



**Zoning Text Amendment 15-09 - Modifications, Corrections and Clarifications**

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**Description**

This Zoning Text Amendment (ZTA) clarifies language, corrects errors, and generally amends language in the new zoning ordinance. The changes requested by this ZTA have been brought to Planning Staff's attention over the past 8 months, since the effective date of the new code. Following the introduction of ZTA 15-09 by the County Council, Planning Staff has received additional feedback from various stakeholders on proposed text changes to the new zoning code. Planning Staff recommends the following modifications to ZTA 15-09 to address the feedback received since the introduction of the ZTA.

**Summary**

**Staff recommends approval of ZTA 15-09, including the amendments proposed by Planning Staff. The ZTA includes clarifications, corrections, and suggested modifications based on implementation of the new zoning ordinance by the Planning Department, the Department of Permitting Services (DPS), the Office of Zoning and Administrative Hearings (OZAH), and other stakeholders.**

**Background/Analysis**

The new zoning ordinance was adopted on March 5, 2014, and became effective on October 30, 2014. ZTA 14-09, which addressed initial corrections and clarifications to the zoning ordinance, was adopted on September 30, 2014, and also became effective on October 30, 2014. Since its effective date, widespread use of the new zoning ordinance has revealed text in need of clarification or correction, as well as a few substantive concerns. To address the need for changes to the new zoning ordinance, the Planning Board held a public meeting on May 14, 2015 to review a ZTA drafted by Planning Staff based on feedback from various County agencies and other stakeholders. During the public meeting, the Planning Board listened to testimony and made the following modifications to the draft ZTA before transmitting it to the District Council on May 15, 2015:

1. To ensure that renters have ample opportunity to engage in the development review process, the Planning Board added a requirement that any registered renters association

within 1/2 mile of a property with a conditional use, variance, sketch plan, or site plan application receive mailed notice about the application and/or hearing.

2. In order to streamline the process for approving an *Attached Accessory Apartment* conditional use application filed under Section 3.3.3.A.2.b, the Planning Board eliminated the need for the Hearing Examiner to make the general findings for a conditional use under Section 7.3.1.E. In addition to the use standards for all accessory apartments and the applicable limited use standards, the Hearing Examiner would only need to find that the conditional use standards under Section 3.3.3.A.2.c. are satisfied to approve the application.

The District Council introduced ZTA 15-09 on May 21, 2015, and scheduled a public hearing for July 14, 2015. The zoning ordinance requires that the Planning Board submit a recommendation on the ZTA prior to the District Council public hearing.

Since its introduction, Planning Staff has received feedback on the language contained in the original ZTA, as well as other issues that have emerged with the implementation of the new zoning code. The modifications to ZTA 15-09 proposed by Planning staff are summarized below. Plain language edits, as well as the correction of grammatical and spelling errors found by Planning Staff, the Office of Hearing and Zoning Appeals (OZAH), and other stakeholders are also included in the proposed modifications to the ZTA but are not noted below.

### **Proposed modifications based on Planning Department and County Staff feedback:**

#### **Department of Health and Human Services (HHS)**

- Section 3.3.2.A: Modify the definition of *Group Living*; remove the requirement that tenancy be arranged on a monthly or longer basis. The monthly tenancy requirement, added to an early draft of the new zoning code by the project consultant, has had an unintended adverse effect on *Group Living* uses. The Director of Health and Human Services(HHS) has indicated that the tenancy requirement impedes the ability of state licensed group homes to provide short term (less than 30 day) residential crisis services (Attachment A). Two such group homes exist in the County and fulfill a critical need in the County's crisis response system.

*Planning staff agrees with the Director of HHS that the County Council did not intend to eliminate these types of short term group living facilities in the new zoning code, and proposes the following change.*

#### *Section 3.3.2. Group Living*

##### *A. Defined, In General*

*Group Living means the residential occupancy of a structure by a group of people that does not meet the definition of any Household Living use under Section 3.3.1[, where tenancy is arranged on a monthly or longer basis]].*

**Office of Zoning and Administrative Hearings (OZAH)**

- Article 5: Modify floating zone requirements so less detail about certain development standards (e.g. internal setbacks, minimum lot size) is required during the rezoning process. Such details about site layout should be established during the site plan review process. The new zoning code requires an overly detailed analysis for floating zones in comparison with the old code. The intent of the new zoning code was to simplify the analysis of floating zone plans at the rezoning stage; these modifications further that intent. *Planning staff agrees and proposes the following revision:*

*B. Setback and Height*

\* \* \*

2. [[Maximum height and setbacks]] Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.

\* \* \*

*C. Lot Size*

*Minimum lot sizes are established by the [[floating zone plan]] site plan approval process under Section 7.3.4.*

- Section 7.2.1.E.2.c: Modify the District Council finding for a Local Map Amendment requiring a floating zone plan to satisfy all the requirements of the entire Chapter. Instead, require the floating zone plan to satisfy the requirements of the proposed zone.

*Planning Staff proposes the following modification in response to OZAH’s concern.:*

*E. Necessary Findings*

\* \* \*

2. *For a Floating zone application the District Council must find that the floating zone plan will:*

- a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*
- b. further the public interest;*
- c. satisfy the intent, purposes, and [[standards]] requirements of the proposed zone [[and requirements of this Chapter]];*

- Section 7.3.1.K: Clarify that any amendment to a *Telecommunications Tower* conditional use is a minor amendment. *Planning Staff proposes the following text:*

*Section 7.3.1. Conditional Use*

\* \* \*

2. *Minor Amendment*

\* \* \*

*Any amendment to a Telecommunications Tower is also a minor amendment.*

- Section 7.5.2.E.1: For applications decided by the Hearing Examiner, the Board of Appeals, and the District Council, require that notice be sent out 30 days prior to the hearing instead of 5 days after the application is accepted. OZAH requested this change due to problems with scheduling the hearing in a 5 day time frame, and the frequent need to re-notice when a hearing date is changed. Also clarify that noticing to pre-submittal meeting attendees is only required in those instances when a pre-submittal meeting is required. *Planning Staff recommends the following:*

*E. Hearing Notice*

1. *[The deciding body must send notice of the hearing within 5 days after an application is accepted to] Hearing notice must be sent to all abutting and confronting property owners, civic, renters, and homeowners associations that are registered with the Planning Department, and located within 1/2 mile of the site, any municipality within 1/2 mile, and, if applicable, pre-submittal meeting attendees [if applicable] who request to be a party of record. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium. The deciding body may require additional noticing according to its approved rules of procedure.*

*a. The District Council, Hearing Examiner, and Board of Appeals must send notice of the hearing [[within 5 days after an application is accepted]] a minimum of 30 days before the scheduled hearing date.*

- Section 7.5.2.E.4: Modify the timeframe for noticing parties of record about the time and place of a continued hearing. OZAH requested this change to avoid undue delay when the continuance of a hearing cannot be announced at a public hearing. *Proposed text follows:*

*E. Hearing Notice*

\* \* \*

4. *A hearing may be postponed or continued if the time and place of the continued hearing is publicly announced at the time of the adjournment or notice is given to all parties of record [[as required for the original application]] a minimum of 10 days before the next scheduled hearing date.*

- Section 7.7.1.D: Per OZAH request, clarify which development standards (lot width and minimum lot size) are exempt under this section. Also add a provision from the old zoning code allowing certain recorded lots in the AR zone to use a prior zoning classification. *Below is the applicable revision for the AR zone. A similar clarification regarding lot width and minimum lot size is also proposed for the Rural, Rural Cluster, RE-2, RE-2C, and RE-1 zones.*

*D. Residential Lots and Parcels*

*9. Exempted Lots and Parcels in the Agricultural Reserve Zone*

*A lot or a parcel in the Agricultural Reserve (AR) zone, in addition to other exemptions in this subsection, is exempt from the minimum lot area and lot width requirements of the AR zone, but must satisfy the requirements of the zone applicable to it before its classification to the AR zone if:*

*\* \* \**

*c. the record lot was created by subdivision and was approved for recordation by the Planning Board before the approval date of the Sectional Map Amendment that initially zoned the property to the RDT zone.*

- Section 8.1.2: Clarify that Division 7.7 does not apply to the zones in Article 59-8. *Planning Staff recommends adding the text below.*

*Section 8.1.2. Modification of Zones*

*A. Amending a Development Plan*

*\* \* \**

*Division 7.7 does not apply to the zones in Article 59-8.*

- In addition, Martin Grossman, the director of OZAH, sent Planning Staff a proposal to eliminate the accessory apartment conditional use process. In his proposal, any challenge to an accessory apartment license rejection by DHCA based on a lack of onsite parking or proximity to other accessory apartments would be the subject of the existing objection process by which accessory apartment license applicants (or opponents) challenge a 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 (Attachment B).

*Planning Staff recommends that, if the Council is so inclined, Mr. Grossman's proposal be introduced as a separate ZTA so the issue can be fully discussed and vetted by all stakeholders.*

**Board of Appeals**

- Section 7.3.2.B.2.j: Add a provision from the old zoning code that required variance applications to include a building permit denial from DPS. The Board of Appeals requested this addition because, under the old zoning code, the DPS determination functioned as a starting point for a variance case. The absence of the building permit denial causes confusion, and in some cases, errors. Further, the Mayor of the Town of Chevy Chase asked that the language be added because the denial of a building permit triggered earlier notice to the town of a possible variance application, allowing the Town more time to consider such variances before the BOA hearing. *Planning Staff proposes adding the following:*

*Section 7.3.2. Variance*

\* \* \*

*B. Application Requirements*

\* \* \*

2. *The applicant must submit the following for review:*

\* \* \*

*j. a letter of building permit denial from DPS.*

**Department of Permitting Services (DPS)**

- Section 4.1.7.B.4.a.ii and Section 4.4.1.B.2: Clarify the maximum size of a bay window (10' x 3') that may be excluded from the calculation of coverage. *Planning propose the following modification:*

*4. Coverage*

*a. Defined*

\* \* \*

*ii. Coverage does not include paved areas such as a driveway, a pedestrian walkway, a bay window measuring 10 feet in width or less and 3 feet in depth or less, an uncovered porch or patio, deck, a swimming pool, or roof overhang.*

- Section 6.7.4.F: Add language from the old zoning code that allows the Department of Transportation (DOT) to regulate signs within the right-of-way, and also authorizes DPS and DOT to remove prohibited signs within the public right-of-way. *The proposed text follows:*

*F. Sign in the Public Right-of-Way*

\* \* \*

*Section 6.7.4.F does not affect the authority of the appropriate transportation jurisdiction to regulate signs in its right-of-way or the authority of the Department of Transportation to otherwise regulate the right-of-way. The appropriate transportation*

jurisdiction or DPS may remove any sign in the public right-of-way that is prohibited under Section 6.7.4.F.

**Maryland National Capital Park and Planning Commission (MNCPPC)**

- Section 4.3.4: Clarify the specification for lot coverage in the Rural Cluster zone. The additional language clarifies that even if lot coverage is 10% or less, a preliminary plan approved before December 24, 2012 may limit the amount of impervious surface as a condition of approval.

<b>2. Lot</b>
* * *
<b>Specification for Coverage</b>
<i>a. The total impervious surface area of [a] <u>any</u> proposed preliminary plan must [satisfy] <u>not exceed</u> any impervious surface area [limit] <u>limits</u> recommended by the master plan. [A project which has had a preliminary plan approved before December 24, 2012 may be built or altered without a limit on impervious surface area.] A preliminary plan approved before December 24, 2012 may be built or altered if the coverage of any lot is 10% of the lot or less, without a limit on total impervious surface area, <u>unless otherwise limited by a condition of approval.</u></i>

- Division 4.4:
  - For standard method development in the Residential zones, add a requirement that a lot front on a street or open space. This language mimics a requirement for optional method development in the Residential zones and is consistent with the definition of lot in the old zoning code. The proposed text appears in the development standards table under standard method development for all the residential zones.

<b>1. Lot and Density</b>	
<b>Lot (min)</b>	
* * *	
<u>Frontage on street or open space</u>	<u>Required</u>

- In the R-90, R-60, and R-40 zones, add an “or” to the building height row to clarify how building height is measured.

<b>Height (max)</b>	
<i>Principal building, measured to highest point of [a flat] roof surface regardless of roof type OR</i>	35'
* * *	

- Division 4.5, Division 4.6, Division 4.8:
  - For standard method development in the C/R, Employment, and Industrial zones, clarify that the open space requirement is based on the tract size rather than the site size. The ZTA (as introduced) makes a similar modification for optional method development in the C/R and Employment zones.

<b>1. Site</b>				
<b>Open Space (min)</b>				
<i>Open space, [[site]] tract ≤ 10,000 SF</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	
<i>Open space, [[site]] tract &gt; 10,000 SF</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	

- Section 4.7.3.B: Clarify the maximum number of public benefit points that an applicant can request for transit proximity. Planning Staff recently reviewed an application requesting public benefit points for proximity to a metro station, a MARC station, and a master planned purple line station. Planning Staff believes the Council’s intent was to encourage public benefits in a variety of categories, and not to allow a project to claim points for proximity to multiple transit facilities.

*B. Transit Proximity*

*1. Transit proximity points are granted for proximity to existing or master planned transit stops based on transit service level and CRT, CR, LSC, and EOF zones. Public benefit points can only be granted for one transit stop.*

- Section 4.8.3: Add a specification to clarify how to calculate the amount of required open space in the Industrial zones.

<b>1. Site</b>		
<b>Open Space (min)</b>		
<i>Amenity open space, [[site]] tract ≤ 10,000 SF (see Section [7.3.7] 6.3.7)</i>	<i>5%</i>	<i>5%</i>
<i>Amenity open space, [[site]] tract &gt; 10,000 SF (see Section [7.3.7] 6.3.7)</i>	<i>10%</i>	<i>10%</i>

**Specification for Open Space**

**a.** Open space is calculated on the area of the site.

- Section 5.2.5.D: Under the Residential Floating Zones, correct the header for Open Space. It is incorrectly listed as Coverage.

*Section 5.2.5. Development Standards*

\* \* \*

*D. ~~[[Coverage]]~~ Open Space*

- Section 6.2.4.B: Clarify that the parking requirements for an *Educational Institution (Private)* are based on the number of students in grades 9-12, or the number of students over 16 years old.

		<i>Baseline Minimum</i>	<i>Baseline Minimum</i>	<i>Baseline Maximum</i>	<i>Baseline Minimum</i>
<b>CIVIC AND INSTITUTIONAL</b>					
* * *					
<i>Educational Institution (Private)</i>	<i>Student (Grades 9 – 12 or age 16<sup>+</sup>)</i>	0.25	0.15	0.25	0.25
	<i>Employee</i>	1.00	0.25	0.50	0.50

- Article 59-7: Add language in several sections to require that a civic, renters, or homeowners association register with the Planning Department to receive notice about applications and hearings. See an example below:

*2. The applicant must submit the following for review:*

\* \* \*

*f. list of any civic, renters, and homeowners associations that are registered with the Planning Department, and located within 1/2 mile of the site;*

**Consistency with Recent Zoning Text Amendments**

- Section 3.4.5.B : Clarify that conditional use approval is not required for certain types of private educational institutions. This correction was originally covered by ZTA 15-04; however, as this text amendment is proceeding ahead of ZTA 15-04 Planning Staff is recommending the following correction:

*Section 3.4.5. Educational Institution (Private)*

\* \* \*

*B. Exemptions*

*A conditional use is not required for:*

1. *[[The conditional use standards in Section 3.4.5.C.2 do not apply for]] any private educational institution or parochial school that is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any State agency, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any Educational Institution (Private) that received conditional use approval by the Hearing Examiner to operate in a building or on a property that was not owned or leased by any church or religious organization at the time the decision of the Hearing Examiner was issued.*

- For consistency with ZTA 15-05:
  - Division 4.5, Division 4.6, Division 4.8:  
Switch the numbers for the “side” and “over” duplex standards and leave the headers in place. For example:

***C. GR and NR Zones, Standard Method Development Standards***

	<i>Detached House</i>	<i>Duplex – [[Side] [[Over]]</i>	<i>Duplex – [[Over] [[Side]]</i>	<i>Townhouse</i>	<i>Apartment</i>	<i>Multi Use</i>	<i>General</i>
<b><i>2. Lot and Density</i></b>							
<b><i>Lot (min)</i></b>							
<i>Lot area</i>	<i>1,000 SF</i>	<i>[[1,000]] <u>500 SF</u></i>	<i>[[500]] <u>1,000 SF</u></i>	<i>900 SF</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
<i>Lot width at front building line</i>	<i>25'</i>	<i>[[25'] <u>12.5'</u></i>	<i>[[12.5'] <u>25'</u></i>	<i>12'</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>

- Section 4.6.3.D & Section 4.6.3.E: For standard method development in the LSC and EOF zones, modify the parking setback, build-to area, building orientation, and transparency specifications to indicate when an applicant can modify the applicable standard under site plan review and for consistency with the language passed in ZTA 15-05, which Staff noted they were tracking and would incorporate into this ZTA. For example:

**Specification for Parking Setbacks for Surface Parking Lots and Build-to Area**

a. *Parking Setbacks for Surface Parking Lots and Build-to Area requirements only apply when the development fronts on a business district street or a build-to-line is recommended in the applicable master plan. [If a site plan approval is required, the] The Planning Board may [waive]modify the Parking Setbacks for Surface Parking Lots and Build-to Area requirements during site plan review under Section 7.3.4 [[if it finds that the alternative design satisfies the intent of the zone and]]. In approving a site plan submitted under this subsection, the Planning Board must find that the plan: (1) deviates from [[those]] the Parking Setbacks for Surface Parking Lots and Build-to Area requirements only to the extent necessary to accommodate the [[characteristics of the subject property]] physical constraints of the site or the proposed land use; and (2) incorporates design elements that engage the surrounding publicly accessible spaces such as streets, sidewalks, and parks.*

**Proposed Modifications Based on Public Correspondence**

**CTRACK #2015-0550 Various/ ZTA 15-09 (Attachment)**

Section 3.1.6 and Section 3.5.11.B.2.a: Increase the maximum gross floor area that may be used for a *Retail/ Service Establishment* in the R-10 zone to 10,000 sf or 10% of the gross floor area of the building, whichever is less. William Kominers and Christopher M. Ruhlen requested this modification so the existing 8,887 sf Grosvenor Market can become a conforming use and have the potential for modest expansion (Attachment C).

*Planning Staff recommend including this modification in the ZTA as follows:*

***B. Retail/Service Establishment***

*\* \* \**

***2. Use Standards***

a. *Where a Retail/Service Establishment is allowed as a limited use, it must satisfy the following standards:*

i. *In the R-10 zone:*

*(a) The apartment building type must contain a minimum of 150 dwelling units, be a minimum of 60 feet in height, and be on a site with a minimum of 5 acres.*

*(b) 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.*

**CTRACK #2015-0565 Harris/ ZTA 15-09 (Attachment D)**

The following changes were proposed by the law firm of Lerch, Early & Brewer. Their remarks are separated into three categories: substantive changes, corrections and clarifications, and comments on ZTA 15-09.

**Substantive Changes:**

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.
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*Planning Staff recommend including this modification in the ZTA, see CTRACK #2015-0550.*

2.	Articles 4 and 6 – Sections 6.8 and 4.5.4.A.4	<p>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."</p> <p>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.</p>
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*Planning Staff believe that Article 59-6 already allows a great deal of flexibility through alternative compliance (Division 6.8) for site access; open space and recreation; general landscaping and outdoor lighting; screening; and outdoor display and storage. ZTA 15-09 also adds a parking waiver provision that allows the deciding body to waive any parking, queuing, or loading requirement under Article 59-6. Alternative compliance and the parking waiver allow flexibility for all the standards in 59-6 (except signage), while requiring the applicant to show the deciding body that an alternative design satisfies the intent of the original requirement, and does not necessarily require Planning Board review.*

*Under Section 4.5.4.A.4, optional method projects in the CR and CRT zones are required to follow the compatibility requirements in Section 4.1.8. The compatibility requirements ensure appropriate height and/ or setback protections for residential properties in Agricultural, Rural Residential, Residential Detached, and Residential Townhouse zones that abut or confront apartment, multi-use, or general buildings in Multi-Unit, C/R, Employment, Industrial, or Floating zones. These compatibility requirements are a critical element of the residential protections provided by this zoning code. They provide predictability for residential properties in close proximity to more intense zones, regardless of whether a nearby applicant proposes a standard or optional method project. Planning Staff does not believe this modification should be made.*

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.
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*The intent of standard method is to allow for a prescriptive, predictable form of development that can be approved without a discretionary review by the approving body. The recommendation to allow an applicant for standard method development to file a site plan to modify any of the requirements contained in Article 59-4 (except Height and density) is beyond the scope and intent of this ZTA, and basically provides the flexibility of the optional method process without the provision of public benefits.*

*The Planning Board and County Council very recently discussed and decided the standard method development standard in the C/R zones that are eligible for review under the site plan process.*

*As stated above, Article 59-6 already allows for a great deal of flexibility through alternative compliance, and this ZTA 15-09 recommends adding a parking waiver provision that allows the deciding body to waive any parking, queuing, or loading requirement under Article 59-6. Together, alternative compliance and the parking waiver allow flexibility for all the standards in 59-6 (except signage).*

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.
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*Under the old code, certain residential zones did require the provision of a fixed amount of open space for townhouses and duplexes. Other residential zones only required the provision of open space, without stating a discrete amount or percentage. The Multi-unit zones had a 50- 65 percent green area requirement. Adding a specific open space metric to the optional method development standards for these zones was done to provide a clear indication of the requirements for all residential zones.*

*In addition, the minimum lot size requirement for most building types was reduced under optional method development in these zones. The addition of common open space in conjunction with reduced minimum lot sizes was thoroughly discussed with the Planning Board during its review of the new code.*

*Planning Staff does not believe the open space requirements should be removed as this was an intentional change to code done in exchange for reduced lot sizes.*

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
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*The restrictive nature of the Residential Floating zones was discussed at length with the Planning Board and Council during the adoption of the new zoning code. Given the number of worksessions devoted to the floating zones during the PHED committee review, Planning Staff believe that changes to the maximum density allowed under the Residential Floating zones are outside the scope and intent of this ZTA.*

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.
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*A master plan recommendation is not a prerequisite for a Floating zone. Section 5.1.3 clearly states the prerequisites required for a Floating zone that is not recommended in a master plan.*

*Under the old code, certain floating zones could only be approved if recommended in a master plan. Under the new code, a master plan recommendation is not required for any of the floating zones; however, a finding of master plan conformance is required for all floating zones. The finding of master plan conformance was added to ensure that floating zones are reviewed in the context of individual master plans. This is not equivalent to the requirement of a master plan recommendation.*

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.
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*Planning Staff does not have the resources or time to thoroughly assess this issue in this ZTA. If the Board or Council desires, this could be a separate ZTA in the future.*

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, <i>not</i> subject to an existing site plan approval, can amend the previously approved parking requirements to adjust the parking standards.
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*Planning Staff have proposed a modification to Section 7.7.1.B.3.b to address this issue.*

**3. [Plan] Amendment of an Approved Plan [for Plans Approved] or Modification of an Application Pending before October 30[.], 2014**

\* \* \*

*b. An applicant may apply [[for a minor site plan amendment]] to amend the parking requirements of a previously approved application (listed in Section 7.7.1.B.1 or 7.7.1.B.2) in a manner that satisfies the parking requirements of Section 6.2.3 and Section 6.2.4.*

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.
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*In all Residential and Rural Residential zones, Section 7.7.1.D.1. allows any lot platted before October 30, 2014 to be issued a building permit for a detached house without regard to street frontage or the lot size requirement of its zone. Planning Staff is also recommending that parcels created by deed prior to June 1, 1958 be granted the same exemption.*

**D. Residential Lots and Parcels**

**1. Residential Lot**

*Unless adjoining lots have merged by virtue of ownership and zoning requirements, DPS may issue a building permit for a detached house on any Residential or Rural Residential zoned lot identified either on a plat recorded before October 30, 2014 or a deed recorded before June 1, 1958, without regard to the street frontage and lot size requirements of its zoning, except as provided in Section 7.7.1.D.3.b.*

**Clarifications and Corrections:**

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.
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*This reference was corrected in ZTA 15-09, as introduced.*

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."
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*If an applicant chooses to retain its grandfathered status and utilize Section 7.7.1.B. or 7.7.1.C. then the standards and procedures of the old code would apply. Should an applicant can choose to come under the new code, the exemptions allowed under Section 7.7.1.B. or 7.7.1.C. would not apply.*

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."
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*Planning Staff have proposed a modification to Section 7.3.1.I.1 to address this issue.*

***I. Duration of Approval***

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*2. ~~[[The]]~~ After the decision, the Board of Appeals or the Hearing Examiner may extend the time limit for a conditional use to be established or obtain a building permit if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. An individual extension must not exceed 12 months. If the Board of*

*Appeals or the Hearing Examiner grants an extension, it must set a date by which the erection or alteration of the building must begin or the use must be established.*

**Comments:**

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”
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*As written in the ZTA, the definition of right-of-way is correct. It has been reviewed by legal staff and staff working on the rewrite of the subdivision regulations, and all are in agreement that “easement” should not be modified by “as separate and distinct from the abutting lots or parcels.” Any changes to the definition of right-of-way, beyond those shown below, should occur in conjunction with the approval of the rewritten subdivision regulations.*

***Right-of-Way: Land [dedicated to] ~~[[reserved]]~~ for the passage of people, vehicles, or utilities as shown on a record plat as separate and distinct from the abutting lots or parcels, or as shown in an easement.***

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 <i>or</i> 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.
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*Per request by DPS, Planning Staff modified the definition of height in the Agricultural, Rural Residential, and Residential zone to more closely match the language of the old code. The intent of the text in the new code was to mimic the intent of the old code provisions for height in these zones; however, a slight wording change is needed to accomplish this. The definition of Height is modified to match the clarification being added to the development standards tables.*

**C. Height**

1. Building Height in Agricultural, Rural Residential, and Residential Zones

a. Building height is measured from the average grade to either the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof or to the highest point of roof surface, [of a flat roof] regardless of roof type.

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."
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Per request by DPS, Planning Staff added clarifying language to the definition of height in the C/R, Employment and Industrial zones. On a corner or through lot, an applicant can choose the front from which the measurement of height is taken and then measure from the center of the building, not anywhere along the curb grade.

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 MDPU's, should be reinstated.
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The removal of text stating that additional density is achieved under optional method MPDU development in the Residential zones was done to clarify how these zones operate. There has been no change in the density allowed under optional method development in the Residential zones.

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.
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The measurement of height in the Agricultural, Rural Residential, and Residential zone as referenced in the development standards table matches the definition of height under Section 4.1.7.c.1.a. The measurement of height to the mean level between the eaves and ridge of certain peaked roofs was not removed. This text in the development standards table was not recommended for modification so was not included in the ZTA. See example below.

**C. Height**

**1. Building Height in Agricultural, Rural Residential, and Residential Zones**

a. Building height is measured from the average grade to either the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof or to the highest point of roof surface, [of a flat roof] regardless of roof type.

**B. R-90 Zone, Standard Method Development Standards**

<b>3. Height</b>	
<b>Height (max)</b>	
<i>Principal building, measured to highest point of [a flat] roof <u>surface</u>, <u>regardless of roof type</u> <u>OR</u></i>	35'
* * * <i>The asterisks indicate no change to the text in this row. Below is the unchanged text that follows in the code.</i>	
<i>Principal building, measured to mean height between the eaves and ridge of a gable, hip, mansard, or gambrel roof</i>	30'

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.
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See response to comment 5.

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.
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*The text proposed for the EOF and LSC zones is based on ZTA 15-05. The added language is not more restrictive than the text in the current code. The current text remains – if a site plan is required, the Board may waive certain development standards; however, if an applicant chooses to file for site plan review to modify one of the applicable development standards, then the Board must find certain criteria are met. This matches the recent text passed for the C/R zones under ZTA 15-05.*

8.	Lines 787 – 792	The current parking lot waiver allows waiving of requirements of Division 6.2, except the required
		parking at a parking lot district. This Section should be revised to allow parking waivers in a parking lot district.

*A request to waive parking in a Parking Lot District would affect the collection of the ad valorem tax. This proposed change should be vetted by the Montgomery County Department of Transportation.*

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.
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*Planning Staff have modified several sections in Article 59-7 to clarify that all civic, renter and homeowner associations must be registered with the Planning Department. If a commercial renters*

association registers with the Planning Department, it would receive notice for all applicable applications and hearings. See an example below:

2. The applicant must submit the following for review:

\* \* \*

f. list of any civic, renters, and homeowners associations that are within 1/2 mile and registered with the Planning Department;

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."
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Section 1.4.1.E. states "the singular includes the plural". Planning Staff does not believe that a modification to the text is required.

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."
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Planning Staff believes that any binding element or condition of approval is integral to a project given its designation as such.

**Correspondence received via email:**

1. Section 6.2.4.B: Reduce the parking requirement for *Life Sciences* and *Research and Development* for consistency with the old zoning code. In conversations with Planning Staff, Nancy Randall and Anne Mead pointed out that the parking requirements for these uses had increased under the new zoning code. The increase was an error in the new code due to the reorganization and reclassification of uses and their associated parking requirements.

*The recommended correction is below.*

USE or USE GROUP	Metric	Agricultural, Rural Residential, Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area		Outside a Parking Lot District or Reduced Parking Area
			Baseline Minimum	Baseline Minimum	Baseline Maximum
Office and Professional					
[[Life Sciences]] Office [[Research and Development]]	1,000 SF of GFA	2.80	2.00	3.00	2.25
<u>Life Sciences</u> <u>Research and</u> <u>Development</u>	<u>1,000 SF of GFA</u>	<u>1.50</u>	<u>1.00</u>	<u>3.00</u>	<u>1.50</u>

## 2. Letter from Rodger's Consulting received June 29, 2015 (Attachment E)

- Surface parking constraints should be addressed by the parking setback standards rather than the build-to area definition.

*The prohibition against surface parking in the build-to area is intentional and appropriate for a standard method project that does not have a site plan review to examine the context and the pedestrian environment. However, language added through recently approved ZTA 15-05 allows a standard method applicant to request that the Planning Board modify the build-to requirements during site plan review. The applicant can request that the build-to area be reduced such that the maximum setback aligns with the front building line. The build-to area would only encompass the area between the front lot line and the front building line, and parking would be allowed directly behind the front building line. This does not require an applicant to undergo the optional method review process nor does this require an amendment to the definition.*

- The addition of site coverage of 40% for townhouses 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.

*Site coverage was added to replace lot coverage for townhouses in MPDU optional method development because Planning Staff received correspondence that lot coverage was an impractical standard for townhouse development. Townhouse lots are typically small, and the building often covers the majority of the lot. Coverage is a more practical metric when assessed across an entire townhouse site, as defined in Section 4.1.7.A.2.*

- The following proposed new language in Section 4.1.7.C.2, Building Height in Commercial/ Residential, Employment and Industrial zone should be removed: “MUST be measured from the middle of the front of the building.”

*At the recommendation of DPS, the term “must” was added to clarify the intent of the definition which was to measure height in a consistent and transparent fashion. For a corner or through lot, an applicant can still choose which side of the building is the front, and therefore from which side the measure is taken.*

- Additional clarification is needed with respect to clarifying common versus public versus amenity open space when a project includes multiple building types.

*To date, Planning Staff has not received any correspondence noting concern or confusion with these provisions, Staff would need more information to address this concern.*

### **3. Letter from Joshua Sloan received May 12, 2015 (Attachment F)**

#### **Substantive changes:**

- Concerns with the definition of right-of-way. The term reserved may be confused with a reservation which indicates a potential dedication or easement, and not all easements are shown as separate and distinct from lots.

*Planning staff removed the word “reserved”, and placed the reference to an easement at the end of the definition to ensure that only the elements recorded on a plat are noted as separate and distinct.*

*Right-of-Way: Land [dedicated to] ~~[[reserved]]~~ for the passage of people, vehicles, or utilities as shown on a record plat as separate and distinct from the abutting lots or parcels, or as shown in an easement.*

- Concern with the modified definition of building height in the C/R, Employment, and Industrial zones. In the case of a through lot which has two fronts, provisions should be made to allow for either curb grade to be used to measure height.

*The applicant can choose which side of the building to consider the front, and measure from opposite the middle of the front of the corresponding curb grade.*

- Development standards including parking setbacks, build-to area, and all of the form standards should be eligible for modification under site plan review.

*The recent discussion and decision on ZTA 15-05 by the Planning Board and County Council resolved the question of which development standards the Board can modify under a request for site plan review for a standard method project. The Board may modify the build-to area, building orientation, and transparency. Under optional method there is no requirement for build-to area, and all other placement and form standards are determined through the site plan process..*

- Suggested modifications to site plan amendments:
  - Add “decrease a setback” and remove “or alter a basic element of the plan”;

*Planning Staff recommends retaining the language in the ZTA as introduced. Allowing some discretion in determining what constitutes a major site plan amendment is consistent with the current Planning Department practice.*

- Retain the ability to approve a major site plan amendment on the consent agenda.

*The intent of the language in the new code was to provide a process by which a major site plan amendment could be approved by the Planning Board, if uncontested; however, in practice the process is unworkable given noticing requirements and scheduling. Planning Staff will continue to look into the possibility of a consent agenda level amendment.*

- Modify language so that any additional requirement for a major site plan amendment must be established by the Planning Department’s Development Review Manual so that the public has the opportunity to comment on any additional requirement.

*Planning Staff recommends the following change to address this concern:*

*Major Amendment*

*\* \* \**

*d. Additional requirements may be established by the Planning [[Department]] Department’s Development Review Manual.*

- Clarify the process for requesting a minor amendment to reduce parking as allowed under section 7.3.4.J.2.

*Planning Staff recommend the following revision which would allow an applicant to amend the parking requirements of a previously approved application. For a parking plan approved as part of a site plan, a site plan amendment would be required. For a parking plan approved under a different process, the original deciding body would approve the amendment.*

*An applicant may apply **[[for a minor site plan amendment]]** to amend the parking requirements of a previously approved application (listed in Section 7.7.1.B.1 or 7.7.1.B.2) in a manner that satisfies the parking requirements of Section 6.2.3 and Section 6.2.4.*

- The grandfathering provisions for new construction are unclear. If the grandfathered portion of a new development must meet the standards of the existing zone, then what is actually grandfathered?

*An applicant can chooses to retain its grandfathered status by expanding only up to the limits provided under Section 7.7.1.C.; however, if an applicant chooses to expand beyond the limits provided under Section 7.7.1.C, then the standards and procedures of the new code apply.*

#### **Other Clarifications and Corrections and Recommendations:**

- The parking wavier is not necessary.

*Prior to the introduction of ZTA 15-09, staff received feedback from several stakeholders citing the difficulty in satisfying the alternative compliance findings when requesting a reduction in the parking requirements. Planning Staff recommends retaining the parking waiver so parking requirements can be reduced, when appropriate, through an efficient process.*

- The measuring point for building height should be from proposed grade in the residential zones due to potential for predevelopment grade to slope downward from the right-of-way.

*Planning Staff meets regularly with DPS to review concerns and issues encounter with the implementation of the new code. This concern has not been raised by DPS staff. Planning Staff will monitor reports by DPS to see whether this becomes an issue.*

- Under 4.5.4.B.1.a. and Section 4.6.4.B.1.a., the references to open space requirements should be to “site” not “lot.”

*Planning Staff recommends replacing “lot” with “tract” (per the introduced ZTA) to be consistent with the C/R zones in the old zoning code. Since density is based on tract size, the percentage of the site required for open space should also be based on the size of the tract.*

- In the Townhouse zones, consider allowing townhouse height up to 45’ to comply with current building typologies.

*A height of 45’ in these zones would likely be incompatible with some adjacent properties in Residential Detached zones (e.g. R-60 and R-90) that have a maximum building height of 35’.*

- Under optional method in the Multi-Unit zones, all standards for lot size, width, and setbacks should be established by the site plan to negotiate “best fit” with the neighborhood and staff.

*Planning staff recommends retaining these development standards (as modified by the ZTA) so certain elements of the review process are prescribed and predictable.*

- Under Section 5.2.5.B.2, the code should read, “Maximum height and minimum setbacks are established by the floating zone plan.”

*Planning Staff recommends the following:*

2. [[Maximum height and setbacks]] Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.

#### **4. A letter from the Duffie Companies received June 8, 2015 (Attachment G)**

- The first issue concerns the definition for build-to area, as modified by ZTA 15-09. The letter states, “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.”

*The prohibition against surface parking in the build-to area is intentional and appropriate for a standard method project that does not have a site plan review to examine the context and the pedestrian environment. However, language added through recently approved ZTA 15-05 allows a standard method applicant to request that the Planning Board modify the build-to requirements during site plan review. The applicant can request that the build-to area be reduced such that the maximum setback aligns with the front building line. The build-to area would only encompass the area between the front lot line and the front building line, and parking would be allowed directly behind the front building line.*

- Secondly, a header in the C/R zones standard method development table (Section 4.5.3.C) suggests that a building must occupy a minimum percentage of the lot width.

*This header was corrected in adopted ZTA 15-05 to read “min % of building façade”.*

**5. An email from Chuck Sullivan received June 9, 2015 (Attachment H)**

The re-subdivision process is expensive, and cumbersome to combine two adjacent residential lots under common ownership. An administrative process should be created to handle this type of situation.

*Planning Staff advised Mr. Sullivan to contact the team charged with rewriting the Subdivision Regulations.*

**6. An email from Erica Leatham received June 5, 2015 (Attachment I)**

In the townhouse zones, the lot sizes for duplexes should be reduced to more closely match the townhouse standards. Duplexes are used to break up longer strings of townhouses and therefore their proportions should be more closely matched to townhouses rather than detached houses.

*The Euclidean townhouse zones are new to the zoning code. Planning Staff is interested in feedback on their standards; however, since this is the first comment received regarding these zones staff would like to give more time to observe the workability of these zones before recommending a change.*