

MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760MCPB
Item #4
10/01/01

DATE: September 27, 2001
TO: Montgomery County Planning Board
VIA: Michael Ma, Development Review Division
FROM: Greg Russ, Development Review Division *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To permit residential housing in conjunction with commercial uses in the C-2 zone on sites within 1,500 feet of a Central Business District Metro Station

TEXT AMENDMENT: No. 01-08
REVIEW BASIS: Advisory to the County Council, sitting as the District Council, Chapter 59, Zoning Ordinance
INTRODUCED BY: Councilmembers Denis, Silverman and Ewing
INTRODUCED DATE: September 11, 2001

PLANNING BOARD REVIEW: October 1, 2000
PUBLIC HEARING: October 16, 2001, 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSES OF THE TEXT AMENDMENT

- Permit residential housing in conjunction with commercial uses in the C-2 zone on sites within 1,500 feet of a Central Business District Metro Station and
- Permit an amendment of the purpose and development standards for the C-2 zone to encourage housing in conjunction with commercial uses near Metro stations and by increasing the building height and FAR for a mixed commercial and residential development under certain conditions.

BACKGROUND

Federal Realty Investment Trust, in connection with its redevelopment in Bethesda of the Giant Food parcel located on the east side of Arlington Road, between Elm Street and

Bethesda Avenue (see Attachment 3; Phase 7 Building), states that they intend to develop main-street retail for this structure, similar in design and function to the majority of their other projects in the area. As such, Federal Realty filed a Preliminary Plan in May of 1999, proposing ground floor retail, with two stories of office above.

Since May of 1999, Federal Realty began evaluating alternative development plans for the Giant Food property, after being approached by various interested parties requesting that the property be developed with residential/retail uses. Through this evaluation, Federal Realty has embraced the prospect and benefits associated with the development of a residential component on the property (in place of office) to further the "new urbanism" concept by introducing a mix of uses within walking distance of the metro station and by reducing the potential traffic volume that the by-right, office over retail, development option, could produce. A public parking garage is located adjacent to and east of the subject site. Residential dwellings are currently not a permitted use in the C-2 zone unless located in a hotel or motel structure lawfully existing on October 24, 1972.

PROPOSED TEXT AMENDMENT

Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. The letter "P" in the appropriate column indicates the zones in which each use is permitted. The letters "SE" in the appropriate column indicate the zones in which each use may be authorized as a special exception.

59-C-4.2 Land uses

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
(a) Residential:												
Apartment hotels. ¹												
Boarding houses			P			P						
Dwellings	P ⁶	P ⁶ /S E	P ^{2,52}		SE	P ⁴⁰ /SE	SE	SE		SE		P ⁴

- 40 In a hotel or motel structure lawfully existing in the C-2 zone on October 24, 1972 or within 1,500 feet of a Metro station located in a Central Business District and adjacent to a public parking garage; provided: (1) the sector plan district in which the property is located is recommended for residential development. and (2) the development complies with the Section 59-D-3 site plan review requirements.

Sec. 59-C-4.35. C-2 zone-Purpose and development standards.

59-C-4.350. Purpose.

It is the purpose of this zone to provide locations for general commercial uses representing various types of retail trades, businesses and services for a regional or local

area. Typical locations for such uses shall include: central urban commercial areas, regional shopping centers and clusters of commercial development. A further purpose of this zone is to promote the effective use of transit facilities in Central Business Districts by encouraging housing with commercial uses in close proximity to Metro stations located in Central Business Districts.

59-C-4.351. Building height.

The maximum building height at any point measured from the finished grade is 3 stories or 42 feet, except that the height may be increased [to 5 stories or 60 feet if the building satisfies all of the following criteria] as follows:

(a) To 5 stories or 60 feet if the building satisfies all of the following criteria:

[(a)] 1. The building is an expansion of a use that either:

[(1)] (i) Existed on November 23, 1976; or

[(2)] (ii) Received site plan approval in accordance with division 59-D-3 between November 23, 1976, and March 26, 1985, for the purpose of attaining the increased height allowed by this section.

[(b)] 2. The roof elevation of the expansion does not exceed the roof elevation of the existing or approved use as specified by paragraph [(a)] (1) above. Elevation is measured from sea level.

[(c)] 3. The expansion receives site plan approval in accordance with division 59-D-3[.] ;
or

(b) To 75 feet to accommodate mixed commercial and residential development, provided:

1. The residential component consists of a minimum of 60% of the overall FAR, and
2. The development is at least 300 feet from any one-family residential use.

59-C-4.352. Floor area.

The gross floor area of buildings shall not exceed FAR 1.5, except that the FAR may be increased to a maximum of 2.5 FAR for a mixed commercial and residential development provided the commercial FAR does not exceed 1.0 FAR.

ANALYSIS

C-2 Zone

The C-2 zone is intended to provide locations for general commercial uses representing various types of retail trades, businesses and services for a regional or local area. Typical locations for such uses shall include: central urban commercial areas, regional shopping centers and clusters of commercial development. Bethesda and Wheaton are the only two

Central Business Districts that have C-2 zoned properties located within 1,500 feet of a Metro station (as stated in the proposed amendment to footnote #40).

C-2 zoned properties in Bethesda - The 1994 Bethesda CBD Sector Plan depicted C-2 zoning predominately located in the areas south of Hampden Lane between Woodmont Avenue and Arlington Road (see attached map—Attachment 4). The proposed text amendment will be applicable to the developments within 1,500 feet of the Metro station, which limits the area to that located north of Bethesda Avenue.

C-2 zoned properties in Wheaton – The attached map of the 1990 Sector Plan for the Wheaton CBD (Attachment 4) predominately depicts one large area of C-2 zoning in close proximity to the Metro station. This area is located west of Veirs Mill Road and northwest of University Boulevard and encompasses the Westfield Shopping Center and office complex.

The staff is generally supportive of the proposed text amendment, which allows residential housing in conjunction with commercial uses in the C-2 zone on sites within 1,500 feet of a Central Business District Metro Station and increases the building height and FAR for a mixed commercial and residential development under certain conditions. Staff believes that the inclusion of a 1,500 feet maximum distance of the property from a Metro station provides the assurance that pedestrians/residents can walk to a transit station, thereby minimizing the number of vehicle trips in the area. Additionally, the proposed language includes a 300-foot distance of a mixed commercial/residential structure (minimum 60% residential) from any one-family residential use, thereby, providing a sufficient screening and buffering area of a building of 75 feet in height (maximum) from these residences. The proposed increase in building height up to 75 feet, to coincide with an increase in the FAR from 1.5 for commercial uses to 2.5 for mixed commercial and residential uses, appears reasonable, considering that the cost for developing a residential/retail project is greater than that of a retail/office structure. As such, the increase in height would be necessary to yield an adequate number of residential units to make the project economically feasible.

Staff further believes, however, that the requirement proposed in footnote #40 of the land use table that the property be adjacent to a public parking garage appears overly restrictive. The proposed requirements such as master plan recommendation, proximity to Metro, distance from one-family residences and site plan approval provide adequate safeguards for the residential areas located outside of the CBD. By restricting the residential component by requiring adjacency to public parking will likely restrict this use to a severely limited number of opportunities (see memo-Attachment 5). In order to ensure the most effective use of transit, this requirement should be reviewed further during the Comprehensive Zoning Ordinance Review-Phase II pertaining to commercial and industrial zones.

Staff has also included a clarification to the proposed amendment pertaining to the floor area section (Section 59-C-4.352) by ensuring that the first floor of the structure be commercial in use. With this inclusion, no building can be totally residential.

CONCLUSION

The staff supports the proposed text amendment to allow residential housing in conjunction with commercial uses in the C-2 zone on sites within 1,500 feet of a Central Business District Metro Station and increases the building height and FAR for a mixed commercial and residential development under certain conditions. The staff, however, believes that the County Council should consider further review of the requirement of adjacency to a public parking garage during the Comprehensive Zoning Ordinance Review project. Staff has modified the portion of the text amendment pertaining to floor area to ensure that first floor retail is provided in any mixed-use proposals.

The staff recommends approval of text amendment No. 01-08, as modified.

Attachment 1 depicts the proposed text amendment as modified by staff. Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. Double underlining indicates text that is added to the text amendment by amendment (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

Attachments

1. Proposed Text Amendment
2. Letter to Chairman Holmes from Patricia Harris
3. Bethesda Row Master Plan of Development
4. Zoning Maps for CBDs
5. Memo from Sally Roman to Michael Ma

ATTACHMENT 1

Zoning Text Amendment No: 01-08
Concerning: Residential uses in C-2 zone
Draft No. & Date: 1 – 9/6/01
Introduced: September 11, 2001
Public Hearing: October 16, 2001; 1:30 PM
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Denis, Silverman and Ewing

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- permitting housing with commercial uses in the C-2 zone on sites within 1,500 feet of a Central Business District Metro station.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-4.2	“Land uses”
Section 59-C-4.35	“C-T zone—Purpose and development standards”
Section 59-C-4.350	“Purpose
Section 59-C-4.351	“Building height”
Section 59-C-4.352	“Floor area”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-C-4 is amended as follows:

DIVISION 59-C-4. COMMERCIAL ZONES.

* * *

59-C-4.2. Land uses.

* * *

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Coun try Inn
(a) Residential:												
Apartment hotels. ¹												
Boarding houses.			P			P						
Dwellings.	p ⁶	p ^{6/} SE	p ^{2,32}		SE	p ^{40/} SE	SE	SE		SE		P ⁴

40 In a hotel or motel [structure] lawfully existing in the C-2 zone on October 24, 1972
 or within 1,500 feet of a Metro station located in a Central Business District and
 adjacent to a public parking garage; provided: (1) the sector plan district in which the
 property is located is recommended for residential development, and (2) the
 development complies with the Section 59-D-3 site plan review requirements.

59-C-4.35. C-2 zone—Purpose and development standards.

59-C-4.350. Purpose.

It is the purpose of this zone to provide locations for general commercial uses
 representing various types of retail trades, businesses and services for a regional or local
 area. Typical locations for such uses shall include: central urban commercial areas,
 regional shopping centers and clusters of commercial development. A further purpose of
 this zone is to promote the effective use of transit facilities in Central Business Districts by
 encouraging housing with commercial uses in close proximity to Metro stations located in
 Central Business Districts.

59-C-4.351. Building height.

The maximum building height at any point measured from the finished grade is 3 stories or 42 feet, except that the height may be increased [to 5 stories or 60 feet if the building satisfies all of the following criteria] as follows:

(a) To 5 stories or 60 feet if the building satisfies all of the following criteria:

[(a)]1. The building is an expansion of a use that either:

[(1)] (i) Existed on November 23, 1976; or

[(2)] (ii) Received site plan approval in accordance with division 59-D-3 between November 23, 1976, and March 26, 1985, for the purpose of attaining the increased height allowed by this section.

[(b)]2. The roof elevation of the expansion does not exceed the roof elevation of the existing or approved use as specified by paragraph [(a)] (1) above. Elevation is measured from sea level.

[(c)]3. The expansion receives site plan approval in accordance with division 59-D-3[.];
or

(b) To 75 feet to accommodate mixed commercial and residential development, provided:

1. The residential component consists of a minimum of 60% of the overall FAR, and

2. The development is at least 300 feet from any one-family residential use.

59-C-4.352. Floor area.

The gross floor area of buildings shall not exceed FAR 1.5, except that the FAR may be increased to a maximum of 2.5 FAR for a mixed commercial and residential development provided the commercial FAR does not exceed 1.0 FAR. The ground floor must be commercial development, excluding residential lobby and loading areas.

1 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
2 date of Council adoption.

3
4 This is a correct copy of Council action.

5
6
7
8 _____
9 Mary A. Edgar, CMC

10 Clerk of the Council

Law Offices

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

September 19, 2001

The Honorable Arthur Holmes, Jr.
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

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Bethesda
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Melbourne
Miami
International Offices:
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ATTACHMENT 2

Orlando
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach
Sao Paulo
Tel Aviv
Tokyo

PATRICIA A. HARRIS
301-215-6613

Internet Address:
paharris@hklaw.com

Re: Federal Realty Investment Trust -- Mixed Use Residential/Retail Development

Dear Chairman Holmes:

We have been working with Federal Realty Investment Trust in connection with its redevelopment of the Giant Food parcel on the east side of Arlington Road, between Elm Street and Bethesda Avenue (the "Property"), and wanted to provide you with a brief summary of our efforts to date.

As you are aware, over the course of the past six years, Federal Realty has transformed the Arlington East area of Bethesda into a first-class, award-winning, pedestrian oriented retail and office area. It is Federal Realty's goal and desire to see that the development of the Giant Food parcel, which represents the last developable parcel on the block, complements the surrounding quality projects.

Federal Realty had always envisioned that the Giant Food Property would be developed with main-street retail, similar in design and function to the majority of Federal Realty's other projects in the area. Examples of the type of development that was planned include the north side of Bethesda Avenue and the building on the south side of Elm Street that was completed several years ago and houses Café Deluxe. In furtherance of their original development intentions, Federal Realty filed a Preliminary Plan for the Property in May of 1999, proposing ground floor retail, with two stories of office above.

Federal Realty began to evaluate alternative development plans for the Property other than retail/office, after being approached over the past year by various interested individuals, requesting that Federal consider developing the Property for residential/retail use. Federal Realty agreed to study this alternative and in the course of doing so, has become more enthused over the prospect and the benefits associated with the development of a residential component on the Property. Not only would the residential development of the Property

further the "new urbanism" concept that Federal has been promoting, by introducing a mix of uses within walking distance of the metro, it would also generate less traffic than the matter-of-right, office over retail, development option.

At the same time however, a mixed-use residential/retail project is by nature inherently more complicated than a retail/office project and therefore more costly. In addition, the economic yield on such a project is less than a commercial project. Given these factors, in order for a retail/residential development to be successful, a sufficient amount of density and a corresponding height standard is necessary to yield an adequate number of residential units. Moreover, other components of the proposal, including the requisite approvals, need to fall into place in a timely manner in order to ensure the viability of the project. Otherwise, from a business standpoint, the prudent course of action for Federal Realty would be to develop the Property as originally intended with retail/office uses. In doing so, Federal would avoid the potential scenario wherein the Giant Food store relocates across Arlington Road to its new site and Federal is left with the carrying costs of the vacant Property, without the necessary development approvals to move forward.

The residential/retail development of the Property will require a Zoning Text Amendment to the C-2 Zone to permit residential uses, as well as Preliminary Plan and Site Plan approval. Accordingly, Zoning Text Amendment 01-08 was introduced on September 11, 2001 and is scheduled for public hearing on October 16, 2001. The Planning Board's consideration of the Zoning Text Amendment is tentatively scheduled for October 1, 2001. Given the opportunity that this proposal presents, as well as the involvement that will be required by the County Council, Park and Planning, Housing and Community Development and others, we wanted to update you on our efforts and will continue to do so as this exciting project moves forward. In this light, we have spent the summer meeting with Park and Planning Staff, as well as several Council members to discuss the proposed residential development on the Property and the Zoning Text Amendment. Likewise, we met with the Edgemoor community in July, at which time the concept was very well received. We are scheduled to meet again with Edgemoor during their annual meeting in October, to provide them with an update of our efforts.

We look forward to working with the County and Park and Planning on this opportunity to introduce the new urbanism concept to Bethesda and will update you as we proceed. Please do not hesitate to contact us if you have any questions.

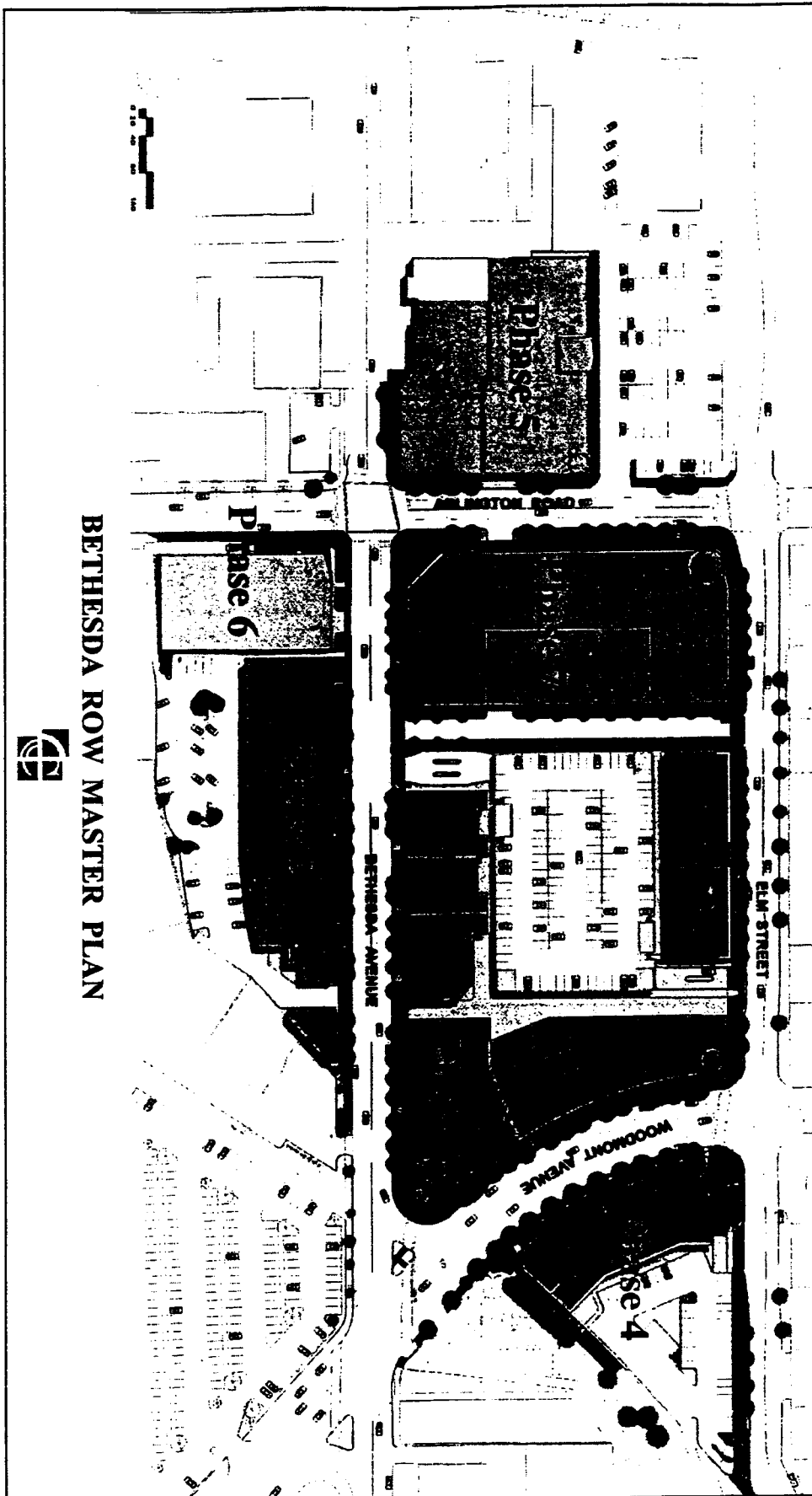
Very truly yours,

HOLLAND & KNIGHT LLP



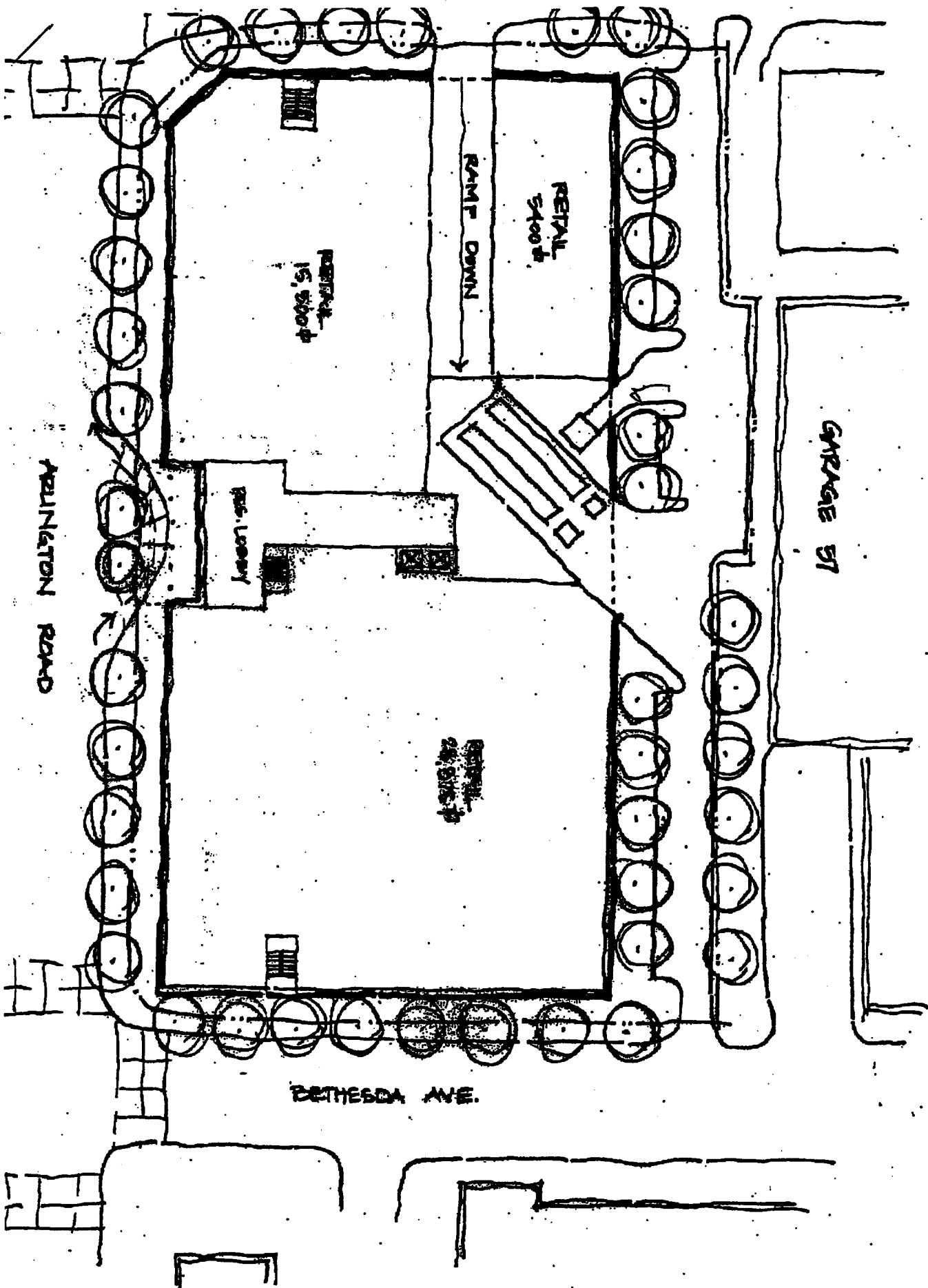
Patricia A. Harris

B



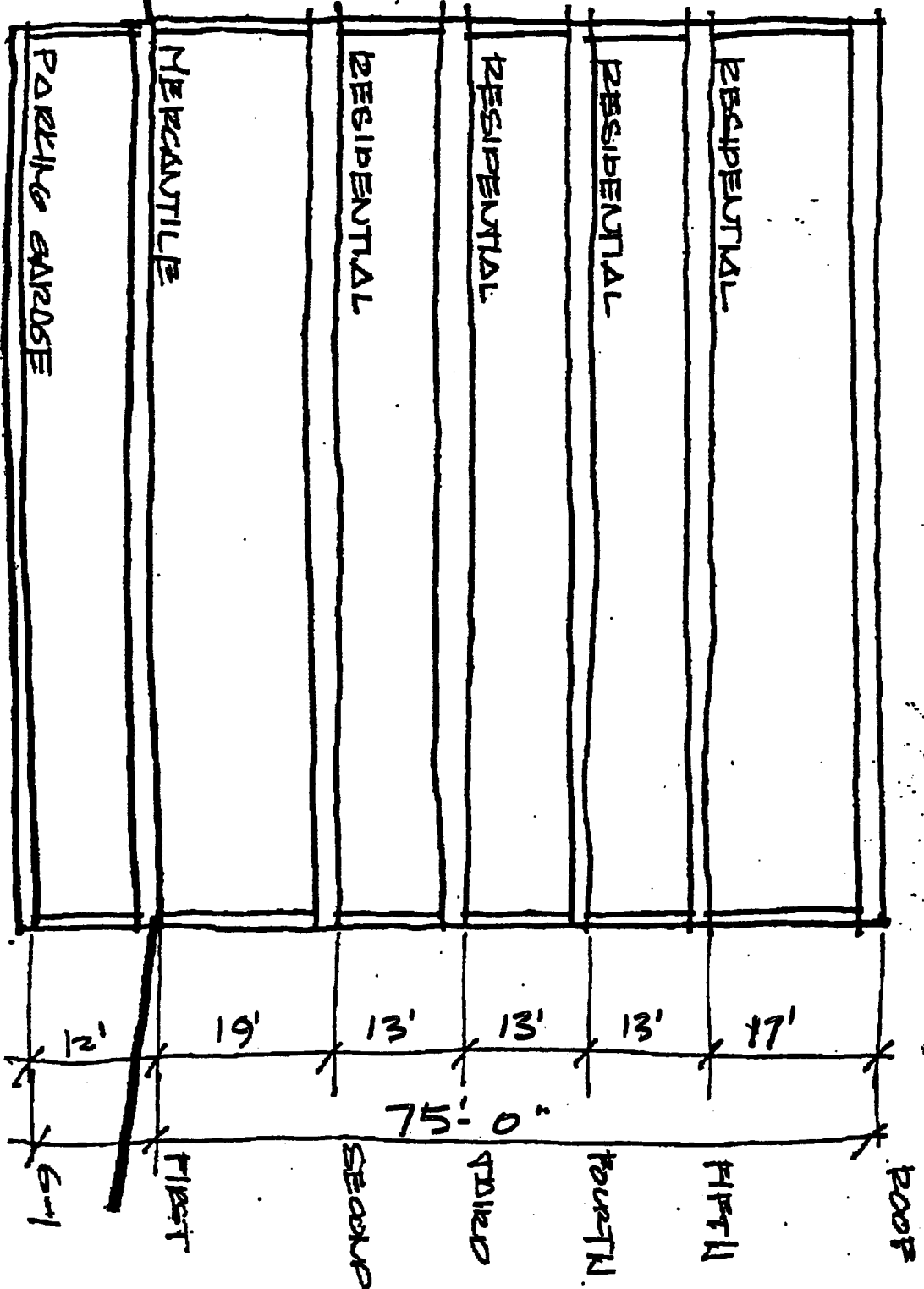
BETHESDA ROW MASTER PLAN





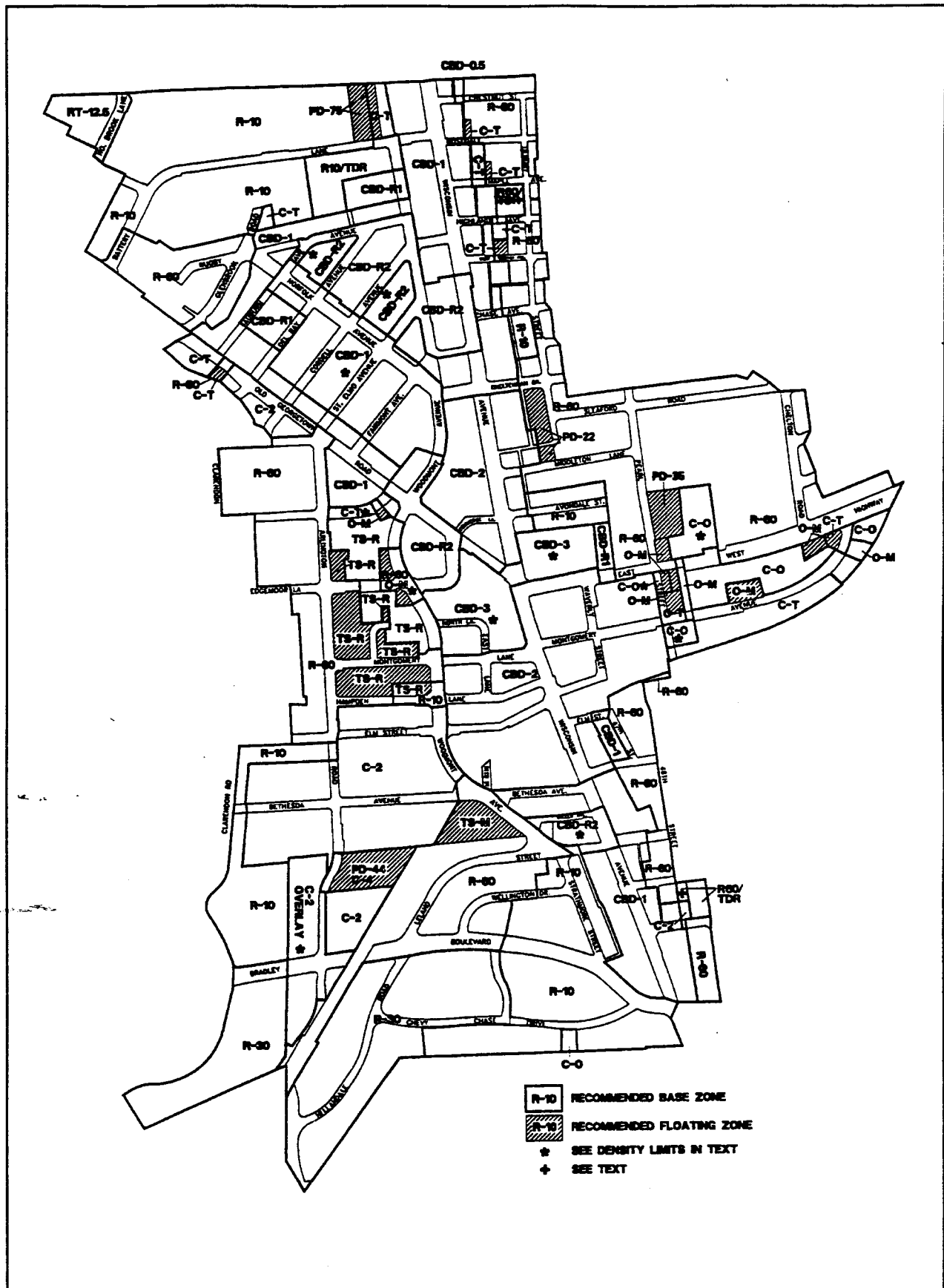
ARL EAST

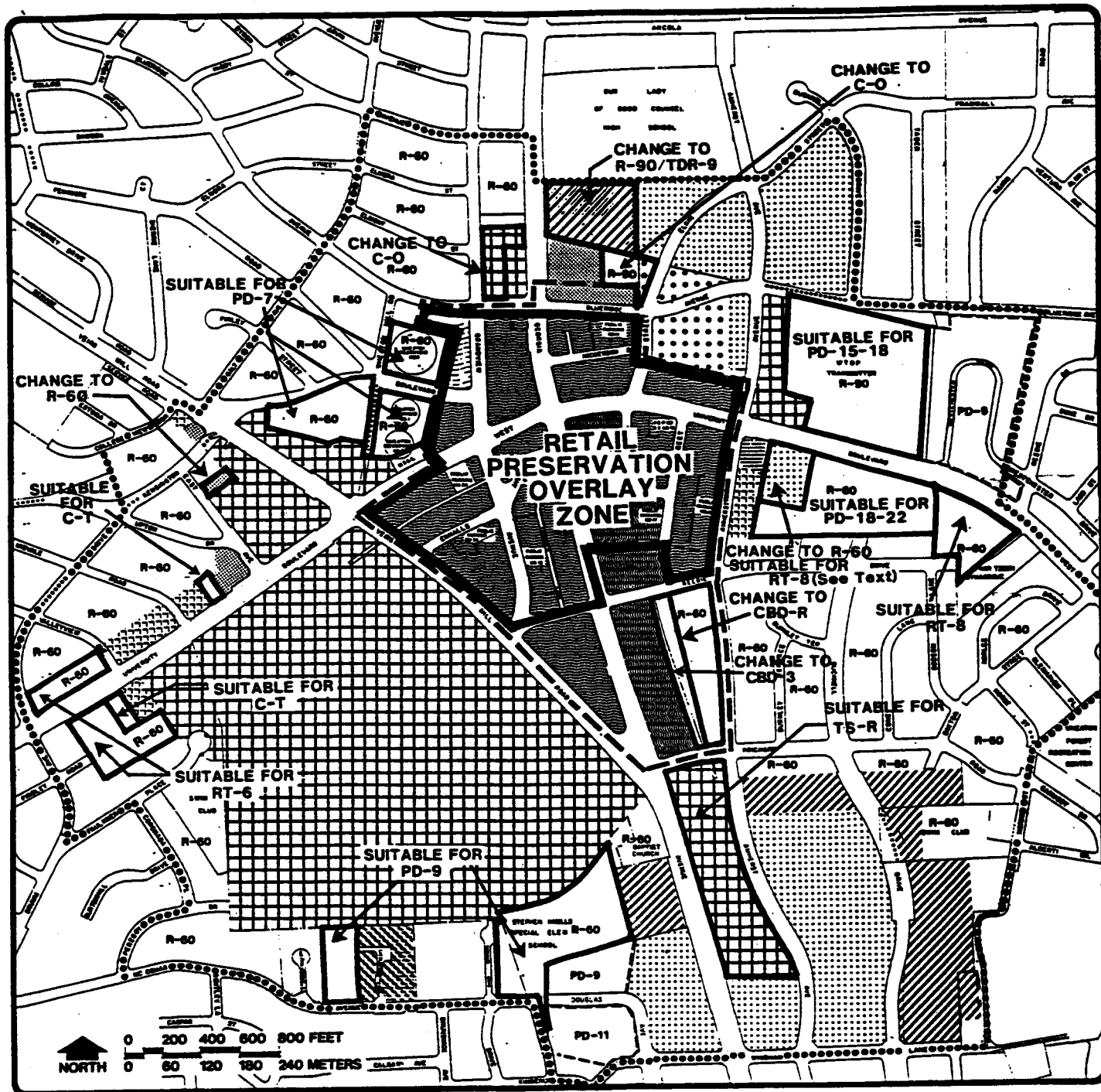
ALL EAST



ZONING PLAN

FIGURE 4.3





PROPOSED ZONING PLAN

R-60 One Family	R-20 Low Density Apartment	C-1 Local Commercial
R-60 One Family	PD-9 P.D. Planned Development Zone	C-2 General Commercial
RT-8 Townhouse	O-M Office Building Moderate Intensity	CBD-1 Central Business District
RT-12.5 Townhouse	C-O High Density Office	CBD-2 Central Business District
R-30 Medium Density Apartment	C-T Commercial Transition Zone	CBD-3 Central Business District
WHEATON		Sector Plan Boundary
		Central Business District Boundary
		Dedicated Street Not Constructed



SEPT.
1990

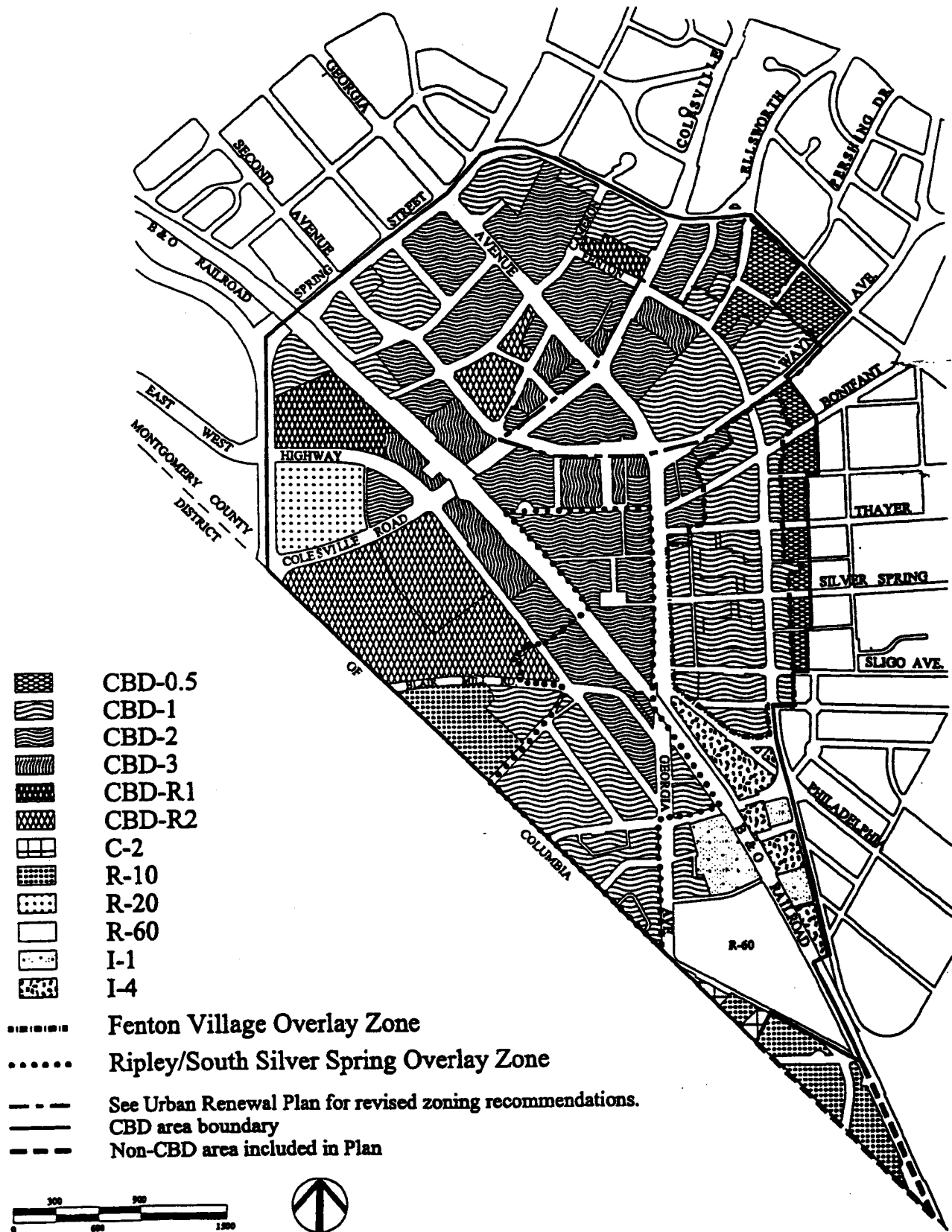
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SECTOR PLAN

KW
PLANNING AREA

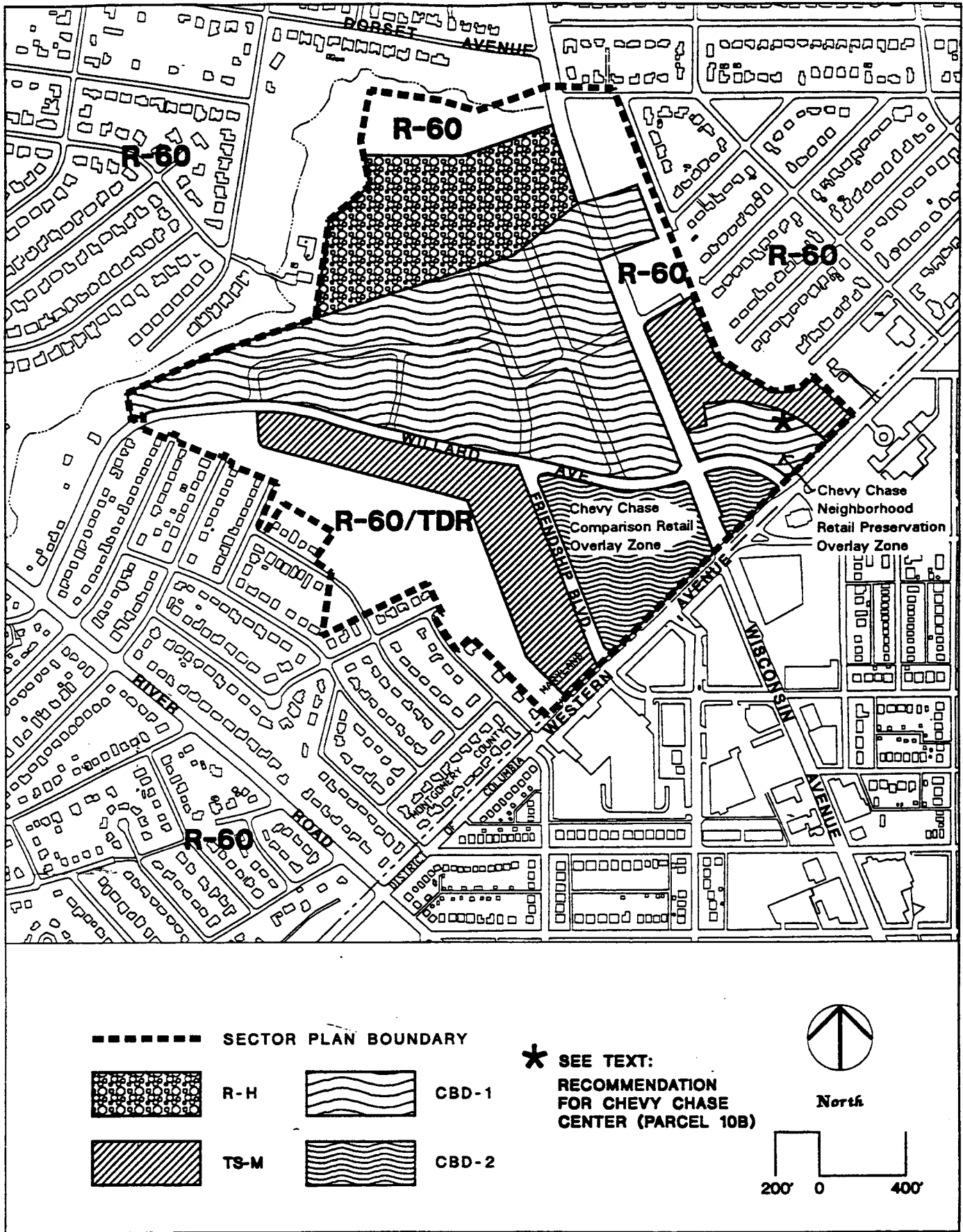
NOTE: This corrected map replaces page 33 in the bound version of the February 2000 Silver Spring CBD Sector Plan.

Map 6 Proposed Zoning Plan

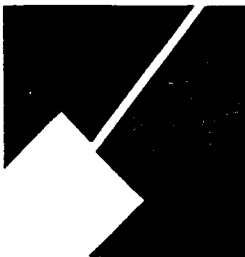


PROPOSED ZONING

FIGURE 21



M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760**MEMORANDUM**

DATE: September 25, 2001

TO: Michael Ma, Zoning Supervisor, Development Review

FROM: Sally Roman, Research and Technology Center *SR*

SUBJECT: Zoning Text Amendment No. 01-08

Zoning Text Amendment 01-08 will add another needed opportunity for housing near Metro by permitting residential use in the C-2 Zone under certain conditions. On the whole, the requirements for this use appear reasonable. However, the requirement in footnote 40 of the land use table that the property be adjacent to a public parking garage appears unduly restrictive. With a mandatory master plan recommendation, proximity to Metro, and site plan approval, there are many safeguards in this amendment. Opportunities for its use are somewhat limited in any case, due to the relative scarcity of C-2 land in many transit station areas. Adding adjacency to public parking is likely to restrict this use to a severely limited number of opportunities. If we wish to make the most effective use of transit, this is counterproductive.