Thursday, May 28, 2015 2:19 PM
To: Afzal, Khalid; Boyd, Fred; Conlon, Catherine; Dunn, Pamela; Freeman, Katherine; Grossman, Martin; Hanna-Jones, Sarah; Krasnow, Rose; Kreger, Glenn; Kronenberg, Robert; Lazdins, Valdis; Robeson, Lynn; Rubin, Carol; Sturgeon, Nancy; Tettelbaum, Emily; Weaver, Richard; Whipple, Scott; Wise, Jennifer
Cc: Russ, Gregory
Subject: ZTA 15-09 for Review and Comments

Please submit written comments NO LATER THAN Thursday, June 9, 2015.

If you have no comments, please inform us of that fact by the date indicated above.

Thank you,

Alexanderia Murph
Principal Administrative Assistant
Functional Planning & Policy Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

ATTACHMENT C

LERCH EARLY & BREWER
ideas that work

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June 26, 2015

VIA E-MAIL AND OVERNIGHT DELIVERY

Casey Anderson, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Zoning Text Amendment ("ZTA") No. 15-09, Zoning Rewrite – Revisions, Clarifications, and Corrections
GMI Associates

Dear Chair Anderson and Members of the Planning Board:

On behalf of our client, GMI Associates, LLC ("GMI Associates"), please include this letter in the Board's consideration of ZTA 15-09, Zoning Rewrite – Revisions, Clarifications, and Corrections. We understand that the Planning Board is currently scheduled to discuss ZTA 15-09 on Thursday, July 9, 2015. In connection with your review of ZTA 15-09, we wanted to alert you to the opportunity to correct a particular issue that affects GMI Associates under the recent comprehensive revision of the Zoning Ordinance, and requires GMI Associates to operate its longstanding neighborhood business as a non-conforming use.

GMI Associates is the owner of 10401 Grosvenor Place, Unit No. 2, which is located on the ground floor of the Grosvenor Park III condominium building in North Bethesda (the "Property", or "Commercial Unit No. 2"). The Property is located on the east side of Grosvenor Place (a private road), south of the intersection with Tuckerman Lane. The entire Grosvenor Park complex includes five high-rise buildings, garden apartments and a townhome community.

GMI Associates operates a small neighborhood market – the Grosvenor Market ("Market") – within Commercial Unit No. 2, which consists of approximately 8,401 square feet of building floor area. The Market also occupies the following areas within the building, which are owned in fee by GMI Associates: (ii) P210, a parking

space in the building's garage used for refrigeration equipment that consists of approximately 162 square feet; and (iii) P209 and P250, two additional parking spaces consisting of approximately 162 square feet each. The total area associated with the Market use, including the parking spaces, is approximately 8,887 square feet.

The Market sells food and other general goods mainly to residents of the complex, consistent with the evolution of its original Special Exception approval, and the owner/operator has only changed twice over the past 45 years.[1] The Board of Appeals granted the original Special Exception for the Market in 1967. At that time, the original use was permitted as a "Delicatessen" in a multi-family building in the Residential Multi-Unit High Density-10 Zone (the "R-10 Zone") pursuant to Sections 111-30 through 111-37 of the 1965 Montgomery County Code, Retail Sales and Personal Service Establishment Incidental in a Multi-Family Building. See Exhibit "A". At the time of the original Special Exception approval, there was no other use category in which to designate this use other than "Delicatessen." Although the testimony associated with the original Special Exception is not available, the use, as originally approved, was less a traditional "delicatessen," than a market with a food service component (see Pages 12-13 of a related 1980 Special Exception proceeding, attached as Exhibit "B"). The use was contemplated to be, and has been since its inception, a market selling "food including fresh meat, beer, wine, magazines, drugs and sundries, paper goods, and certain hardware and convenience items normally stocked in supermarkets" (Page 13, Exhibit "B").

The Montgomery County Zoning Ordinance was revised in 1977 and, for reasons unknown, the "Delicatessen" use was eliminated from the list of possible retail services in a multi-family building. In place of the "Delicatessen" use, the 1977 Zoning Ordinance created a new "Food and Beverage Store" special exception use. See Exhibit "C". Thus, although "Delicatessen" remained a permitted use within other retail Special Exception categories (*e.g.*, "Retail Establishments in an Office Building"), the Zoning Ordinance no longer permitted Delicatessens within the R-10 Zone applicable to the Grosvenor Park III multi-family building. Nonetheless, the Market has continued to operate on the Property since the time of its original approval.

[1] The current owner/operator has worked at the Market for 29 years.

After working in the business for many years, the current owner, through GMI Associates, purchased the Market and the Property in 2002, when the original owner retired. Subsequently, on February 23, 2005, GMI Associates obtained confirmation from the Board of Appeals that the County's revision of the Zoning Ordinance in 1977 terminated the initial Special Exception by operation of law, transforming the Market into a non-conforming use. (Refer to the Board of Appeals Resolution for Case No S-68, attached as Exhibit "D".) The owner/operator of the Market then applied for a Certificate of Non-Conforming Use, which the Montgomery County Department of Permitting Services approved on May 17, 2006. See Exhibit "E". Thus, the Market – lawful when established – has remained lawful over time, but for the 1977 change in the Zoning Ordinance.

The recently revised Zoning Ordinance, effective as of October 30, 2014, created a new "Retail/Service Establishment" land use category that permits retail uses within multi-family apartment building types in the R-10 Zone. However, in multi-family buildings in the R-10 zone, retail/service establishments are limited uses and are required to be less than 5,000 square feet in size. See Exhibit F. Additionally, among other requirements, the limited use provisions restrict such retail uses to the lesser of 10 percent of gross building floor area or 5,000 square feet. See Exhibit G. As previously stated, the Market encompasses approximately 8,887 square feet of floor area, exceeding the 5,000 square foot limitation on the use, but well below 10 percent of the gross floor area of the building in which it is located. Due to the Market's size, the use must continue to be a Certified Non-Conforming Use, with no opportunity to expand under Section 7.7.1.A.2.

ZTA 15-09 provides an appropriate opportunity to correct the existing non-conforming status of the Market, and this correction can be made with two simple, straightforward amendments:

1. *Revise the Zoning Ordinance Table of Uses (Section 3.1.6., Page 3-9) to permit the "Retail/Service Establishment (5,001 - 15,000 SF)" use as a limited use in the R-10 Zone.*

2. *Revise Section 3.5.11.B.2.a (Page 3-58) to increase the maximum floor area allowed for retail/service establishments in multi-family buildings the R-10 Zone from 5,000 square feet to 10,000 square feet.*

The specific revisions to the text of the Zoning Ordinance that are needed to implement these changes are shown on Exhibit H, attached hereto.

Requiring the Market to continue its non-conforming status, rather than permitting the use as a limited use, appears to be unintentional and not reflective of any deliberate policy decision. Today, neighborhood-oriented retail/service uses of this type are not uncommon in multifamily residential areas. While such neighborhood-oriented uses may have once raised questions about compatibility with surrounding residential areas, this is no longer a predominant concern. Modern planning embraces the concepts of mixed land uses and proximity to local goods and services. The presence of small-scale, neighborhood-oriented uses like the Market in residential areas, is now recognized as fulfilling a need for local goods and services, reducing automobile dependence in such communities.

For the reasons explained above, we respectfully request that the Planning Board include the above-described revisions in the final recommendations to the County Council concerning ZTA 15-09. We appreciate your considered attention to this matter, and trust that you will not hesitate to contact us if you have any questions.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.

William Kominers .cmr

William Kominers

Christopher M. Ruhlen

Christopher M. Ruhlen

w/ Enclosures

cc: Mr. Scot Shuck
Ms. Rose Krasnow
Ms. Pam Dunn
Ms. Tedi Osias
Ms. Marye Wells-Harley
Mr. Norman Dreyfuss
Ms. Natali Fani-Gonzalez
Ms. Amy Presley

ATTACHMENT D

LERCH EARLY & BREWER
ideas that work

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Fax (301) 347-3756
paharris@lerchearly.com

June 29, 2015

By Electronic Mail

Mr. Casey Anderson, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Omnibus Zoning Text Amendment No. 15-09

Dear Chair Anderson and Members of the Board:

On behalf of Lerch, Early & Brewer, we are providing comments and suggestions on the content of the draft Omnibus Zoning Text Amendment No. 15-09 (the "ZTA") and suggesting other potential revisions to the Zoning Ordinance. Our comments fall into three major categories, as follows:

1. Substantive changes in the Ordinance that we believe are warranted, which are not included in the ZTA;

2. Recommended clarifications or corrections to the Ordinance, not included in the ZTA; and

3. Comments and recommended revisions on the proposed changes set forth in the ZTA.

In order to facilitate your review of these materials, we have prepared a chart for each of these three categories which sets forth the particular relevant Ordinance section and provides a brief description of the proposed change. The chart also references the addendum attached to each chart which provides a more detailed justification for the proposed revision.

We wish to express our appreciation for the Planning Board's initiative in undertaking the effort represented by this ZTA. Acknowledging the need for correction and clarification to the very comprehensive rewrite of the Zoning Ordinance is a positive step. We appreciate the ongoing willingness of the Planning Board and its Staff to consider those elements causing confusion or unintended consequences, which require clarification or modifications, so as to make the new Ordinance effective.

Thank you for your consideration of our comments on the new Ordinance and the Omnibus ZTA. We look forward to further discussions during your worksessions and public hearing.

Very truly yours,

LERCH, EARLY & BREWER, CHARTERED

Cynthia M. Bar
Stuart R. Barr
Robert G. Brewer
Elizabeth C. Geare
Patricia A. Harris
Robert R. Harris
Martin J. Hutt
William Kominers
Harry W. Lerch
Patrick L. O'Neil
Susan M. Reutershan
Steven A. Robins
Christopher M. Ruhlen
Stacy P. Silber

Attachments
cc: Ms. Pam Dunn
WK/paj

ATTACHMENT D

SUBSTANTIVE CHANGES TO BE MADE TO THE ORDINANCE

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
1.	Section 3.5.11.B	Limits retail/service establishments in the R-10 Zone to a maximum size of 5,000 sq. ft. We recommend that this limited use should be expanded to the next category of 5,001 to 15,000 sq. ft., but restricted to no larger than 10,000 sq. ft.
2.	Articles 4 and 6 – Sections 6.8 and 4.5.4.A.4	Because development standards are very strict and often inflexible, there is a need for greater flexibility in the standards that are applicable to standard method of development and optional method of development projects. A new Section 6.8.2 should be added to read: "Except for the density and height established by the zone, the standards of Article 4 and Article 6 may be established by the site plan approval process." Additionally, to eliminate contradictions and provide clarity as to the Planning Board's authority to establish setbacks for optional method of development projects at the time of site plan, Section 4.5.4.A.4 should be deleted.
3.	Sections 4.5.3.B.2	Amend Section 4.5.3.B.2 to read: An applicant may elect to file a site plan application to modify any of the requirements contained in Article 4 and Article 6, except for height and density.
4.	Sections 4.4.5.C., 4.4.6.C., 4.4.7.C, 4.4.8.C, 4.4.9.C, 4.4.10.C, 4.4.11.C, 4.4.12.C, 4.4.13.C, 4.4.14.C, 4.4.15.C, and 4.4.16.C	These sections add a fixed common open space percentage in each of these rescheduled zones. Previously, the amount of common open space was determined by the Planning Board on a site by site basis at the time of Site Plan. This flexibility should remain by removing these particular requirements.
5.	Section 5.2.5	Contrary to the prior Ordinance, the residential floating zones only allow maximum density for residential that is twice the base density of the underlying residential zone unless there is a Master Plan recommendation. The maximum residential density allowed should be higher than twice the base density to encourage infill redevelopment of parcels that have been artificially zoned for residential use although used for institutional purposes. We recommend the maximum densities allowable be reconsidered and ultimately either deleted or

ATTACHMENT D

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
1.	Section 3.5.11.B	Limits retail/service establishments in the R-10 Zone to a maximum size of 5,000 sq. ft. We recommend that this limited use should be expanded to the next category of 5,001 to 15,000 sq. ft., but restricted to no larger than 10,000 sq. ft.
		increased.
6.	Section 7.2.1.E	Requires that any floating zone application must substantially conform to the recommendations of the applicable Master Plan. Often a Master Plan does not make a recommendation for floating zones. Thus, to encourage appropriate infill redevelopment, a Master Plan recommendation for a zone should not be a prerequisite.
7.	Section 6.2.3.I.3	References the ULI Shared Parking Publication, which has little applicability to urban mixed use, should be eliminated, and the former shared parking table should be reinstated.
8.	Section 7.7.1.B.3.b	Should be amended to clarify the procedure by which an application, approved under the standards of the Zoning Ordinance in effect on or before October 29, 2014, may be amended to take advantage of the new parking requirements effective October 30, 2014. The list of previously approved applications in § 7.7.1 that can be amended is expansive. However, there is uncertainty as to the procedures by which existing developments, *not* subject to an existing site plan approval, can amend the previously approved parking requirements to adjust the parking standards.
9.	Section 7.7.1.D.2	The grandfather provision for pre-1958 lots is unclear with respect to lot size. The old Ordinance allowed undersized lots to be grandfathered which is an important consideration for both lots on which houses exist, and those where new houses might be built.

SUBSTANTIVE CHANGES TO BE MADE TO THE ORDINANCE

1. Retail/Service Uses – Section 3.5.11.B.

In recognition of the benefits of maximizing uses (especially services), we now encourage retail and other commercial uses on the ground floor of many types of buildings. These types of retail uses provide a convenience to residents of the buildings, as well as reduce the need for automobile trips to travel for similar services outside the complex. As such, to allow small retail services in high-rise apartment buildings, consistent with County policies and smart growth principles, we recommend amending the use table in Section 3.1.6 and Section 3.5.11.B.2.a.i.(b) to allow for retail/ service establishments up to 10,000 square feet as a limited use in the R-10 zone.

While there is already a use category for a retail/service establishment as a limited use in the R-10 Zone, it is limited to a maximum size of 5,000 square feet. We recommend that this limited use should be expanded up to 10,000 square feet to provide sufficient space to accommodate meaningful ground floor, neighborhood serving retail establishments. Instead of creating a new use category, we recommend the use table in Section 3.1.6. be modified to allow retail/service establishments between 5,001 to 15,000 square feet as a limited use in the R-10 Zone. However, this limited use in the R-10 Zone should be restricted to no larger than 10,000 square feet. This can be accommodated by modifying Section 3.5.11.B.2.a.i.b as follows:

> **A maximum of 10% of the gross floor area of the building or [5,000] 10,000 square feet, whichever is less, may be used for the Retail/ Service Establishment use.**

The criteria in Section 3.5.11.B.2.a will ensure that these uses would only occur in buildings that are of substantial size, where there is an expectation of significant utilization by the residents in the residential complex.

2. Flexibility During Site Plan Review – Articles 4 and 6

The numerical development standards in Articles 4 and Article 6 are very strict and often inflexible, especially under the standard method of development. Yet properties are inherently different and more often than not, do not match the neat polygons drawn in the Ordinance's diagrams. Given individual characteristics, such as site configuration, access points, utility locations, environmental considerations, site circulation, or other various factors, some of the development standards simply cannot realistically be met in many development scenarios. And in many cases, the standards strictly as applied do not make good sense or result in good design. Thus, there is a need for greater flexibility in the standards that are applicable to both standard method of development and optional method of development projects.

Although the CR Zone optional method of development purports to give the Planning Board the flexibility to establish setbacks for buildings and parking during the site plan approval process (see Section 4.5.4.B.3), Section 4.5.4.A.4 undercuts this by requiring compliance with

the setback requirements contained in Section 4.1.8. To eliminate contradictions and provide clarity as to the Planning Board's authority to set the setbacks for optional method of development projects at the time of site plan, we recommend that Section 4.5.4.A.4 be deleted. Deleting Section 4.5.4.A.4 will ensure the compatibility standards contained in Section 4.1 will continue to remain applicable to non-site plan standard method of development projects, where they are most applicable.

While beneficial to optional method of development projects, this flexibility is even more important for standard method of development projects already subject to site plan review. Many of the development standards are conflicting and often cannot all be satisfied on certain properties. For example, within the front build-to area (a maximum setback of 20 feet for general building types) many standard method of development projects must also provide public open space abutting a public sidewalk or public pedestrian route that is a minimum of 15 feet wide and and a 10 foot Public Utilities Easement (15 feet + 10 feet $\neq$ 20 feet). Even though there may be recognition that all the competing requirements cannot be satisfied, without the necessary flexibility, the Planning Board and Planning Board Staff's hands are tied. The recently adopted Zoning Text Amendment 15-05 gives the Planning Board the discretion to modify the build-to area, building orientation and transparency requirements during site plan review of standard method of development projects in a Commercial/ Residential zone. However, there are other design elements that should also be afforded this flexibility. For example, parking setbacks are especially problematic for: (a) new multiple-building projects, and (b) existing projects or individual buildings wanting to expand using the new Ordinance. Design elements such as parking, coverage, frontage, mass etc. are all just the kinds of elements that site plan review is designed to address.

The ability to resolve practical problems that arise through the application of the Ordinance to individual sites should be undertaken through the site plan review process and not through forcing the use of variances. Accordingly, during site plan review of both optional method projects or standard method projects, the Planning Board should be able to modify or adjust any or all of the standards in Articles 4 and 6, with the exception of density and height—as those two standards are the <u>only</u> elements from the Ordinance that are integral to the "zoning" of a property. Allowing deviations from the strict standards during the site plan approval process will create efficiencies, as any necessary adjustments can be addressed during the course of the same regulatory proceeding, in review of the same plan, and by the same deciding body—the Planning Board—rather than in two different processes and standards (i.e., site plan review by the Planning Board and variance approval by the Board of Appeals/Hearing Examiner).

The LSC and EOF Zones provide a great example of a very reasonable approach. The existing text for the LSC and EOF zones (found in Sections 4.6.3.D.3.a and 5.a. for the LSC Zone and 4.6.3.E.3.a and 5.a. for the EOF Zone) allows the Planning Board to make decisions in the context of a specific plan, and without restriction. To ensure the necessary flexibility in site design is provided for all non-residential zones, we suggest that you add the following text as a <u>new Section 6.8.2</u>:

"Except for the density and height established by the zone, the standards of Article 4 and Article 6 may be established by the site plan approval process."

This proposed Planning Board authority is discretionary. By saying that adjustments to the standards "may be established" through site plan review, the Board is allowed to make an adjustment or may retain use of the original standard. But, the evaluation of the site plan is inherently within the purview of the Planning Board. The Board should be trusted to look holistically at a site plan and be able to exercise reasonable discretion about the needs of the particular, unique property.

3. Flexibility – Section 4.5.3.B.2

ZTA 15-05 amended the Ordinance to allow an applicant to elect to file a site plan application to modify the build-to area, building orientation and transparency requirements. For the same reasons discussed above, we believe the Ordinance should be amended to allow applicants to elect to use site plan review, when it is not otherwise required, to modify all design elements in Articles 4 and 6 except for building height and density. This opportunity should be provided to all standard method of development projects, in all zones, and would allow applicants that cannot satisfy the strict standards of the Ordinance with the opportunity to achieve the necessary flexibility through the site plan approval process. The Planning Board would then be able to evaluate the property in a comprehensive manner and determine what standards are appropriate, given the individual characteristics of a given property. We recommend amending Section 4.5.3.B.2 to read:

An applicant may elect to file a site plan application to modify [the Build-to Area, Building Orientation, and Transparency requirements under Section 4.5.3.C] any of the requirements contained in Article 4 and Article 6, except for height and density.

4. Open Space – Sections 4.4.5.C, 4.4.6.C, 4.4.7.C, 4.4.8.C, 4.4.9.C, 4.4.10.C, 4.4.11.C, 4.4.12.C, 4.4.13.C, 4.4.14.C, 4.4.15.C, and 4.4.16.C

These sections add a fixed common open space percentage in each of these rescheduled zones. Previously, the amount of common open space was determined by the Planning Board on a site by site basis at the time of Site Plan. This flexibility should remain by removing these particular requirements.

5. Floating Zones – Section 5.2.5

The residential floating zones only allow maximum density for residential that is twice the base density of the underlying residential-zone (except for the R-90 zone) unless there is a Master Plan recommendation, whereas most floating zones under the old Ordinance, including the PD zone, allow one to seek greater density without a Master Plan designation. Many properties have been artificially zoned for single-family residential use when they are in fact improved for institutional use and these are prime candidates for infill redevelopment at densities

more than twice the underlying single-family zone. The maximum density that is appropriate for an individual lot will ultimately be determined by the District Council through the Local Map Amendment process, but in order to allow the opportunity for higher density in-fill redevelopment where appropriate, we recommend that the maximum densities allowable be reconsidered and ultimately either be deleted or increased.

6. Floating Zones – Section 7.2.1.E.

This section requires that any floating zone application must substantially conform with the recommendations of the applicable Master Plan. Many times a Master Plan does not make a recommendation for floating zones, often because it assumes a particular existing development or land use will remain in place. But, as discussed above, these locations often are excellent candidates for infill development under a new zone. A Master Plan recommendation should be deleted as a prerequisite for approval of a Floating Zone (i.e. delete Section 7.2.1.E.2.a).

7. Shared Parking – Section 6.2.3.I.3.

We recommend reinstating the former shared parking table and eliminating the reference to the ULI Shared Parking Publication. Most critically, the ULI Publication is oriented more toward suburban development; it has little applicability to urban mixed use. In addition, the Zoning Ordinance should not reference an outside publication which must be purchased in order to determine the County's shared parking calculations. Unlike other provisions of the Zoning Ordinance, the ULI parking standards can be changed without the normal public protections of legislation in the County; there is no opportunity for comment or any need for ULI to notify anyone if changes are made. The shared use table of the prior Ordinance was relevant, easy to apply and accessible. Thus, we recommend that it be reinstated.

8. Grandfathering/ Parking – Section 7.7.1.B.3.b.

This section should be amended to clarify the procedure by which an application that was approved under the standards of the Zoning Ordinance in effect on or before October 29, 2014, may be amended to take advantage of the new parking requirements effective October 30, 2014. This section currently allows an applicant to apply for a minor site plan amendment to amend the parking requirements of a previously approved application including not only site plans, but also for example, building permits, preliminary plans, special exceptions, record plats and variances. Clarity is needed as to the procedures by which many of these existing development approvals, which are not subject to an existing site plan approval, can be amended through a minor site plan amendment to adjust the parking standards.

We recommend that any amendment to the parking requirements be authorized to occur in any regulatory proceeding before the Planning Board or, where another regulatory proceeding is not otherwise required, through an administrative approval.

9. Section 7.7.1.D.2

The grandfather provision for pre-1958 lots is unclear with respect to lot size. The old Ordinance allowed undersized lots to be grandfathered which is an important consideration for both lots on which houses exist, and those where new houses might be built.

Section 59–B–5.1 of the old Ordinance makes it clear that any pre-1958 lot that was buildable under the law in effect immediately before June 1, 1958, is a buildable lot even if it does not have the current minimum area. The revised Ordinance makes it clear that such lots can be built on irrespective of lot width and other requirements, but it does not make clear what happens in the case of an undersized lot. We suggest that Section 59.7.1. D.2.c be modified to say "constructed or reconstructed in a manner... and the side yard, rear setback and lot size required by its pre-1958 zoning.... "

ATTACHMENT D

CORRECTIONS AND CLARIFICATIONS NEEDED IN ORDINANCE

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
1.	Section 4.8.3.A & B	The development standards tables for the Industrial Zones establish minimum requirements for amenity open space, and reference §7.3.7 for more information. The latter reference is incorrect – it leads one to the "Administration & Procedures" chapter of the Ordinance. The correct provision is located in §6.3.7.
2.	Sections 7.7.1.B	States that an applicant, if otherwise qualifying, may elect to utilize the standards and procedures of the Zoning Ordinance in effect on or after October 30, 2014. We would propose the addition of a new second sentence in §7.7.1B to provide an applicant with the option of utilizing the new Ordinance: "In processing applications under Sections 7.7.1.B and 7.7.1.C, the applicant may elect to utilize the standards and procedures of the Zoning Ordinance in effect on or after October 30, 2014."
3.	Section 7.3.1.I	Subsection 2 appears to suggest that an extension to a conditional use may be granted subsequent to approval. However, the last phrase in subsection 1 which provides, "is established by the decision or resolution," suggests that an extension must be granted at the time of the initial approval. We recommend modifying the last phrase of subsection one to read: "... unless a longer period is established by the decision or resolution or subsequently, pursuant to Subsection 2."

ATTACHMENT D

CORRECTIONS AND CLARIFICATION NEEDED IN ORDINANCE

1. Correcting Incorrect Internal Reference – Section 4.8.3.A and B.

The development standards tables for the Industrial Zones establish minimum requirements for amenity open space, and reference Section 7.3.7 for more information. That latter reference is incorrect – it leads one to the "Administration & Procedures" chapter of the Ordinance. The correct provisions for Amenity Open Space are located in Section 6.3.7, not Section 7.3.7.

2. Clarifying Standards for Review – Sections 7.7.1.B

The first sentence of Section 7.7.1.B provides that certain applications approved or filed before October 30, 2014, "must be reviewed" under the standards of the prior Ordinance. This sentence was intended to protect the applicant from being pressured to use the standards of the new Ordinance in implementing later steps in an approval that began under the old Ordinance. However, there may be instances where an applicant could prefer to use the standards of the new Ordinance, even to implement subsequent steps of a plan originally approved under the old Ordinance. A strict reading of the first sentence of Section 7.7.1.B could preclude that. The Ordinance should clarify that an applicant, if otherwise qualifying, may elect to utilize the standards and procedures of either the previous Zoning Ordinance, or the Zoning Ordinance in effect on or after October 30, 2014.

As such, we would propose adding as a new sentence in Section 7.7.1.B: "In processing applications under Sections 7.7.1.B. the applicant may elect to utilize the standards and procedures either of the Zoning Ordinance in effect on or after October 30, 2014."

3. Extension of Implementation Period – Section 7.3.1 I

Subsection 2 appears to suggest that an extension to a conditional use may be granted subsequent to approval which is logical since it is often many months after an approval is granted that an applicant realizes they will not be able to implement the conditional use within the statutory validity period. However, the last phrase in subsection 1 which provides "is established by the decision or resolution" suggests that an extension must be granted at the time of the initial approval.

We recommend clarifying that an extension may be granted subsequent to approval by adding the following underscored language to read: unless a longer period is established by the decision or resolution, or subsequently, pursuant to Subsection 2."

ATTACHMENT D

COMMENTS ON ZTA 15-05, DATED MAY 18, 2015

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
1.	Lines 34-36	Right-of-way definition should be changed to read, "land dedicated to or reserved for the passage of people, vehicles, or utilities as shown on a record plat, or as shown in an easement, as separate and distinct from the abutting lots or parcels"
2.	Lines 333-336	The definition of "height" in the agricultural and residential zones appears to contradict itself. Height is being measured to either the mean height level between the eaves and ridge of certain roofs *or* the highest point of the roofs surface, regardless of the roof type. The "highest point" was intended to address a flat roof only, but the ZTA eliminates reference to a flat roof. This contradiction should be addressed and the language in the existing Ordinance should be reinstated.
3.	Lines 340 – 350	Prevents corner lots and through lots from selecting the height measuring point, by requiring that the measuring point be opposite a building "front" that faces one of those streets. The definition fails to contemplate the varying grades often associated with large mixed use projects. Clarity regarding the measuring point may be provided as follows: "On a corner lot exceeding 20,000 square feet, the height of the building may be measured from any point along either adjoining curb grade, provided that the site measuring point is clearly identified on the Sketch, Preliminary and Site Plan, and any site plan submitted in connection with the building permit. For a lot extending through from street to street, the height may be measured from either curb grade, provided that the site measuring point is clearly identified on the Sketch, Preliminary and Site Plan, and any site plan submitted in connection with the building permit."

ATTACHMENT D

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
4.	Lines 421 – 427	Language giving authority for additional units beyond the standard method of development density, where a development provides more than the minimum number of MDPUs, should be reinstated.
5.	Lines 471 – 472	The ZTA calls for height in the R- 90 zone to be measured to the highest point of a roofs surface, regardless of roof type, rather than to the mean level between the eaves and ridge of certain peaked roofs. The height maximum should be modified to be consistent with the current definition of building height in Section 4.1.7.C.1.a of the Ordinance.
6.	479 – 480	The ZTA calls for height in the R- 60 zone to be measured to the highest point of a roofs surface, regardless of roof type, rather than to the mean level between the eaves and ridge of certain peaked roofs. The height maximum should be modified to be consistent with the current definition of building height in Section 4.1.7.C.1.a of the Ordinance.
7.	Lines 549 – 550 and 550 – 551	Development standards in the LSC and EOF Zones require that parking setbacks be behind the front or side street building line of the building in the build-to-area, and that a build-to-area occur with respect to front and side street areas. The findings necessary for modifying the parking setbacks and build-to area requirements proposed in the ZTA are more restrictive and less flexible. Due to the importance of providing flexibility for design elements for standard method of development projects, the ZTA should be return to the original text as provided in Sections 4.6.3.D and 4.6.3.E of the existing Ordinance.
8.	Lines 787 – 792	The current parking lot waiver allows waiving of requirements of Division 6.2, except the required

ATTACHMENT D

NUMBERS CORRESPONDING TO PARAGRAPHS IN ATTACHED ADDENDUM	SECTION NUMBERS	DESCRIPTION
		parking at a parking lot district. This Section should be revised to allow parking waivers in a parking lot district.
9.	Lines 842 – 843, 888 – 889, 940 – 941, and 1079	Requirement for notice to renters, as indicated by the Planning Board's discussion, was to apply only to renter association registered with the Planning Board. If renters are to be included, the text should be changed in that manner. It is also worth noting that the term "renters" applies to residential and non-residential renters alike, which would require notice of commercial tenants.
10.	Line 904	The proposed language appears to suggest that only one extension may be requested by the Planning Director or an applicant. The language should be changed to: "may request one or more extensions."
11.	Lines 966 – 996	Subsection J.1 defines "major amendment" to include conditions or binding elements that relate to components of a project, but many conditions of approval and/ or binding elements are neither materially nor substantively integral to a project. This definition is too restrictive and is contradicted by Subsection J.2, dealing with minor amendments. Subsection J.1 should be revised to eliminate the phrase "deviation from a binding element or condition."

COMMENTS ON ZTA 15-05, DATED MAY 18, 2015

The comments on the ZTA are set forth in the order in which they appear, with reference to the specific lines numbers in ZTA Draft No. 1, dated May 18, 2015.

1. Lines 34-36, Right-of-way Definition.

Restore the deleted language "dedicated to" and add the word "or" before "reserved". This will cover both situations of land that is either dedicated for right-of-way or reserved for right-of-way. Relocate the clause "or as shown in an easement" to the criteria for how the right-of-way was created, so that the modifier clause modifies both methodologies. The definition should be changed to read: "land dedicated to or reserved for the passage of people, vehicles, or utilities as shown on a record plat or as shown in an easement, as separate and distinct from the abutting lots or parcels".

2. Lines 333-336, Height in the agricultural and residential zones.

The definition appears to contradict itself. Height is being measured to: (i) the mean height level between the eaves and ridge of certain roofs, or (ii) the highest point of the roof's surface regardless of roof type. In the event of a hip, gable, mansert or gambral roof, the highest point of the roof surface, meaning the ridge, will always be a higher elevation than the mean height level between the eaves and ridge. The "highest point of the roof's surface" was meant to address a flat roof as distinguished from the mean height level for peaked roofs, but the ZTA eliminates the reference to flat roof. The contradiction should be addressed. We recommend that the existing language in the Ordinance be retained and left unchanged.

3. Lines 340-350, Height and commercials/residential, employment, and industrial zones.

Contrary to the new Ordinance and the prior Ordinance, the ZTA would prevent the selection of the building height measuring point on corner lots; instead the measuring point must be opposite a building "front" that faces one of those streets. This precludes buildings on corner lots from constructing to a height that may be most appropriate given the surrounding uses, if the front of the building happens to be on the street with the lower elevation. This fails to contemplate the varying grades often associated with large mixed use projects that include corner lots. The actual height of buildings can be controlled at the site plan stage to assure compatibility. There should remain flexibility to choose the appropriate measuring point, which in the case of a corner lot should be either street frontage without respect to the location of the building entrance. We understand that this change was intended to provide DPS with clear guidance on how to measure building height on corner lots. We are not aware of any substantive reason why the building height should effectively be reduced (which will be the result of this ZTA). To the extent this issue is truly driven by DPS' need for guidance on how to measure the height of a building on a corner lot or through lot, that guidance can easily be provided by adding the following language:

Building height is measured from the level of approved curb grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof or to the mean height level between eaves and ridge of a pitched roof. If a building is located on a terrace, the height may be increased by the height of the terrace. On a corner lot exceeding 20,000 square feet, the height of the building may be measured from any point along either adjoining curb grade, provided that the site measuring point is clearly identified on the Sketch, Preliminary and Site Plan, and any site plan submitted in connection with the building permit. For a lot extending through from street to street, the height may be measured from either curb grade, provided that the site measuring point is clearly identified on the Sketch, Preliminary and Site Plan, and any site plan submitted in connection with the building permit.

4. Lines 421-427, Optional Method—Residential.

Where a development provides more than a minimum number of MPDUs, the text should not delete the clear authority to allow an "increase in density above the total number of dwelling units allowed by the standard method of development." The deletion of that language, would suggest that no additional units would be allowed beyond the standard method of development density. Clearly, Chapter 25A allows increased density for development of MPDU units above the minimum required. The deleted language needs to be restored to assure that the density allowed in the zone can be increased to accommodate the bonus MPDU units.

5. Line 471- 472, Standard Method Development Standards for the R-90 Zone.

The height maximum shows that the principle building height is 35 feet and must be measured to the highest point of a roof's surface regardless of roof type. This is inconsistent with the definition of height that allows measuring to the mean level between the eaves and ridge of certain peaked roofs. The definition in line 471 would seem to suggest that height is always measured to the ridge. This should be modified to be consistent with the current definition of building height in Section 4.1.7.C.1.a of the Ordinance.

6. Lines 479-480, R-60 Zone Standard Method Development Standards—Height.

This is the same issue as the R-90 height measurement discussed above and similarly, should be modified to be consistent with the current definition of building height in Section 4.1.7.C.1.a of the Ordinance.

7. Line 549-550 and 551-552 LSC and EOF Zones, Standard Method Development.

The development standards require that setbacks for surface parking have to be behind the front or side street building line of the building in the build-to area, and that a build-to area occurs with respect to front and side street areas. However, life sciences type buildings are not often built in an environment that facilitates utilization of a build-to area. They often act in a campus format or at best not in an urban condition where buildings are brought to the street. In

addition, where a building has both a build-to area at the front and a side street build-to area, the language implies that a building must be built at the corner of the site, irrespective of the size of the lot, length of the frontage, or design of the site.

The findings necessary for modifying the parking setbacks and build-to area requirements proposed in the ZTA are more restrictive and less flexible. Existing text for the LSC and EOF Zones (found in Sections 4.6.3.D.3.a and 5.a. for the LSC Zone and 4.6.3.E.3.a and 5.a. for the EOF Zone) is a very reasonable approach and allows the Planning Board to make decisions in the context of a specific plan, and without restriction. Due to the importance of providing flexibility for design elements for standard method of development projects, the changes found on lines 549-550 and 551-552 of the ZTA should be removed and the ZTA should be return to the original text as provided in Sections 4.6.3.D and 4.6.3.E of the existing Ordinance.

8. Lines 787-792, Parking waivers.

The parking waiver allows waiving of requirements of Division 6.2, except with respect to the required parking in a parking lot district. The parking lot districts, generally located in urban areas, should be the best opportunity to reduce parking through the waiver process. We recommend deleted the phrase "except the required parking in a Parking Lot District under Section 6.2.3.H.1."

9. Lines 842-843, 888-889, 940-941, and 1079, Notice to Renters.

This new requirement for notice to renters occurs in several places throughout the ZTA. Based upon the Planning Board's discussion, this was only going to include renter associations if those associations were registered with the Planning Board, as is currently the practice with Civic Associations. If renters are to be included, the text should be changed to clarify that intent. But while considering the issue, it should be taken into account that, as currently written, notice to "renters" applies not only to residential renters but non-residential as well. Therefore, in a CBD type situation where notice must go to adjoining property owners and renters, all commercial tenants would be required to be given notice.

10. Line 904, Extensions of the hearing date.

As currently written, only one extension can be requested by the Planning Director or an applicant. The language should be changed from "may request an extension" to may request "one or more extensions".

11. Lines 966-996, Major amendments.

Clarifying What Qualifies as a Major Site Plan Amendments – Section 7.3.4.J.1.a

Subsection J.1 defines "major amendment" (i.e., an amendment requiring Planning Board review and approval) as any revision that increases density or height or "makes a change to any condition of approval." However, this definition is much too restrictive. Many conditions of

approval relate to components of a project that are neither materially nor substantively integral to a project. The Development Reviews Procedures Manual has allowed the staff to approve amendments that do not "alter the intent or objectives of the Planning Board's action." The Planning Staff should have the authority to approve a Site Plan amendment that seeks to revise such items as: paver type; number or style of benches; number or type of trees or other landscaping component; configuration of open space; parking and loading; minor architectural changes/building locations; and other minor features even if they technically are "conditions of approval." We recommend that the reference to "changes to any conditions of approval" be deleted.

Moreover, the ZTA's proposed revision to Subsection J.2, dealing with minor amendments potentially contradicts Subsection J.1 in terms of what constitutes a major amendment (i.e., the change to J.2 provides that a minor amendment includes any change to "parking or loading, landscaping, sidewalk, recreation facility or area, configuration of open space..."). However, any of these items could and often are conditions of approval. Given the potential conflict between these two provisions it is recommended that J.1 be revised to eliminate from the definition of major amendment, the phrase: "deviation from a binding element or a condition."

ATTACHMENT E

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June 29, 2015

Mr. Casey Anderson, Chair
The Maryland-National Capital Park and Planning Commission
Montgomery County Planning Board
8787 Georgia Ave,
Silver Spring, MD 20910

Re: Omnibus Zoning Text Amendment 15-09

Dear Chair Anderson and Members of the Montgomery County Planning Board:

We have been reviewing, with great interest the contents of the above noted ZTA and wish to offer the following comments/changes for consideration by the Board as you transmit your comments to the County Council in anticipation of the public hearing on this bill scheduled for July 14, 2015.

Of particular concern is the treatment of surface parking within the build-to area. The current draft prohibits surface parking and drive aisles within the build-to area. While this is a positive design goal, the placement of parking can be more appropriately addressed within the parking setbacks of the code. In amending Section 4.1.7.B.2.b., the inclusion in the definition of *a surface parking lot and drive aisle* no longer allows the build-to area to apply to the building only. Parking constraints should be rightly addressed within an appropriate parking setback section. Additionally, it raises the question as to whether the Planning Board has the power to allow modification of definitions during plan review. If surface parking is restricted totally in the build-to area, it may remove the ability to use the standard method in the CRT zone. In fact, the proposal could be viewed as creating a conflict, because the zone already permits the building to be closer to the street than the parking, but for the definition that has been added by this text amendment .Accordingly, the applicant is therefore unable to use the standard method and is compelled to go to optional method. In this scenario the build-to area can be proposed to be modified to a minimum, however this is still a discretionary decision by the Planning Board.

The irony is that the final goal in both instances is the same: bringing the building and not the parking up to the street. By incorporating the definition, the process to reach an identical conclusion is made much more onerous. Like many grand schemes, it creates a variety of grievous unintended consequences and appears antithetical to the County's far reaching goal of achieving compact development.

Regarding changes suggested for the R-90 Zone Optional Method Standards Section 4.4.8.C.1., the change in minimum common open space from 30% to 15% is supported. The addition of site coverage of 40% for THs under the MPDU development criteria raises the question as to what is the definition of site coverage in this context and why was it inserted here. Section 4.4.8.C.2.has reduced the lot area for THs to 1,000 SF and eliminated the 60% maximum lot coverage for TH lots, both of which are positive changes. The reduction of the rear setback/ from the alley from 20' to 4' (per Section 4.4.8.C.3, Placement) is also supported.

In connection with revised Section 4.1.7.C.2 Building Height in Commercial/Residential, Employment and Industrial Zones, the proposed new language "MUST be measured from the middle of the front of the building" needs to be removed to revert back to the original language. There are many cases where a larger corner or through lot will have significant differentials. In the case of a lot with more than one building separated by an internal private street from a road with an approved street grade, more flexibility in measurement must be made available.

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ATTACHMENT E

While the focus of this amendment is not on the family of CR Zones, additional clarification is needed with respect to clarifying Common vs. Public vs Amenity Open space when a project includes multiple building types. The current language is subject to a wide degree of interpretation and ambivalence.

In closing, we urge that the Planning Board take a closer look at the entire build- to area concept within the omnibus text amendment. The build-to area is not about parking, and the tools to assure that buildings are designed so as to create an attractive streetscape are elsewhere in the zoning ordinance, most notably in the parking section.

Sincerely,
Rodgers Consulting, Inc.

Jennifer Russel
Principal

JR/eb

Pamela Dunn
Acting Chief
Functional Planning & Policy Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

RE: MCPB Item No. 8, 5-14-15, Zoning Text Amendment – Modifications, Corrections and Clarifications

Dear Ms. Dunn,

I appreciate the ongoing amazing effort of Planning Department staff to fine-tune the recently adopted zoning ordinance and agree with many of the changes. Over the past several months of applying the zoning ordinance in a variety of situations, we have found additional changes that we think you, the Planning Board, and, ultimately, the District Council should consider.

Below I have addressed the substantive issues called out in the Staff Report and added a few additional comments.

Substantive Changes

1) Right-of-Way. A reservation is sometimes used specifically for potential dedication or set aside for an easement; some easements are established by deed and not "shown"; "as separate and distinct from the abutting lots or parcels" is problematic because easements are not distinct from lots; finally, there have been several different ways rights-of-way have been obtained. An alternative to consider: "Public or private land dedicated, condemned, or established by prescriptive or recorded easement allowing public access for the passage of people, vehicles, or utilities as shown on a record plat or described by deed. A right-of-way does not include easements restricted for private use and access."
2) Building Height. Some buildings on through lots have two fronts, e.g., a residential lobby entrance and an office or retail entrance. Provision should be made, in such cases, to allow for either curb grade to be used (opposite the middle of the respective front). Previous interpretation should be noted and grandfathered.
3) Development Standards. We have run across several situations where the design of a substantial open space required odd configurations due to some placement and form standards. I agree that the Planning Board should be able to approve alternatives for parking setbacks, build-to-area, and all form standards for the Commercial Residential and Employment Zones when a walkable, compact development is maintained. If a site plan is not required, however, the ability to proffer a site plan to make use of this provision should be allowed.

4) Site Plan Amendments.
    a. Under J.1.a., I would add "decrease a setback" and remove "or alter a basic element of the plan", which I think is covered by density, height, use, open space, setbacks, and conditions/binding elements.
    b. Under J.1.b., the ability to approve a major amendment on the consent agenda should be maintained.
    c. Under J.1.d., the "Additional requirements may be established by the Planning Department" makes me nervous. Can there be a reference to the Manual for Development Review so that public comment on those requirements can be maintained?
    d. Under J.2.a., there has been some confusion regarding the amendments to reduce parking under Article 59-6. It should be made clear that this applies only to the parking requirements established under 6.2.4.B. Vehicle Parking Spaces and not the entirety of the Article.
5) Notice Standards. No comments.
6) Grandfathering. The proposed language does not seem to clarify the issue. If the "grandfathered" part of the new development must meet the standards of the existing zone, then what is actually grandfathered? I think some clear examples and situations should be modeled to refine our understanding of the grandfathering section more generally – it was never really clear to begin with.

Other Clarifications and Corrections

- I don't think a parking waiver is necessary – any of the parking requirements may be adjusted under the alternative compliance section.
- Regarding height measurement: the standard that the measuring point is established by the more restrictive of the existing or proposed grade has some unintended consequences when a site slopes down from a right-of-way. In such cases, the measuring point should be from proposed grade, which provides a more compatible relationship to the street. For example, under Section 4.1.7.C.1.b., I would suggest rewording to: something like, "Average grade is calculated using the weighted average of point grades for each wall length along finished or pre-development grade, whichever is more restrictive, along the front of the building parallel to the front setback line unless the pre-development grade is below street grade, in which case, height may be measured from average street grade."
- Couldn't agree more on removing all 4' or 20' references – turns out most easements, utility requirements, and fire-and-rescue access standards make this even more complicated. A 4' minimum setback is easier to work with.

Other Recommendations

- Under 4.5.4.B.1.a. and 4.6.4.B.1.a, the references to open space requirements should be to "site", not "lot".
- Under Sections 4.4.11.-13., Townhouse Zone Standards, consider allowing townhouse height up to 45' to comply with current building typologies.

- Under Optional Method Development for the Multi-Unit Zones, all standards for lot size, width, and setbacks should be established by site plan to better negotiate “best fit” with the neighborhood and staff.
- Under Section 5.2.5.B.2, the code should read, “Maximum height and minimum setbacks are established by the floating zone plan.”

Thank you for your consideration of these matters.

Sincerely,

Joshua Sloan, RLA
Director of Planning and Landscape Architecture
VIKA MD, LLC

ATTACHMENT G

THE DUFFIE COMPANIES

1701 Elton Road, Silver Spring, MD 20903
Phone: 301 434-3040 Fax: 301 434-3854

June 8th, 2015

VIA ELECTRONIC MAIL
The Montgomery County Planning Board
Attn: Casey Anderson, Chair
Ms. Marye Wells- Harley, Vice Chair
Mr. Norman Dreyfuss, Commissioner
Ms. Natali Fani-Gonzalez, Commissioner
Ms. Amy Presley, Commissioner
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Omnibus Zoning Text Amendment 15-09

Dear Chair Anderson and Members of the Montgomery County Planning Board

I am writing you today on behalf of the Duffie family and The Duffie Companies. We are currently exploring the redevelopment of a by right use under a standard method in the newly adopted CRT Zone. We would respectfully request that you clarify certain language being considered in "the Omnibus ZTA" which is presently before you.

We understand that it is the Planning Board's goal, with the Council's approval, to correct certain errors in the new zoning ordinance, as well as clarify language, where appropriate. We are concerned that, as enacted, the existing zoning ordinance is internally contradictory and will unintentionally frustrate the purpose of the new zones. We have two issues of concern and would like to respectfully offer some proposed solutions

Issue One is the prohibition of surface parking within the "build-to area" as proposed to be modified under the Omnibus ZTA; and
Issue Two is the application of the "Building in front of street build-to area" set forth in §4.5.3.C.3 of the current zoning ordinance.

Issue One: The existing zoning code definition of "build-to area" (see Division 1.4, Defined terms and §4.1.7.B.2) for the CRT Zone is as follows:

> "a. The build-to area is the area on the lot where a certain percentage of the front building façade must be located, measured as a range from the edge of the lot line.
>
> b. All structures and uses customarily allowed on the lot are allowed in the build-to area except a surface parking lot."

The Draft Omnibus ZTA build-to area Definition proposes to revise this same language to say:

> "a. The build-to area is the area on the lot from the edge of the lot line or right-of-way to the maximum setback where a certain percentage of the front or side street building façade must be located, measured as a range from the edge of the lot line.
>
> b. A surface parking lot and a drive aisle are prohibited in the build-to area. All other structures and uses customarily allowed on the lot are allowed in the build-to area, [except a surface parking lot] including an access driveway perpendicular to the right-of-way."

We would suggest that the fundamental premise of the build-to area relates to the flexible siting range afforded to a principal building (as set forth in part a). In other words, rather than providing a strict line to which buildings must be constructed (a build-to-line), the intent was instead to provide a range of space within which the front of a building should occupy (and therefore also define where it could not occupy). The relationship of parking to the building is appropriately addressed within the parking setback language set forth in §4.5.3.C. §4.5.3.C of the zoning ordinance mandates that surface parking for a standard method project "must be behind [the] front building line." We believe that this worthy design goal of not allowing surface parking to occur in front of a building's façade (ultimately a LINE) is being inadvertently applied to an entire AREA. In other words, the code on the one hand provides needed flexibility in relation to the building location but then constrains unnecessarily in relation to the building's parking field.

To correct this problem, we would encourage you to remove the language in subsection (b) in its entirety. We suggest allowing the "build-to area" definition to pertain to the building only while allowing constraints on the parking field to be addressed within the parking setback section(s) of the code (namely §4.5.3.C & §6.2.9 which require the parking to be behind the building).

Diagram 1 (attached) illustrates that with the current surface parking setback standard of "must be behind front building line", the goal of prohibiting surface parking between the principal use and the street is met, while also promoting a more compact development form. Furthermore, the pedestrian realm is clearly not negatively affected as the building still forms the 'street wall' and the parking is behind the street wall plane.

If Issue One is not resolved in the suggested fashion, the prohibition of surface parking lots in subsection (b) of the build-to area definition would supersede the specified surface parking setbacks section specified in the CRN, CRT, and CR zones.

The current standards, see §4.5.3.C of the zoning ordinance, mandates that surface parking for a standard method project "must be behind [the] front building line". Notably, this does NOT expressly prohibited surface parking in the build-to area, as does the general definition of the build-to area itself. As a result of this contradiction, in the CRN, CRT and CR zones, the de facto front and side street surface parking setbacks would become 20' (for a general building) as that is the principal building build-to area maximum setback. By contrast, the setback standard from a surface parking lot abutting a single family (sensitive) zone is only either 6' or 10' (see section 6.2.9.C.3). Why would a 6' or 10' setback be acceptable relative to a single family zone but a 20' setback would be required along the commercial street wall?

Additionally, we will importantly note that by including this language about parking within the DEFINITION section of the build-to area, it is our understanding that the Planning Board will be unable to exercise its discretion when it comes to modifying parking setbacks (or other items like an access drive location) on a site even through a site plan review or waiver process. Lots that have limited depth, width and/or other topographical site constraints may not be able to achieve the critical dimensions necessary for a viable parking lot module if not afforded the flexibility of surface parking within the build-to area. Without the removal of the subsection (b) language from the definition section, there will be no "relief valve" available to alleviate such a hardship or to facilitate a case by case review by the Planning Board. Montgomery County's policy of promoting redevelopment and infill of small, fragmented and low intensity properties in smart growth areas relies heavily on efficient geometric layouts to be physically and economically viable. These unique properties often include some quantity of surface parking.

Issue Two: §4.5.3.C.3 of the zoning ordinance specifies the built-to area maximum setback and minimum percentage of lot width for certain uses. Assuming a general use, the current language in the zoning ordinance requires 70% of the Building façade to be located within the built-to area. Unfortunately, the section also includes language suggesting that a building must occupy a "min% of lot width". This can not be correct. We would encourage that, consistent with the clarification being made in the Omnibus ZTA for the LSC and EOF zones standard method of development, additional clarification is also necessary for the CRN, CRT and CR Zones Build-To Area language. "BTA, max setback and *min % of lot width*" should be changed to "*min % of building façade*" to clarify that it is the minimum quantity of building façade which is required within the build-To Area, not a minimum percent of lot width which must be occupied by building façade.

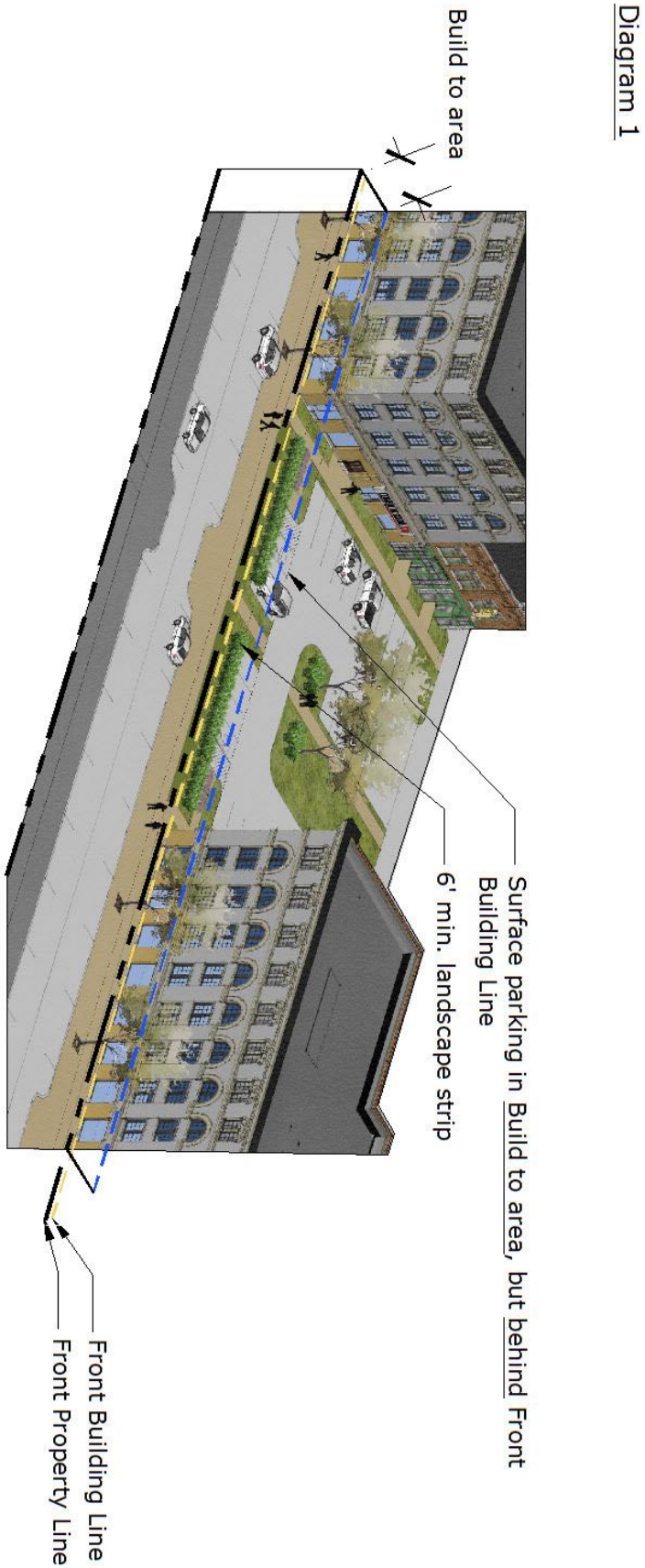
Thank you for the opportunity to provide our comments on the Omnibus ZTA, and we look forward to working with you on these requested clarifications and changes.

Sincerely,

Shane Pollin

cc: Rebecca D. Walker, Miles & Stockbridge
Jennifer Russel, Rodgers Consulting
Matt Leakan, Rodgers Consulting
Members of the Montgomery County Council
Jeff Zyontz, Legislative Council
Luis Estrada
Nancy Sturgeon

Diagram 1


Build to area
Surface parking in Build to area, but behind Front Building Line
6' min. landscape strip
Front Building Line
Front Property Line

ATTACHMENT H

From: Chuck Sullivan [mailto:chuck.csh@verizon.net]
Sent: Tuesday, June 09, 2015 11:33 AM
To: Dunn, Pamela
Subject: Zoning Re-write

Hey Pam,

I met you at the MBIA Custom Home Builder's Council. It is my understanding you are considering input for the zoning re-write and I would offer the following suggestion:

Often in established communities a house is located on two recorded adjacent lots. When that property owner wants to build a new home they must combine those two lots into one recorded lot in order to get a building permit. The existing two lots are really acting as one lot. The density is being reduced. The combination of the two lots is really just formalizing what has existed for years.

Currently the process of combining two recorded adjacent lots into one lot is an expensive process that takes up to 6 months. It is my understanding they are always approved.

It would be tremendously helpful if there were an administrative process for this situation. The only engineering needed is to create a new plat that shows the two lots combined. I would hope the process would be just a matter of paying a minor fee and not require MNCPPC Board approval.

Your consideration of this request is appreciated. Should you have any questions or concerns please do not hesitate to contact me.

Thanks,

Chuck Sullivan
7901 Pearl Street
Bethesda, MD 20814
240-508-2557
President, Chuck Sullivan Homes

ATTACHMENT I

Tettelbaum, Emily

From: Dunn, Pamela
Sent: Wednesday, June 24, 2015 4:54 PM
To: Tettelbaum, Emily; Wise, Jennifer
Subject: FW: Omnibus ZTA

From: Leatham, Erica A. (Bethesda) [mailto:LeathamE@ballardspahr.com]
Sent: Friday, June 05, 2015 2:54 PM
To: Dunn, Pamela
Subject: RE: Omnibus ZTA

Thanks! That makes it easy.

In the Townhouse zones, you reduced the lot sizes for towns, but not for duplexes (side) and since these duplexes are basically two end unit townhouses, it would be consistent to reduce those lot sizes in the same proportions. Recently, most duplexes have been MPDUs designed to mimic the market rate single family homes in the single family zones and, in that context, a lot size half the size of the single makes sense. But, you will not see that design element in a townhouse zone, rather you will see duplexes used as a way to break up longer strings of towns, and you will want to keep their proportions in line with the proportions of the towns. For example, in the TLD Zone, using the same reduction percentage as you used to downsize the townhouse lots would result in a duplex (side) minimum lot size of 1500 square feet. The same thing applies in the TMD and THD Zones.

Also, the definition of duplex and towns may need to clarify that the minimum lot size refers to a single unit of the duplex or town. When we were re-reading it, it was not clear.

Let me know if you have any questions.

Thanks again, Erica

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