


AGENDA ITEM #7
June 20, 2006

Worksession

MEMORANDUM

June 16, 2006

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: Worksession – ZTA 05-16, Workforce Housing

PHED Recommendation: The Committee recommends (3-0) that ZTA 05-16 be approved, with revisions. The Committee accepted staff recommended revisions and agreed to apply the same MPDU flexible development standards to workforce housing. Councilmember Praisner dissented in two instances. The Committee recommended revisions are identified below.

Eligibility Requirements

Revise lines 33-40 of ZTA 05-16 to read as follows:

Any subdivision that would contain 35 or more market dwelling units, and that would be located in a zone with a maximum permitted residential density at or above 40 dwelling units per acre and in a Metro Station Policy Area, must include an amount of workforce housing units that is not less than 10 percent of the number of proposed market dwelling units, not including any MPDUs or resulting bonus density units, or dwelling units excluded under Chapter 25B.

The number of workforce housing units that must be provided is based on the number of market rate units, but does not include the market rate units that result from the MPDU density bonus provision. The Metro Station Policy Area maps and affected zones are shown on ©42-51.

Master or Sector Plan Limits

As revised by the Committee, any building height or residential density limit established in a master or sector plan may be exceeded to the extent required for the number of workforce housing units that are constructed, but not more than the maximum building height or residential limit of the zone (Lines 49-60) Where an overlay zone establishes more restrictive development limits than allowed under the base zone, the development limits of the overlay zone control. An amendment proposed by Councilmember

Praisner would not allow any increase above a master or sector plan established density or height limit on property that adjoins one-family residential development ©19. Master plans that contain height restrictions potentially affecting the workforce housing program are identified on © 34.

Multi-Family Zone Green Area Standard

The special regulations for MPDUs permit the “normal” green area minimum requirement to be reduced from 50/55 percent of the net lot area to 35 percent. **The Committee recommended that the same reduced standard apply to workforce housing.** (See table beginning on line 64, and footnote on lines 73-74.) Councilmember Praisner questioned the rationale for the trade-off in green space for MPDUs and workforce housing.

PD Zone Green Area Standard

The Committee agreed that the green space standard of the PD zone should be reduced to provide greater development flexibility in achieving workforce housing in the PD zones. (Lines 267-288) The rationale in part for the reduction is to provide development flexibility for PD zone projects that use lower cost stick built construction in lieu of high-rise construction techniques. Councilmember Praisner believes that any reduced green area should be provided off-site. The reduction in green area to accommodate workforce housing does not adjust the green area standard for MPDUs, but to be consistent, the same standard should be applied by a future ZTA to MPDU development.

RMX Zone

The zones identified by Planning Board staff in determining parcels subject to the workforce housing program include: (1) zones with a base density at or above 40 dwelling units per acre, and (2) zones with a base density below 40 dwelling units per acre that yield 40 or more dwelling units when the MPDU density bonus, TDRs, or other optional method procedures are applied. The RMX zone was not identified in the introduced version of ZTA 05-16 as subject to the workforce housing program. **However, based on Planning Board staff’s calculations that the maximum achievable density under the RMX zone in a “commercial area” is 48.8 dwelling units per acre, the Committee agreed that the RMX zone should be included.** (Lines 306-309 and lines 317-321) The only eligible RMX zoned parcel is located in the Glenmont Metro Station Policy Area. Zones that meet the workforce housing criteria are identified on © 23-32.

TOMX2 Zone

ZTA 05-16 as introduced did not permit an increase in the density or building height established in the TOMX2 zone or in a master or sector plan to accommodate the construction of workforce housing. This restriction on increased density to accommodate workforce housing was to ensure that development under the Shady Grove Sector Plan did not exceed school capacity constraints. However, the density recommendations of the Shady Grove Sector Plan were adjusted to establish a base density upon which a bonus or other density increase could be

achieved. **The Committee agreed to adjust the language of the TOMX2 zone to establish the same standard for workforce housing as established for the other zones where workforce housing is required.** (Lines 346-359)

Applicability

As introduced, the workforce housing requirement would not apply to any preliminary subdivision plan approved by the Planning Board before the ZTA effective date. Preliminary plans filed but not approved would be subject to the workforce housing requirement. **The Committee agreed that the grandfather provision should be made broad enough to include pending zoning applications, development plans, project plans, preliminary subdivisions plans, and site plans.** (Lines 338-342)

Effective Date

As introduced, the ZTA effective date is 20 days after the date of adoption and the Bill effective date is 91 days after the date of adoption. The Committee agreed that the effective date of the ZTA and Bill should be coordinated. **Since the workforce housing program will require DHCA to prepare after enactment implementing regulations, the Committee recommends that the effective date of the ZTA and Bill be set at December 1, 2006.** (Lines 361-362)

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Zoning Text Amendment No: 05-16
Concerning: Workforce Housing
Draft No. & Date: 9 – 6/16/06
Introduced: October 11, 2005
Public Hearing: 11/22/05; 7:30 p.m.
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 Silverman, Floreen and Subin

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

- defining the term “workforce housing unit”;
- requiring any residential development at or above a certain density, located in a metro station policy area, to include a certain percentage of workforce housing units; and
- generally providing standards for the development of workforce housing units.

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

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1	“Definitions”
DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE”
Add a new section:	
<u>Section 59-A-6.18</u>	“ <u>Workforce Housing</u> ”
DIVISION 59-C-2	“RESIDENTIAL ZONES, MULTIPLE-FAMILY”
Section 59-C-2.4	“Development standards”
Section 59-C-2.418.	“Maximum Density of Development (Dwelling Units per Acre of Net Lot Area)”
Section 59-C-2.442	“General provisions”
DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-4.357	“C-2 zone—purpose and development standards.”
DIVISION 59-C-6	“CENTRAL BUSINESS DISTRICT ZONES”
Section 59-C-6.215	“Method of development and approval procedures”
Section 59-C-6.23	“Development standards”
DIVISION 59-C-7	“PLANNED UNIT DEVELOPMENT ZONES”



Section 59-C-7.14 "Density of residential development
DIVISION 59-C-8 "TRANSIT STATION DEVELOPMENT AREA ZONES"
Section 59-C-8.4 "Development standards"
DIVISION 59-C-13 "TRANSIT ORIENTED, MIXED USE ZONE (TOMX)"
Section 59-C-13.215 "Methods of development and approval procedures"

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-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1. Definitions.

* * *

Metro[-]station policy area: An area around a Metro station designated in the [Annual] Growth Policy as appropriate for concentrating new job and housing growth.

* * *

Workforce housing unit: A dwelling unit that is subject to rent limits or sales controls under Chapter 25B. A [[W]] workforce [[H]] housing [[U]] unit is not a Moderately Priced Dwelling Unit or a Productivity Housing Unit.

* * *

Sec. 2. DIVISION 59-A-6 is amended as follows:

DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

59-A-6.18. Workforce housing.

59-A-6.18.1. Generally.

The workforce housing program complements the Moderately Priced Dwelling Unit (MPDUs) Program, the Productivity Housing Program, and other County programs designed to promote affordable housing. Under Chapter 25B, a developer must build the number of workforce housing units required in any zone under this Chapter.

59-A-6.18.2. Requirements.

[[Any development located in a zone with a maximum permitted residential density at or above 40 dwelling units per acre and located in a Metro Station Policy Area must include workforce housing units on site in an amount that is not less

28 than 10 percent of the total number of dwelling units in the development, not
29 counting any MPDUs or resulting bonus density units. This workforce housing
30 requirement applies to any preliminary plan of subdivision which proposes the
31 development of 35 or more dwelling units, not counting any MPDU bonus density
32 units.]]

33 (a) Any subdivision that would contain 35 or more market dwelling units,
34 and that would be located in a zone with a maximum permitted
35 residential density at or above 40 dwelling units per acre and in a
36 Metro Station Policy Area, must include an amount of workhouse
37 housing units [[on site]] that is not less than 10 percent of the total
38 number of proposed market dwelling units, not including any MPDUs
39 or resulting bonus density units, or dwelling units excluded under
40 Chapter 25B.

41 (b) A site plan is required under Division 59-D-3 for any project that
42 includes a workforce housing unit.

43 (c) To allow the construction of all workforce housing units on site, the
44 Planning Board must permit:

45 (1) any residential density or residential FAR limit of the
46 applicable zone to be exceeded to the extent required for the
47 number of workforce housing units that are constructed, but not
48 by more than 10 percent;

49 (2) any residential density or residential FAR limit established in a
50 master or sector plan to be exceeded to the extent required for
51 the number of workforce housing units that are constructed, but
52 not to more than the maximum density and FAR of the zone,
53 except as provided in paragraph (1), and

54 (3) any building height limit established in a master or sector plan
 55 to be exceeded to the extent required for the number of
 56 workforce housing units that are constructed, but not to more
 57 than the maximum height of the zone. [[However, any increase
 58 in residential density or residential FAR must not exceed the
 59 maximum allowed in the applicable zone by more than 10
 60 percent.]]

* * *

63 **Sec. 3. DIVISION 59-C-2 is amended as follows:**

64 **DIVISION 59-C-2. RESIDENTIAL ZONES, MULTIPLE-FAMILY.**

* * *

66 **59-C-2.4. Development standards.**

67 **59-C-2.41. Standard method of development.**

* * *

	R-30	R-20	R-10	R-H
59-C-2.418. Maximum Density of Development (Dwelling Units per Acre of Net Lot Area):	14.5	21.7	43.5*	*
* * *				
59-C-2.42. Special regulations for development including moderately priced dwelling units.				
The following optional standards may be used to achieve MPDUs, including any bonus density, provided under Chapter 25A on site. If the optional standards are used, the site plan approval procedures of Division 59-D-3 must be followed.				
* * *				
59-C-2.422. Coverage Limitations (Percentage of Area of Lot).				

-Green area may be reduced, to not less than: * * *	35	35	35**	35**

70

71 * Workforce [[H]] housing [[U]] units must be provided as required by
 72 Section 59-A-6.18 and Chapter 25B.

73 ** If required to accommodate the construction of all workforce housing units
 74 on site.

75 * * *

76 **59-C-2.44 Special regulations for optional method development using**
 77 **transferable development rights.**

78 **59-C-2.442. General provisions.**

79 * * *

80 (d) A property developed with [the transfer of] development rights must
 81 [conform to the requirements of the] include Moderately Priced
 82 Dwelling Units (MPDUs) as required by Chapter 25A [of the
 83 Montgomery County Code requiring MPDU's] and [[W]] workforce
 84 [[H]] housing [[U]] units as required by Section 59-A-6.18 and
 85 Chapter 25B. The [applicability of Chapter 25A and the MPDU
 86 density increased provided by Section 59-C-2.42] number of MPDUs
 87 and any resulting bonus density must be calculated after the base
 88 density of a property has been increased by a transfer of development
 89 rights. The calculation of the number of workforce housing units
 90 must be based on the total number of market dwelling units in the
 91 development including any transfer of development rights, but not
 92 counting any MPDUs or resulting bonus density units. The MPDU
 93 density [increase provided by Section 59-C-2.42 may be made

94 without] bonus does not require the acquisition of additional
95 development rights.

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

97 **DIVISION 59-C-4. COMMERCIAL ZONES.**

98 * * *

99 **Sec. 59-C-4.357. C-2 zone-purpose and development standards.**

100 Residential development in the C-2 zone [pursuant to] under Section 59-C-
101 4.351(b) must include Moderately Priced Dwelling Units (MPDUs) [in accordance
102 with the provision of] as required by Chapter 25A and [[W]] workforce [[H]]
103 housing [[U]] units as required by Section 59-A-6.18 and Chapter 25B.

104 **Sec. 5. DIVISION 59-C-6 is amended as follows:**

105 **DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.**

106 * * *

107 **59-C-6.2. Provisions of the CBD zones.**

108 * * *

109 **59-C-6.215. Method of development and approval procedures.** Two methods
110 of development are possible in each of these zones.

- 111 (a) **Standard method of development.** The standard method requires
- 112 compliance with a specific set of development standards and permits a
- 113 range of uses and a density compatible with these standards. If
- 114 residential uses are included in a development, Moderately Priced
- 115 Dwelling units must be provided [in accordance with] as required by
- 116 Chapter 25A and [[W]] workforce [[H]] housing [[U]] units must be
- 117 provided as required by Section 59-A-6.18 and Chapter 25B. The
- 118 maximum dwelling unit density or residential FAR may be increased
- 119 in proportion to any MPDU density bonus provided on-site.

120 (b) **Optional method.** Under the optional method greater densities may
 121 be permitted and there are fewer specific standards, but certain public
 122 facilities and amenities must be provided by the developer. The
 123 presence of these facilities and amenities is intended to make possible
 124 the creation of an environment capable of supporting the greater
 125 densities and intensities of development permitted. If residential uses
 126 are included in a development, Moderately Priced Dwelling units
 127 must be provided [in accordance with] as required by Chapter 25A
 128 and Workforce Housing Units must be provided as required by
 129 Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit
 130 density or residential FAR may be increased in proportion to any
 131 MPDU density bonus provided on-site. The procedure for approval of
 132 an optional method project is specified in Division 59-D-2, and the
 133 procedure for approval of a site plan is specified in Division 59-D-3.

134 * * *

135 **59-C-6.23. Development standards.**

136 * * *

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ⁹	O	S	O	S ⁹	O	S	O	S ⁹	O	S	O
* * *												
59-C-6.233. Minimum Public Use Space (percent of net lot area):¹⁵	10	20	10	20 ¹⁶	10	20 ²⁰	10	20	10	20	10	20
--The required standard method public use space may be reduced to accommodate the construction of MPDUs, including any <u>resulting</u> bonus												

<p>density units, <u>and workforce housing units</u>, provided on-site to:</p> <p>--The required optional method public use space may be reduced or eliminated to accommodate the construction of MPDUs, including any <u>resulting bonus density units, and workforce housing units</u>, provided on site, if an equivalent amount of public use space is provided off-site in the same CBD within a reasonable time.</p>	5		5		5		5		5		5	
* * *												
59-C-6.235. Maximum Building Heights (in feet).												
* * *												
(b) Optional method of development.												
—Normally:		60		60		60		143		143		143
—If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased												

to:		60 ¹²		143		90 ¹		200 ¹¹		200		200
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¹ [For projects using the optional method of development involving more than one lot under Section 59-C-6.2351, the Planning Board may approve height over 90 feet, but not more than 143. In order to approve height over 90 feet, the Planning Board must find that:

(1) The additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan;]

For projects using the optional method of development [[involving more than one lot under Section 59-C-6.2351]], the Planning Board may approve height over 90 feet, but not more than 143 feet, if [:(i)] the additional height is necessary for the project to comply with the workforce housing requirements of 59-A-6.18; however, the additional height must not be more than required for the number of workforce housing units that are constructed. [, or (ii)] For projects using the optional method of development involving more than one lot under Section 59-C-6.2351, the Planning Board may approve height over 90 feet, but not more than 143 feet, if the additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan. In order to approve additional height for property where the additional height is specifically recommended for the property in a sector plan or urban renewal plan, the Planning Board must find that:

[(2)](1) The additional height is consistent with the criteria and guidelines for the property as contained in the applicable sector plan or urban renewal plan;

[(3)](2) Except as recommended in an urban renewal plan the portion of the property upon which the additional height is to be used is on

164 all sides abutted by or adjacent to property recommended in the
165 applicable sector plan or urban renewal plan for classification in
166 the CBD-0.5, CBD-1, CBD-2, or CBD-3 zones;

167 [(4)](3) The proposed development is compatible with the surrounding
168 development, considering but not limited to the relationship of
169 the building or buildings to the surrounding uses, the need to
170 preserve light and air for the residents of the development and
171 residents of surrounding properties, and any other factors
172 relevant to the height of the building; and

173 [(5)](4) The proposed development will provide a substantial amount of
174 consolidated public open space in excess of that which would
175 be required if this process were not used. The public open
176 space must be designated as public amenity space and be
177 accessible to and usable by the public in accordance with the
178 applicable sector or master plan, or urban renewal plan.

179 * * *

180 ¹¹ [Under the optional method of development process, the Planning
181 Board may approve height over 143 feet, but not more than 200 feet,
182 In order to approve height over 143 feet, the Planning Board must find
183 that:

184 (1) The additional height is specifically recommended for the
185 property in the applicable sector plan or urban renewal plan
186 or the property is within a revitalization area designated in
187 the applicable sector plan and is located fully or partially
188 within 800 feet of an entrance to a metro station;]

189 Under the optional method of development process, the Planning
190 Board may approve height over 143 feet, but not more than 200 feet.

191 if: (i) the additional height is necessary for the project to comply with
192 the workforce housing requirements of Section 59-A-6.18; however,
193 the additional height must not be more than required for the number of
194 workforce housing units that are constructed, or (ii) the additional
195 height is specifically recommended for the property in the applicable
196 sector plan or urban renewal plan or the property is within a
197 revitalization area designated in the applicable sector plan and is
198 located fully or partially within 800 feet of an entrance to a metro
199 station. In order to approve additional height for property
200 recommended in a sector plan or urban renewal plan or within a
201 designated revitalization area, the Planning Board must find that:

202 [(2)](1) The additional height is consistent with the criteria and
203 guidelines for the property as contained in the applicable
204 sector plan or an urban renewal plan approved by the
205 County Council under Chapter 56, or in the case of a site
206 outside an urban renewal area, accomplishing the objectives
207 of incorporating residential development with commercial
208 development in a mixed use project in close proximity to a
209 metro station otherwise unobtainable due to site conditions,
210 proximity of adjacent non-residential buildings, or other
211 physical constraints which prevent the achievement of sector
212 plan objectives;

213 [(3)](2) The proposed development is compatible with the
214 surrounding development, considering but not limited to the
215 relationship of the building or buildings to the surrounding
216 uses, the need to preserve light and air for the residents of
217 the development and residents of surrounding properties,

218 and any other factors relevant to the height of the building;
219 and

220 [(4)](3). The proposed development will provide additional public
221 facilities and amenities beyond what could otherwise have
222 been provided if the excess height were not approved. Such
223 facilities must be accessible to and usable by the public in
224 accordance with the applicable sector or master plan or
225 urban renewal plan.

12 226 The Planning Board may approve height over 60 feet, but not more
227 than 90 feet, if: (i) the additional height is consistent with an
228 applicable sector plan or an approved urban renewal plan; or (ii) the
229 additional height is needed to comply with the workforce housing
230 requirement of Section 59-A-6.18; however, the additional height
231 must not be more than required for the number of workforce housing
232 units that are constructed.

233 **Sec. 6. DIVISION 59-C-7 is amended as follows:**

234 **DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.**

235 * * *

236 **59-C-7.1. P-D zone—Planned development zone.**

237 * * *

238 **59-C-7.14. Density of residential development.**

239 * * *

240 (c) The density of development is based on the area shown for residential
241 use on the master plan and must not exceed the density permitted by
242 the density category granted. However, the maximum density
243 [prescribed by Subsection] allowed under subsection (a) may be
244 increased to accommodate the construction of Moderately Priced

245 Dwelling units and [[W]] workforce [[H]] housing [[U]] units as
 246 follows:

247 (1) For projects with a residential density of less than 28 dwelling
 248 units per acre, the number of Moderately Priced Dwelling Units
 249 must not be less than either the number of density bonus units
 250 or 12.5 percent of the total number of dwelling units,
 251 whichever, is greater.

252 (2) For projects with a residential density of more than 28 dwelling
 253 units per acre, the number of Moderately Priced Dwelling Units
 254 must be at least 12.5 percent of the total number of dwelling
 255 units in accordance with Chapter 25A.

256 (3) Any project with a residential density at or above 40 dwelling
 257 units per acre must provide workforce housing units as required
 258 by Section 59-A-6.18 and Chapter 25B.

259 * * *

260 **59-C-7.16. Green Area**

261 Green area must be provided in amounts not less than indicated by the following
 262 schedule:

263 Density	Green Area
264 <u>Category</u>	<u>(Percent of Gross Area)</u>
265 * * *	
266 Medium high	
267 PD-15	50
268 PD-18	50*
269 PD-13	50*
270 PD-22	50*
271 PD-25	50*
272	50*
273	
274 High	
275 PD-28	50*
276 PD-35	50*
277 PD-44	50*

278		
279	Urban High	
280	PD-60	30*
281	PD-68	30*
282	PD-75	30*
283	PD-88	30*
284	PD-100	30*
285		

286 * Green area may be reduced to 35 percent for “Medium High” and “High”
 287 densities and to 20 percent for “Urban High” densities to allow the
 288 construction of all workforce housing units on site.

289 **Sec. 7. DIVISION 59-C-8 is amended as follows:**

290 **DIVISION 59-C-8. TRANSIT STATION DEVELOPMENT AREA ZONES.**

291 * * *

292 **59-C-8.4. Development standards.**

293

	TS-R	TS-M
59-C-8.4.2. Density of Development.		
The density of development must not exceed any of the following:		
* * *		
(c) The density of development must not exceed the FAR or the dwelling units per acre allowed by the zone, except that the maximum density permitted may be increased to accommodate the construction of moderately priced dwelling units [in accordance with] <u>as required by Chapter 25A and the construction of workforce housing units as required by Section 59-A-6.18 and Chapter 25B.</u> The maximum number of dwelling units or residential FAR may be increased [in proportion to] <u>as needed for any MPDU density bonus and any workforce housing units provided on-site.</u> The provision of MPDUs or <u>workforce housing units</u> does not authorize a reduction in any public facility and amenity or active or passive recreation space recommended in a master or sector plan.		

294

295 **Sec. 8. Division 59-C-10 is amended as follows:**

296 **DIVISION 59-C-10 RMX Zones –Residential Mixed Use Development**

297

* * *

298 **59-C10.3.7. Maximum Residential Density**

299 (a) The maximum residential density in an RMX zone must not exceed
300 30 dwelling units per acre for residential areas shown on the project
301 plan. The density approved by the Planning Board must not exceed
302 the density shown on the approved and adopted master plan which
303 must be no greater than the density permitted by the RMX zone.
304 Where residential development is proposed to be located within a
305 proposed commercial area, the maximum residential density for such
306 areas must not exceed 40 dwelling units per acre. Any residential
307 development must include Moderately Priced Dwelling units
308 (MPDUs) as required by Chapter 25A and workforce housing units as
309 required by Section 59-A-6.18 and Chapter 25B.

310 (b) The density of residential development [should] must comply [be
311 compatible] with the density recommended on the approved and
312 adopted master plan; [except that the number of units permitted may
313 be increased by a number equal to the number of moderately priced
314 dwelling units included in the development plan in accordance with
315 Chapter 25A of this Code, as amended, provided that the total
316 increase does not exceed 22 percent of the total number of units
317 recommended on the master plan].however, the number of residential
318 dwellings must be increased to accommodate the construction of
319 Moderately Priced Dwelling units (MPDUs) as required by Chapter
320 25A and the construction of workforce housing units as required by
321 Section 59-A-6.18 and Chapter 25B.

322 **Sec. 9. Division 59-C-13 is amended as follows:**

323 **DIVISION 59-C-13. TRANSIT ORIENTED, MIXED-USE ZONE (TOMX**
324 **2.0).**

325 * * *

326 **59-C-13.2. Provisions of the Transit Oriented, Mixed Use Zones.**

327 **59-C-13.21. Description, purpose, intent and general requirements.**

328 * * *

329 **59-C-13.215. Methods of development and approval procedures.**

330 * * *

331 (b) **Optional Method of Development:** The Optional Method of
332 Development promotes additional densities, and supports innovative
333 design and building technologies to create a pedestrian-oriented and
334 mixed-use development pattern. Approval of the Optional Method of
335 Development is dependent on providing required public amenities and
336 facilities. The public facilities and amenities are intended to support
337 the additional densities permitted under the Optional Method of
338 Development. The procedure for the approval of the Optional Method
339 of Development is set forth in Section 59-D-2. Site plans must be
340 approved in accordance with Section 59-D-3. If residential uses are
341 included in a development, Moderately Priced Dwelling Units must be
342 provided [in accordance with] as required by Chapter 25A and
343 workforce housing units must be provided as required by Section 59-
344 A-6.18 and Chapter 25B. The maximum dwelling unit density or
345 residential FAR may be increased in proportion to any MPDU density
346 bonus provided on-site [[; however, notwithstanding any provision to
347 the contrary in Section 59-A-6.18, the Planning Board must not
348 approve an increase in any residential FAR or maximum building
349 height established in the TOMX2 zone or under any applicable master

350 or sector plan for any building in the TOMX2 zone to accommodate
351 the construction of workforce housing units]].

352 * * *

353 **Sec. 10. [[Preliminary subdivision plan approved before (ZTA Effective**
354 **Date)]] Applicability.**

355 The requirement to construct workforce housing under Chapter 25A and
356 Section 59-A-6.18 does not apply to any development for which an
357 application for a local map amendment, development plan, project plan,
358 preliminary subdivision plan, site plan [[approved by the Planning Board]]
359 filed before (ZTA Effective Date).

360
361 **Sec. 11. Effective date.** This ordinance becomes effective [[20 days after
362 the date of Council adoption]] December 1, 2006.

363
364 This is a correct copy of Council action.

365
366 _____
367 Linda M. Lauer, Clerk of the Council

June 16, 2006

**Amendment to ZTA 06-05, as revised by PHED Committee
Proposed by Councilmember Praisner**

Add new paragraph under "59-A-6.18.2. Requirements"

- (d) However, the Planning Board must not permit any residential density, residential FAR, or building height limit established in a master or sector plan to be exceeded to accommodate the construction of workforce housing on property that adjoins or is adjacent to existing or proposed one-family residential development.

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② ZTA 05-16

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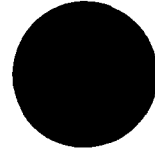


THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

December 9, 2005

The Honorable George Leventhal
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

018987



2005 DEC 12 11 20 00

Montgomery County Planning Board

Dear Mr. *George* Leventhal:

The Montgomery County Planning Board is pleased to comment on County Council's Bill 30-05 and ZTA 05-16, which, together, would establish a workforce housing program in Montgomery County. The Planning Board agrees that there is a pressing need to increase the supply of housing affordable to Montgomery County's workforce households and applauds the intent of the County Council's Bill 30-05 and ZTA 05-16. Additionally, the Planning Board agrees that this body of legislation will complement the County's other affordable housing initiatives. The Planning Board discussed this legislation at its regularly scheduled session on November 17, 2005. As a result of that discussion, the Planning Board recommends approval of both the bill and the zoning text amendment, with some modifications.

The Planning Board recommends that the County define the range of workforce incomes as being from the MPDU income limits to 100 percent of the Area Median Income (AMI), adjusted for household size. One purpose of this recommendation is to ensure that there is no gap between the MPDU program and the Workforce Housing program. The other comes from the Board's conclusion that this legislation should target households earning no more than 100 percent of the AMI. The Board concludes this income level is the best balance between two competing goals: to assist those households having the most difficulty finding housing in their price range, and setting income limits high enough to make production of workforce units feasible for builders.

In particular, while some areas may require a higher AMI due to higher land and construction costs, the problem with setting such a higher percentage of AMI is that it virtually assures that units will be sold only at that higher percentage. In practice, an income ceiling often becomes an income floor in markets where demand is high, because this is what the developer can charge in that particular market. Thus, if workforce units are to be available for families at 100 percent of AMI, experience suggests that this should be the income limit for the program. If the present bill remains focused primarily on Metro areas, there should be further analysis of housing prices and costs in those areas to justify the use of

a higher AMI. The Planning Board staff would be glad to assist Council staff and other county agencies in preparing such an analysis.

Three of the five Planning Board members suggest that the Council consider requiring the workforce-housing requirement *within* the base number of units, excluding MPDUs and bonus density units, rather than *in addition to* the base density. The County sets zoning at what is determined to be the maximum that is appropriate for a particular area. The Planning Board majority is not comfortable that density increases are desirable, particularly because it has not been shown that the increases are necessary even in the Metro planning areas. The Planning Board cautions that while the additional development increment will last for the life of the building, the affordability of the workforce units ends with the expiration of the control period. Planning Board staff, in coordination with other county agencies, is determining whether the use of a somewhat higher percentage of AMI for particular types of zones or areas may be more desirable than exceeding the maximum density for the zones.

While the Board agrees that additional market analysis will be helpful—particularly with units that are to be developed in Metro areas where land and construction costs may be higher—the Board notes that the private sector is producing and selling units in the “workforce housing” price range. This suggests that workforce units may be sufficiently profitable that a density bonus or other incentive is not necessary. In 2004, over 8,300 housing units sold for less than \$300,000, which is affordable to households earning 100 percent of the 2004 AMI (\$85,400). These homes included new single-family attached units and condominium units.

The Board notes that requiring workforce housing to be among the base number of units may encourage builders to build more than the minimum number of MPDUs, because this will be the only way for them to achieve a density bonus that includes additional market rate units. The fact that so many developments have not taken advantage of the MPDU density bonus is *prima facie* evidence that even MPDUs have been built profitably without any density bonus. For example, CBD development applications received after April 1, 2005, could have taken advantage of the broader and higher building envelope allowed in the new MPDU legislation. Instead, no CBD development application received since April 1, 2005, has proffered more than the minimum 12.5 percent MPDUs. A conclusion may be drawn that MPDUs can be built profitably without a density bonus and it is therefore probable that workforce housing units—units that will sell for about twice the price of MPDUs—are even more likely to be profitable without a density bonus.

Other recommendations include exploring the economic feasibility of lowering the subdivision threshold from 35 to 20 units and clarifying the role of the Planning Board within the legislation.

The Planning Board recognizes that the proposed zoning text amendment is oriented toward Metro areas, which may present somewhat different issues than an analysis and a more generic bill that has a county-wide orientation. However, the Planning Board does not believe that those distinctions are sufficiently well developed at this time to contravene the comments provided above.

The Planning Board looks forward to working with Council members and partner agencies to continue to explore the public policy objectives and market realities of workforce housing to strengthen programs supporting a range of housing choices for the County's workforce.

Sincerely,



Derick P. Berlage
Chairman

McMillan, Linda

From: Suarez, Sharon [Sharon.Suarez@mncppc-mc.org]
Sent: Friday, March 17, 2006 7:50 AM
To: McMillan, Linda
Subject: RE: Workforce Housing
Importance: High

Hi. I will look into the mapping today.

Re the RMX zones. A yield of 48.8 is achievable in the mixed-use area of RMX zones through the Optional Method and MPDU maximum density bonus: $40 * 1.22 = 48.8$.

Re the PD zones: All have the "High," "Urban High," MXPDP, and PD for Elderly can exceed 40 DUs.

I am attaching two files: 1) Theoretical Maximum Yield Report (I created it as ready-reference for the M-NCPPC) and 2) a short list of zones that could yield 40 or more DUs per acre. Please feel free to use them and let me know if you find any errors. I worked with Greg Russ to create the maximum yield analysis, and I plan to update it every year.

I will let you know what can happen with the maps later today.

sks

Sharon K. Suarez, AICP, Housing Coordinator

The Research & Technology Center

Montgomery County Dept. of Park & Planning

Maryland-National Capital Park & Planning Commission (M-NCPPC)

8787 Georgia Avenue, Silver Spring, MD 21701

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Sharon.Suarez@MNCPPC-MC.org

www.mcparkandplanning.org/housing

*See our new site
www.clarksburgplanning.org
for Clarksburg projects*

under review.

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MULTI-FAMILY RESIDENTIAL ZONES.

Zone	DUs per Acre	Notes
R-10	53.07	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 43.5.
R-H Residential High-Density Development		Extremely flexible floating zone. Can increase 22% over the percentage of the lot covered by Multifamily Dwellings for inclusion of MPDUs up to 20% of lot area. See Sections 59-C-2.411b, 2.42, and 2.422.
R-30/TDR	49	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 40.
R-20/TDR	61	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 50.
R-10/TDR	122	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 100.

RMX ZONES—RESIDENTIAL MIXED-USE DEVELOPMENT.

Zone	DUs per Acre	Notes
RMX—all zones Mixed-use area	48.8	Optional Method for DUs in mixed-use areas of the zone—40 DUs, increases with MPDUs up to 22%.

Transit Station Zones

Zone	DUs per Acre	Notes
Transit Station Residential	183	See page C8-8. FAR 2.5, with 30% min. open space. 150 DUs per acre within the FAR. Can go up to 22% more with MPDUs.
Transit Station Mixed-Use	131	See page C8-8. No maximum or minimum as long as you can make it happen within the 3.0 FAR. Min. open space is 10%—but if you have a project of 50 DUs or more, then the recreation requirement is 25% of the net area, which may increase the total open space requirement to 35%. ¹

100% Residential CBD Zones Standard Method²

Zone	DUs per Acre	Notes
CBD-R1	52.46	See the chart on pages C6-16 and Section 59-C-215.
CBD-1	52.46	See the chart on pages C6-16 and Section 59-C-215.
CBD-2	97.6	See the chart on pages C6-16 and Section 59-C-215.
CBD-3	120	See the chart on pages C6-16 and Section 59-C-215.
CBD-R2	97.6	See the chart on pages C6-16 and Section 59-C-215.

¹ 3 FAR * 43560/1000 SF per unit = 131 DUs.

² 100% Residential CBD Zones be developed using both the Standard and Optional method. According to Section 59- C-6.215, under both methods of development the maximum dwelling unit density allowed may be increased to accommodate the construction of MPDUs. See the chart on pages C6-16 and C6-17.

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100% Residential CBD Zones Optional Method, also applies to Residential in Mixed-us CBD

Zone	DUs per Acre	Notes
CBD 0.5	122	See the chart on pages C6-17 and Section 59-C-215.
CBD-R1	152.5	See the chart on pages C6-17 and Section 59-C-215.
CBD-1	152.5	See the chart on pages C6-17 and Section 59-C-215.
CBD-2	244	See the chart on pages C6-17 and Section 59-C-215.
CBD-3	244	See the chart on pages C6-17 and Section 59-C-215.
CBD-R2	244	See the chart on pages C6-17 and Section 59-C-215.

SINGLE FAMILY RESIDENTIAL ZONES. None.

SINGLE FAMILY RESIDENTIAL/ TDRS ZONES. None.

TOWNHOUSE ZONES (SINGLE-FAMILY ATTACHED RESIDENTIAL). None.

PD ZONES. See Section 59-C-7.145 Refer to the Master Plans. High, Urban High, Elderly, and Mixed used PD zones are floating zones and they are the max density granted in the respective zones.

CBD ZONES. See chart in Section C-6.23.

INDUSTRIAL AND COMMERCIAL ZONES with residential development. None.

AGRICULTURAL ZONES. None

Last Update: January 2006
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 301-495-4720
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SINGLE FAMILY RESIDENTIAL ZONES. See page 59C1-37-42.¹

Zone	Max Density	Notes
RE1/ RE-1cluster	1.0	Per acre of useable area. ² See cluster density on page C1-38. MPDUs not applicable.
RE 2	0.5	1 DU per two acres.
RE 2C	0.4	Per acre of useable area. See cluster density on page C1-38
R200	2.44	Per acre of useable area. With 22% MPDUs. Without MPDUs, the cluster option is lower by 22%. See page C1-41.
R150	3.17	Per acre of useable area. With 22% MPDUs. Without MPDUs, the cluster option is lower by 22%. See page C1-41.
R90	4.39	Per acre of useable area. With 22% MPDUs. Without MPDUs, the cluster option is lower by 22%. See page C1-41.
R60	6.10	Per acre of useable area. With 22% MPDUs. Without MPDUs, the cluster option is lower by 22%. See page C1-41.
R40	10.12	Per acre of useable area. With 22% MPDUs. Without MPDUs, the cluster option is lower by 22%. See page C1-41.

SINGLE FAMILY RESIDENTIAL/ TDRS ZONES. See p. C1-19.

Zone	Max Density	Notes
RE1 TDR	2.44	Optional Method per C1-19, 2 DUs with TDRs. Per 59-C-1.392 (d), MPDUs are calculated on after the base density has been increased by a TDR. ³
RE 2 TDR	4.88	Optional Method per C1-19, 4 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).
RE 2C TDR	2.44	Optional Method per C1-19, 2 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).
R200 TDR	13.42	Optional Method per C1-19, 11 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).
R150	7.32	Optional Method per C1-19, 6 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).
R90	34.16	Optional Method per C1-19, 28 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).
R60	34.16	Optional Method per C1-19, 28 DUs with TDRs. Increased by 22% for inclusion of MPDUs, per 59-C-1.392 (d).

¹ If there is development in this zone, developers can only get the maximum density allowed in the zone via cluster method (p. C1-38), unless they opt for MPDUs AND then they can get the density allowed on page 59C1-41.

² Usable area is defined in Section 59-C-1.628 (a)(1) and (2). "The usable area upon which the density of development is calculated, as set for thin section 59-C-1.622, is determined by deducting from the gross area of the tract the following: (1) all land indicated on the master plan of highways as a right-of-way with a width of 100 feet or more; and (2) All ultimate 100-year floodplain areas that, in the opinion of the planning board, would constitute an excessively high percentage of the total area of the tract."

³ Per 59-C-1.392 (d): A property developed with the transfer of development rights shall conform to the requirements of chapter 25A of the Montgomery County Code requiring MPDU's. The applicability of chapter 25A and the MPDU density increase provided by section 59-C-1.6 shall be calculated after the base density of a property has been increased by a transfer of development rights. The density increase provided by section 59-C-1.6 may be made without the acquisition of additional development rights."

TOWNHOUSE ZONES (SINGLE-FAMILY ATTACHED RESIDENTIAL). See page C1-52.

Zone	Max Density	Notes
RT 6	7.32	Per acre of useable area. Maximum development with MPDUs. Min. Tract SF is 20,000 SF. See page C1-52.
RT 8	9.76	Per acre of useable area. Maximum development with MPDUs. Min. Tract SF is 20,000 SF. See page C1-52.
RT 10	12.2	Per acre of useable area. Maximum development with MPDUs. Min. Tract SF is 20,000 SF. See page C1-52.
RT 12.5	15.25	Per acre of useable area. Maximum development with MPDUs. Min. Tract SF is 20,000 SF. See page C1-52.
RT 15.0	18.30	Per acre of useable area. Maximum development with MPDUs. Min. Tract SF is 40,000 SF. See page C1-52.

MULTI-FAMILY RESIDENTIAL ZONES. See page c2-10.

Zone	DUs per Acre	Notes
R-30	17.69	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 14.5.
R-20	26.47	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 21.7.
R-10	53.07	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 43.5.
R-H Residential High-Density Development		Extremely flexible floating zone. Can increase 22% over the percentage of the lot covered by Multifamily Dwellings for inclusion of MPDUs up to 20% of lot area. See Sections 59-C-2.411b, 2.42, and 2.422.
R-30/TDR	49	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 40.
R-20/TDR	61	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 50.
R-10/TDR	122	See page C2-10. Maximum density is achieved with MPDUs. Base maximum is 100.
R-MH Residential Mobile Home	7	59-C-3-52, the density includes the minimum percentage of moderately priced dwelling units, as specified.

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RMX ZONES—RESIDENTIAL MIXED-USE DEVELOPMENT.⁴ See Sec. 59-C-10.2.1.

Zone	DUs per Acre	Notes
RMX -1, 2, 3	2.44	Standard Method, use R-200 density (2 DUs per acre) increase with MPDUs up to 22%.
RMX - 1,2,3/TDR	13.42	Standard Method Use R-200 TDR density of 11 DUs per acre. MPDUs can increase TDR density up to 22%.
RMX-2C, and 3C	21.5	Use C-2 Zone. Use R30 standards (14.5 DUs per acre), increase with MPDUs up to 22%. The "C" stands for "Commercial."
RMX—all zones Residential area	36.6	Optional Method for residential section of RMX zone (30 DUs per acre, base). Increase with MPDUs up to 22%.
RMX—all zones Mixed-use area	48.8	Optional Method for DUs in mixed-use areas of the zone—40 DUs, increases with MPDUs up to 22%.

⁴ A Euclidean Zone, not a floating zone. RMX zones have a standard and optional method. In all RMX zones, if the tract is over 30 acres, the minimum number of residential dwelling units is 150 DUs per acre. In the RMX zones, the master plan density may be increased by a number equal to the number of MPDUs included in the development plan. Under the optional method for the TDR zones, greater densities may be permitted up to the maximum density established in 59-C-1.332, as shown below. MPDUs are allowed per 59-C-1.6, which permits a density increase above the total number of dwelling units permitted by the standard method. MPDUs may increase the density above master plan densities. See Section 59-C-1-23 for TDR sections in the SF zones p. C-1-19.

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MIXED USE PD ZONES. See Section 59-C-7.145 Refer to the Master Plans. Mixed used PD zones are floating zones and they are the max density granted in the respective zones.

Zone	DUs per acre	Notes:
PD Planned Development	122	Must be large enough tract to construct 50 DUs under the density category granted. (Low) 2 and 3; (Medium Low) 4, 5, and 7; (Medium) 9, 11, and 13; (Medium High) 15, 18, 22, and 25; (High) 28, 35, and 44; (Urban High) 60, 68, 75, 88, and 100, where the number denotes the maximum number of DUs per acre. MPDU requirements kick in at 28 units per acre (not 35 units or 50 units), refer to p. C7-8. The maximum density may be increased to accommodate the construction of MPDUs. ⁵
PD for Elderly Housing	366	For elderly housing in the PD zone, the density three-times the density allowed and requires that at least 20% of the total be MPDUs—see page C7-8.
PNZ Planned Neighborhood Zone	19	The population density of a planned neighborhood must be planned so as to fall within a density range of from one to 15 persons per acre of land (Sec. 59-C-7.342), and that density may be increased by an amount not to exceed 112 percent of the population to be housed in MPDUs (round up for MPDUs). For the Planned Neighborhood Zone (PNZ), page C7-21, the number of dwelling units in a PNZ shall be as such as would house not fewer than 450 children. See the formula at page C7-22.
PRC Planned Retirement Community	13 DUs in the age restricted section 8 DUS in non- age restricted section	13 DUs in the age restricted section (10 market and 3 MPDUs); 8 DUS in non-age restricted section (6 market and 2 MPDUs). For the PRC Zone, see page C7-24. The maximum density in the PRC is 10 DUs per acres in the Age Restricted section, plus 22% MPDUs; and 6 DUs per acre in the non-age-restricted section plus 22% MPDUs. The area is determined by a development plan. For developments of 750 acres or more, not more than 15% of the gross area can be covered by residential development. For a 25-acre or larger PRC that is less than 750 acres in size, 65% of the tract is for green area, with the rest of the tract used for all other uses, including roadways. There is a 100-foot height limit with a 500-foot setback if the buildings are over 39 feet high.
MXPD Mixed-Use Planned Development Zone	50 in residential areas; 92 in the commercial or industrial areas	The maximum density may be increased to accommodate the construction of MPDUs (round up for MPDUs). Per 59-C-53 (page C7-34), the density must be compatible with the appropriate master plan or sector plan; max. density is 44 units per acre for residential areas shown on the concept or development plans; max density is 75 DUs per acre where residential development is proposed to be located within a proposed commercial/industrial area.
MXN Mixed-Use Neighborhood Zone	16	See p. C7-48. Master plan recommendation. Residential cannot be less than 25% of the combined floor area of the total project. Floor area cannot exceed 0.3 FAR for the total site. For Theoretical Maximum, assume 100% residential: .3 FAR * 1000 SF per DU (MF) * 1.22% (maximum density for MPDUs).
Town Sector Zone	19	Requires a 1500-acre tract. See Sec. 59-C-7.25, base density 15 DUs per acre plus MPDUs—round up for MPDUs.
Transit Station Residential	183	See page C8-8. FAR 2.5, with 30% min. open space. 150 DUs per acre within the FAR. Can go up to 22% more with MPDUs.
Transit Station Mixed-Use	131	See page C8-8. No maximum or minimum as long as you can make it happen within the 3.0 FAR. Min. open space is 10%—but if you have a project of 50 DUs or more, then the recreation requirement is 25% of the net area, which may increase the total open space requirement to 35%. ⁶

⁵ Section 59-C-7.14 (c) refers to 28 dwelling units per acre as the point at which MPDUs must be included in the development of a PD zone, not 50 dwelling units, as was the case at the time this section was enacted. The point at which MPDUs must be included in the PD zone has not been lowered since the 2003 enactment of the new, lower MPDU threshold of 35 dwelling units.

CBD ZONES. See chart in Section C-6.23.

100% Residential CBD Zones Standard Method⁷

Zone	DUs per Acre	Notes
CBD 0.5	38.66	Includes maximum allowable with MPDUs. See the chart on pages C6-16 and Section 59-C-215
CBD-R1	52.46	See the chart on pages C6-16 and Section 59-C-215.
CBD-1	52.46	See the chart on pages C6-16 and Section 59-C-215.
CBD-2	97.6	See the chart on pages C6-16 and Section 59-C-215.
CBD-3	120	See the chart on pages C6-16 and Section 59-C-215.
CBD-R2	97.6	See the chart on pages C6-16 and Section 59-C-215.

100% Residential CBD Zones Optional Method, also applies to Residential in Mixed-us CBD

Zone	DUs per Acre	Notes
CBD 0.5	122	See the chart on pages C6-17 and Section 59-C-215.
CBD-R1	152.5	See the chart on pages C6-17 and Section 59-C-215.
CBD-1	152.5	See the chart on pages C6-17 and Section 59-C-215.
CBD-2	244	See the chart on pages C6-17 and Section 59-C-215.
CBD-3	244	See the chart on pages C6-17 and Section 59-C-215.
CBD-R2	244	See the chart on pages C6-17 and Section 59-C-215.

⁶ 3 FAR * 43560/1000 SF per unit = 131 DUs.

⁷ 100% Residential CBD Zones be developed using both the Standard and Optional method. According to Section 59- C-6.215, under both methods of development the maximum dwelling unit density allowed may be increased to accommodate the construction of MPDUs. See the chart on pages C6-16 and C6-17.

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INDUSTRIAL AND COMMERCIAL ZONES with residential development. See page 59G-95. See Productivity Housing and Special Exception.



Zone	DU per acre	Note
CT	As exists.	Grandfathered. Takoma Park.
CP	Not allowed.	Do not include.
C1	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
C2	21.5	Existing and SE Productivity Housing only. This is by right permitted—standard for mixed-use developments. 1.0 FAR for commercial, 1.5 FAR for residential—and residential at least 60% of overall FAR.
C3	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
C4	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
C5	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
C6	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
HM Hotel/Motel	Not allowed.	Not applicable.
Country Inn	Do not include.	Residential uses are allowed only for caretakers.
I-1	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.
I-2	Do not include.	Residential uses are not allowed in this zone.
I-3	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but not beyond 21.5 DUs per acre. I-3 has an optional method, but the optional method produces fewer DUs per acre (see page C5-26): base density 8 DUs per acre with 12.5 DUs per acres with MPDUs/TDRs.
I-4	21.5	Highest yield available through production of Productivity Housing in up to 25% of the land in the zone in the Master Plan area. MPDUs can be used to reach the Maximum, but will not allow any density beyond 21.5 DUs per acre.

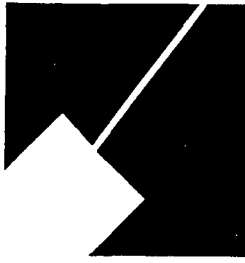
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AGRICULTURAL ZONES. See Section 59-C.9.

Zone	DUs per Acre	Notes
Rural	0.2	1 DU per 5-acre lot. Standard method only.
RC Rural Cluster	0.2	1 DU per 5-acre lot. Standard method only.
LDRC Low-Density Rural Cluster	0.2	1 DU per 5-acre lot. Standard method only.
RDT Rural Density Transfer	.04	1 DU per 25-acre lot. Standard method only.
RS Rural Service	.5	1 DU per 2-acre lot. Standard method only.
RNC Rural Neighborhood Cluster	1	Must be sewered to get the Optional Method, per 59-C-9.573(f).

Last Update: March 2005
 Sharon K. Suarez, AICP
 Housing Coordinator
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January 19, 2006

Memorandum

To: Linda McMillan, Montgomery County Council Staff

From: Karl Moritz, Chief, Research & Technology Center, 301-495-1312
Sharon K. Suarez, AICP, Housing Coordinator, 301-495-4720

Re: Questions from PHED Meeting of December 8, 2005

1. How many subdivisions of 35 or fewer units have there been in CBD zones in metro areas in the last 10 years or so?

Site plans and preliminary plans approved since 1995 in CBD zones with 35 or fewer dwelling units were reviewed. During that period, three subdivision plans were approved in CBD zones, each yielding 35 or fewer units: two in Bethesda and one in Silver Spring. Of those, two were preliminary plans and one was a site plan. Because there were so few such plans, the search was widened to include TS zones. Six subdivision plans were found in the TS zones, and all were in Bethesda: four preliminary plans and two site plans.

PA	PA Name	Zone	Plan Name	Plan Number	DU Total	MPDUs	TDRs
35	Bethesda	CBD-1	4933 Fairmont Ave	820040090	2	0	0
35	Bethesda	CBD-1	West Virginia Ave	120040710	4	0	0
35	Bethesda	TS-R	Edgemoor	119980670	12	0	0
35	Bethesda	TS-R	Edgemoor at Arlington	120010180	12	0	0
35	Bethesda	TS-R	Montgomery Lane, Edgemoor	119960590	18	0	0
35	Bethesda	TS-R	Villages of Bethesda	119970380	22	0	0
35	Bethesda	TS-R	Edgemoor II	819980350	29	0	0
35	Bethesda	TS-R	Edgemoor IV	82000023A	12	12	0
36	Silver Spring	CBD-1	Silver Spring Park	120030600	24	0	0

2. **Which Master Plans (MP) contain height restrictions that might affect the proposed workforce housing legislation?**

The Bethesda MP (p.39) has potential height restrictions, as well as does the related Friendship Heights Sector Plan, which has limits on the number of stories allowed and which affects the Geico & Hecht Co. parcels. The Silver Spring MP has some height restrictions, such as those in the Fenton Village Overlay Zone (p. 68), the Ripley District Overlay Zone (pp. 84-85), and the South Silver Spring (pp. 86-87).

3. **Chart the steps in the Development Review Process. How many projects are in the various steps? How much time does it take for projects, on average, to get through the process?**

- a. Process Charts. The Community-Based and Development Review divisions have been charting the development review process. As can be seen in **Attachment A**, the Development Review Process is slightly different for applications with recorded lots versus unrecorded lots; for applications in Takoma Park; and for applications with historic properties.
- b. Number of the projects in various steps of the process. In fiscal year 2005, the Department reviewed 77 Pre-Applications; seven Project Plans; 125 Preliminary Plans; 88 Site Plans; 182 Natural Resource Inventories/Forest Stand Delineation Recertifications; 215 Forest Conservation Plan Exemptions; 97 Forest Conservation
- c. Always and 235 Plans process. According to M-NCPPC staff attorney, Michele Rosenfeld, the pre-Clarksburg duration of an application averaged between 45 to 60 days in process. Post-Clarksburg, the process has been somewhat lengthier – about 90 days, and it is hoped that staff reassignments and new-hires will in time bring the process timeframe back to pre-Clarksburg levels.

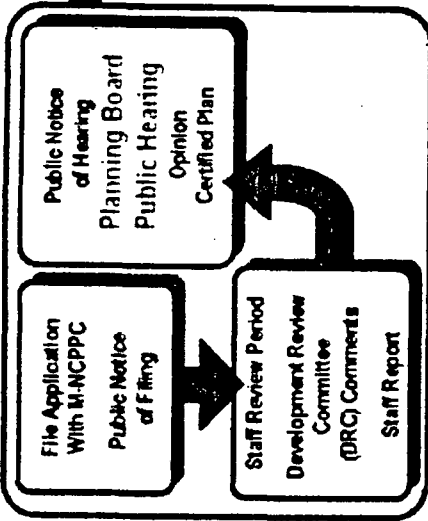
4. **Provide Metro Area maps with zoning.**

As requested, ten letter-sized maps are included as **Attachment B**. The first is a key map, and the rest are metro area maps.

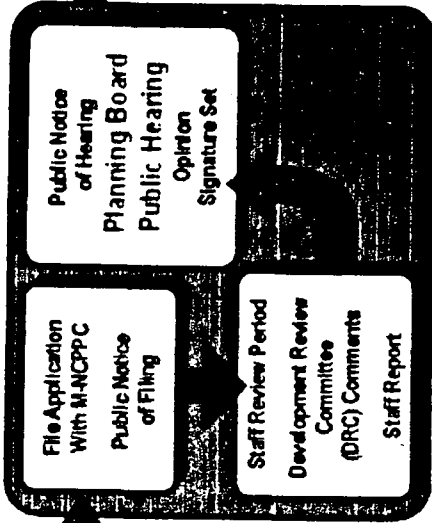
Attachment A
Development Review Process Charts

~~27~~ 35

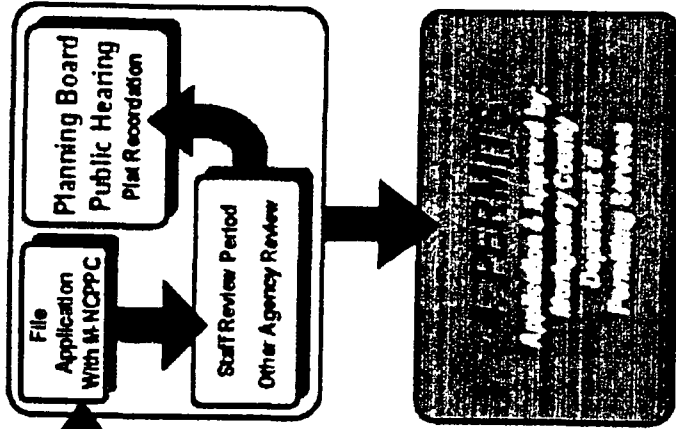
1. PRELIMINARY PLAN



2. SITE PLAN



3. RECORD PLAT



Draft 12-20-05

Un-Recorded Lot: Preliminary Plan with Required Site Plan Review

January 2006
 The Agency is a regulated responsibility of a unit plan development and review process. This is a public document and is subject to change.

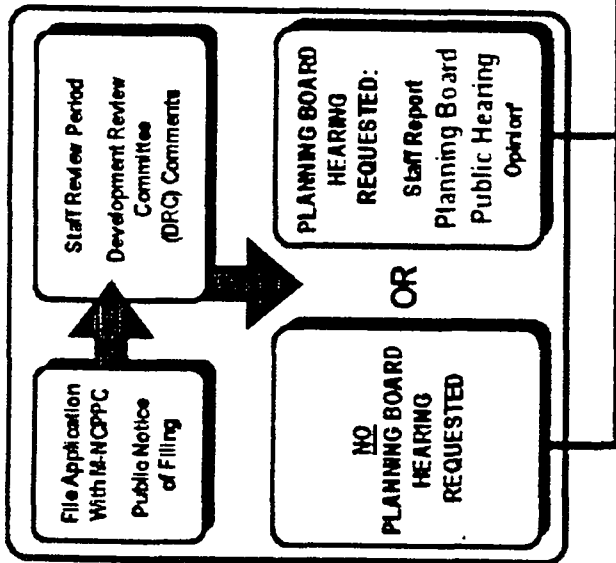


DEVELOPMENT REVIEW PROCESS
 MONTGOMERY COUNTY, MARYLAND



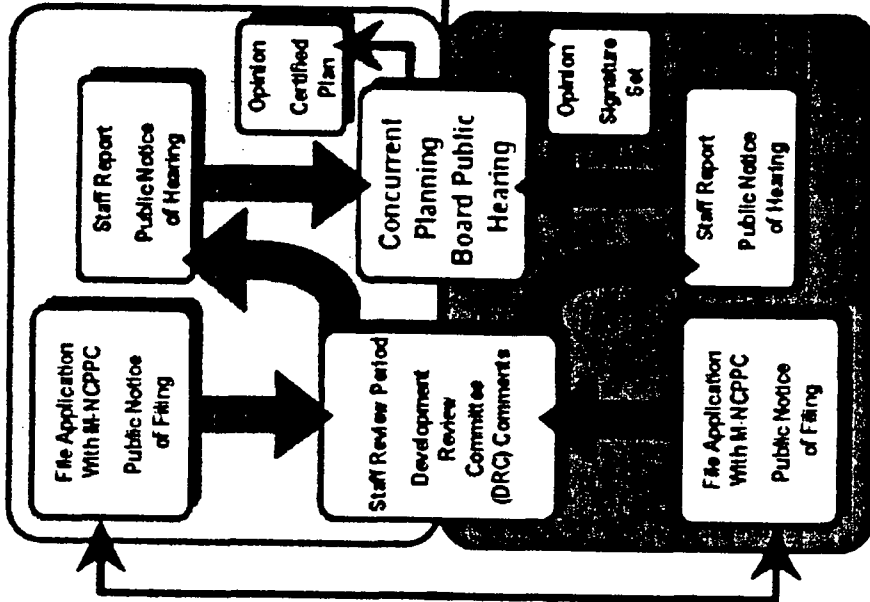
~~28~~ 36

1. PRE-APPLICATION

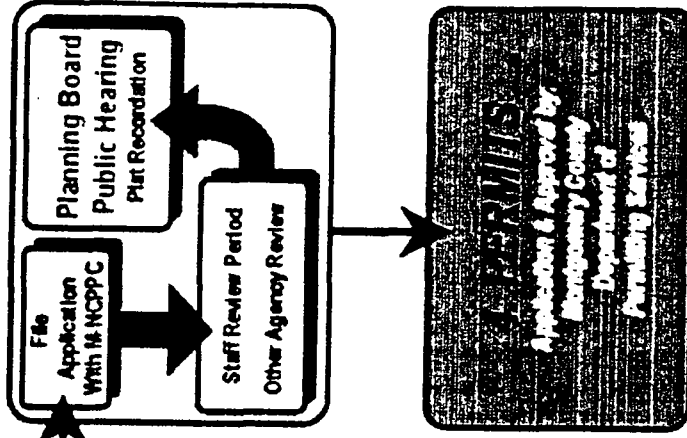


* An opinion is issued if a binding Planning Board action is requested by the applicant

2. PRELIMINARY PLAN & SITE PLAN



3. RECORD PLAT



Attention: The Applicant is a legal representation of a lot and the Applicant is responsible for the accuracy of the information. This is a preliminary opinion and is subject to change.

January 2006

Draft 12-20-05

Un-Recorded Lot: Concurrent Preliminary Plan with Required Site Plan Review

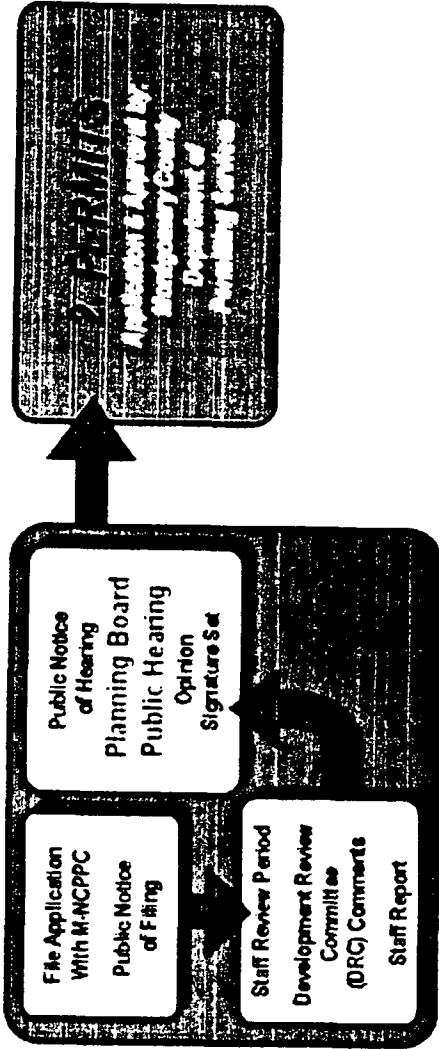


DEVELOPMENT REVIEW PROCESS

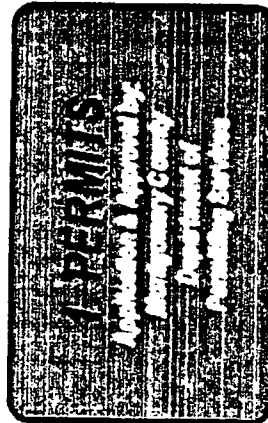
MONTGOMERY COUNTY, MARYLAND

~~37~~ 37

1. SITE PLAN



Recorded Lot: With Required Site Plan Review



Permits
This document is a simplified representation of a site plan. It is not a final plan. It is subject to change. Approval and use is subject to change.

January 2006

Recorded Lot: With No Site Plan Review Requirement

DEVELOPMENT REVIEW PROCESS

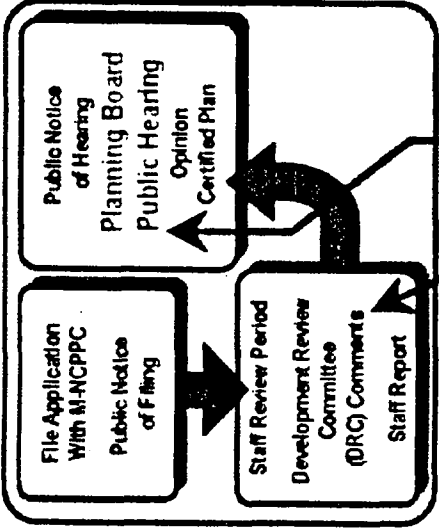
MONTGOMERY COUNTY, MARYLAND

Dist 12-20-06

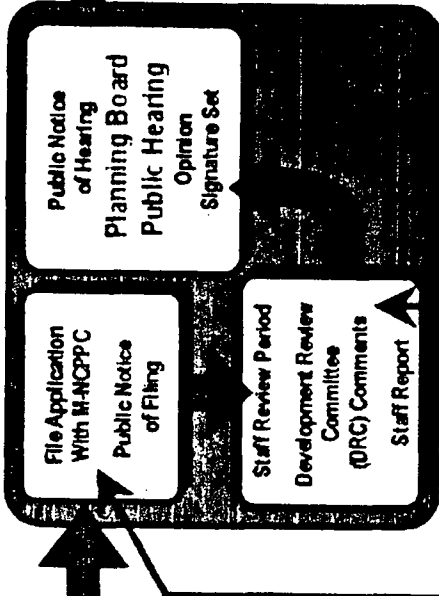


~~27~~ 38

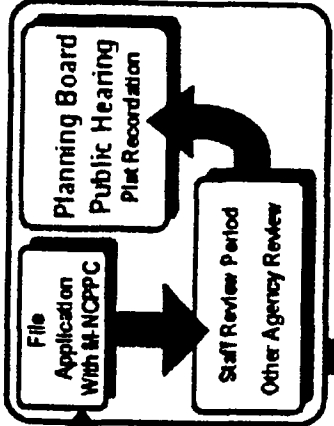
1. PRELIMINARY PLAN



2. SITE PLAN

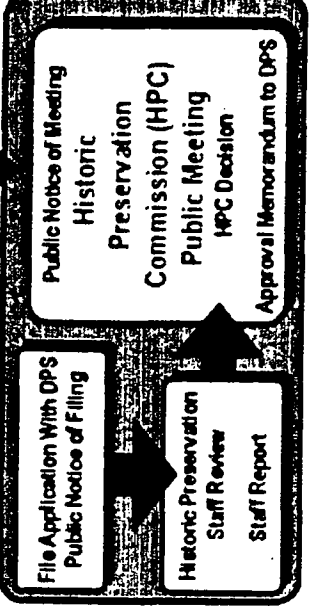
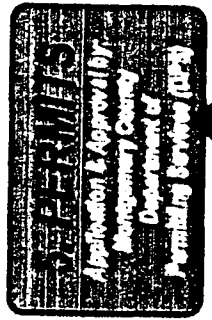
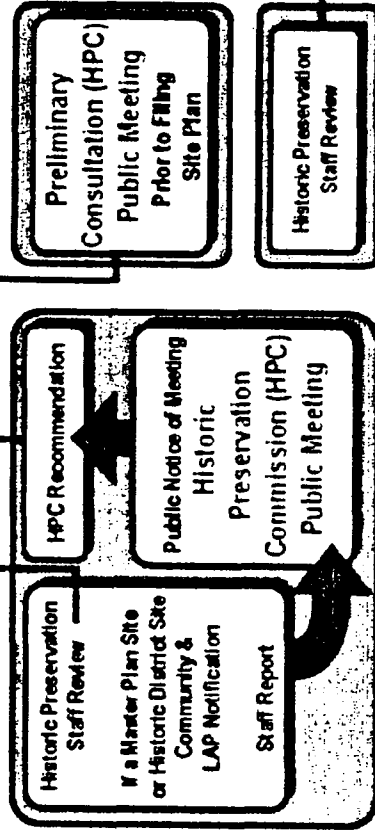


3. RECORD PLAT



4. HISTORIC AREA

WORK PERMIT



Proposals With Historic Properties

Un-Recorded Lot: Preliminary Plan With Required Site Plan Review

Approval: This diagram is a simplified representation of a more complex process. This is an illustrative diagram and is subject to change.

January 2006

DEVELOPMENT REVIEW PROCESS

MONTGOMERY COUNTY, MARYLAND

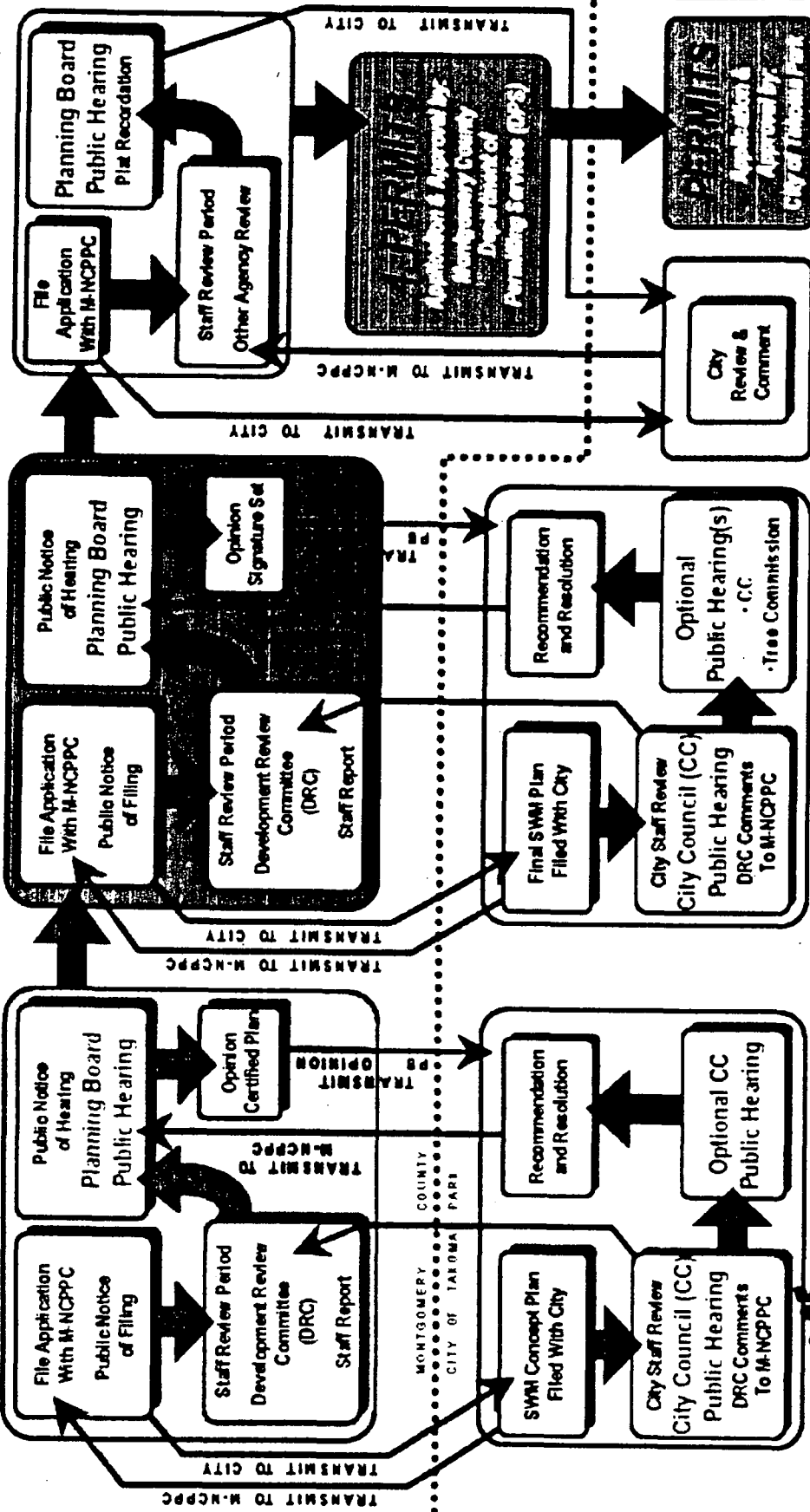
2-20-06

39

1. PRELIMINARY PLAN

2. SITE PLAN

3. RECORD PLAT



Proposals Within the City of Takoma Park
Draft 12-20-05
For Discussion Only Un-Recorded Lot: Preliminary Plan and Site Plan Review

January 2006



DEVELOPMENT REVIEW PROCESS

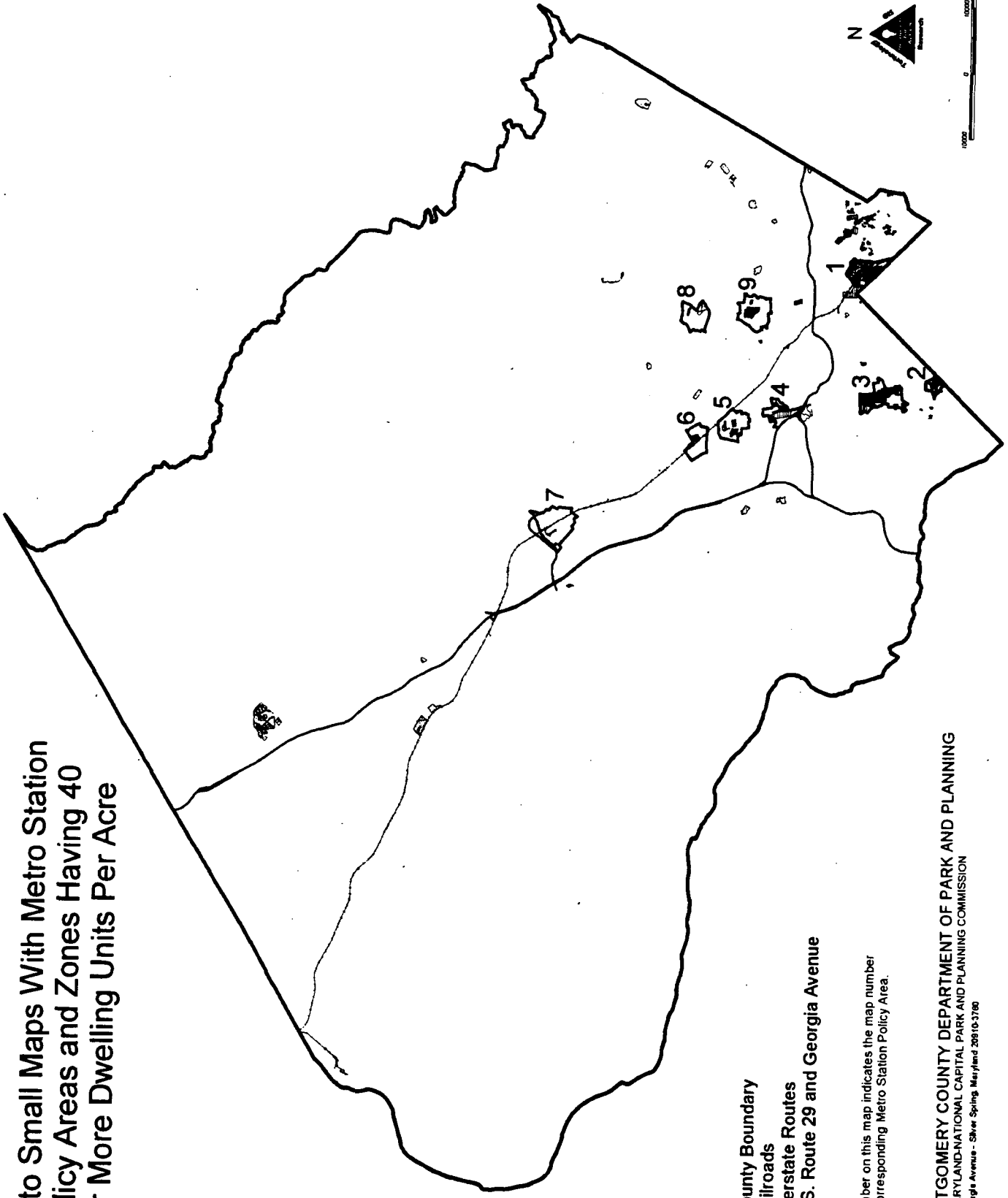
MONTGOMERY COUNTY, MARYLAND

~~30~~ 40

Attachment B
Metro Station Policy Area Maps

~~3B~~ 41

**Key to Small Maps With Metro Station
Policy Areas and Zones Having 40
or More Dwelling Units Per Acre**



- County Boundary
- Railroads
- Interstate Routes
- U.S. Route 29 and Georgia Avenue

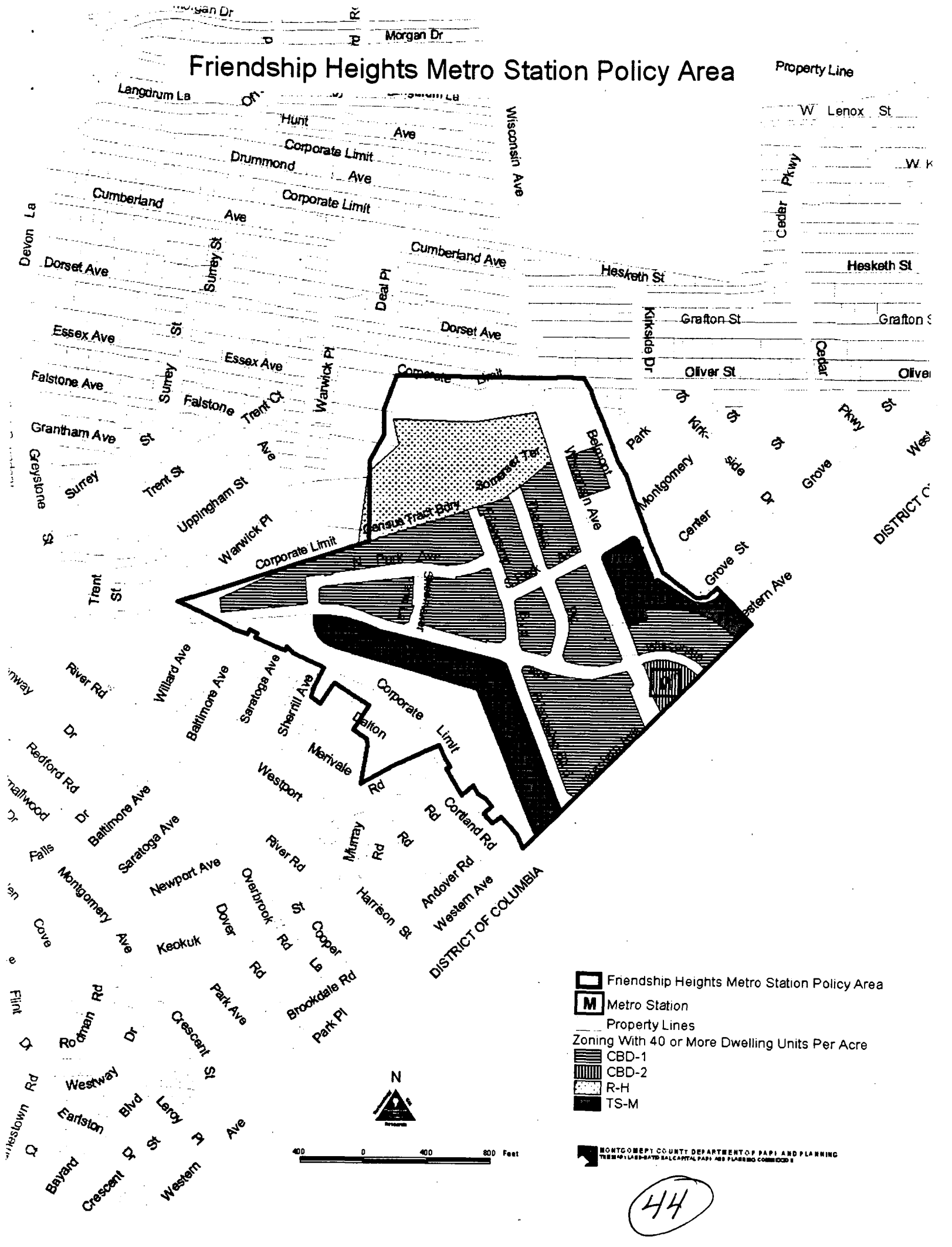
Note: The number on this map indicates the map number of the corresponding Metro Station Policy Area.

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8787 Georgia Avenue - Silver Spring, Maryland 20910-3780



42

Friendship Heights Metro Station Policy Area



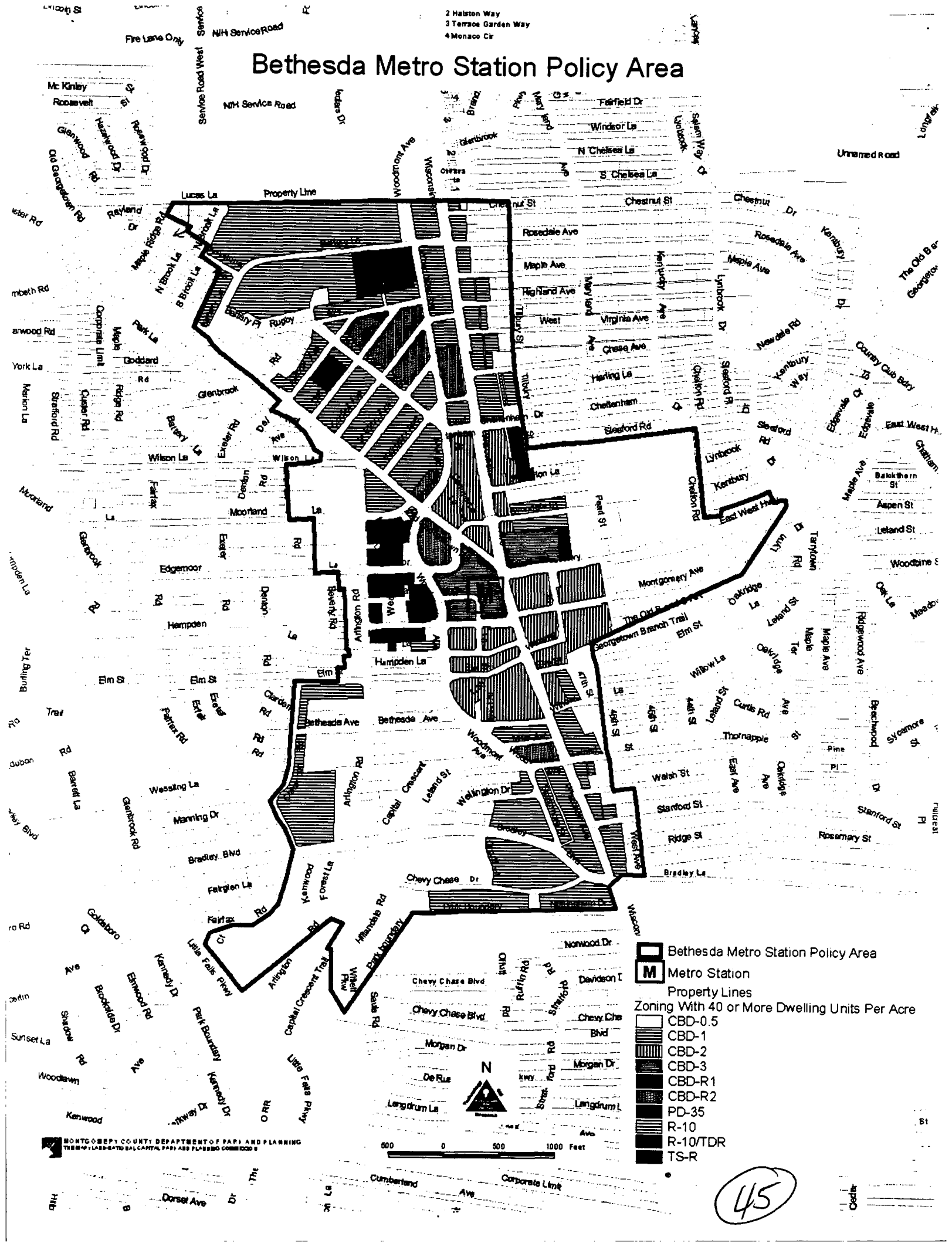
- Friendship Heights Metro Station Policy Area
- Metro Station
- Property Lines
- Zoning With 40 or More Dwelling Units Per Acre
- CBD-1
- CBD-2
- R-H
- TS-M
















MONTGOMERY COUNTY DEPARTMENT OF PUBLIC AND PLANNING
 1100 LEE ROAD, BALTIMORE, MARYLAND 21201

44

Bethesda Metro Station Policy Area

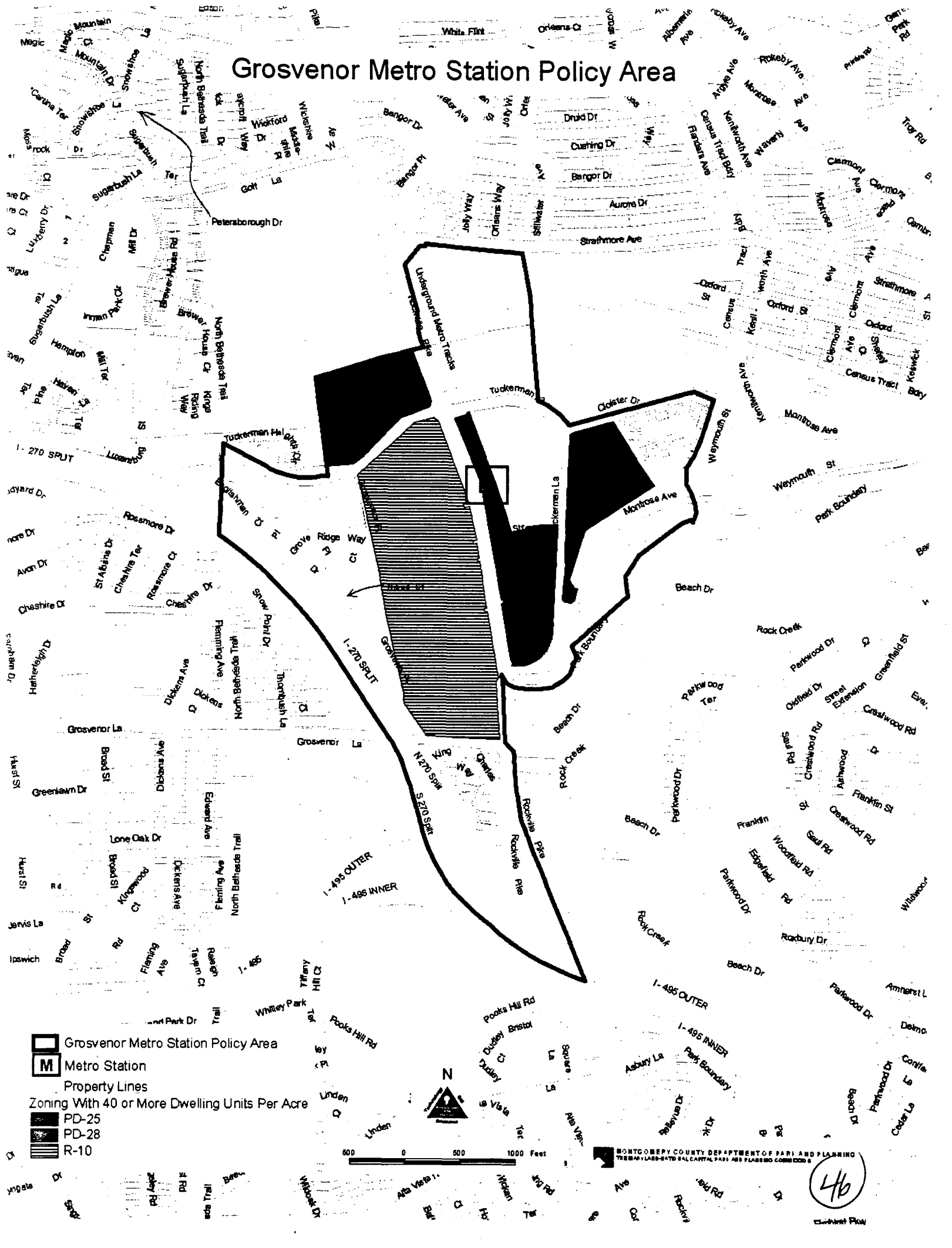








-  Bethesda Metro Station Policy Area
-  Metro Station
-  Property Lines
- Zoning With 40 or More Dwelling Units Per Acre
-  CBD-0.5
-  CBD-1
-  CBD-2
-  CBD-3
-  CBD-R1
-  CBD-R2
-  PD-35
-  R-10
-  R-10/TDR
-  TS-R

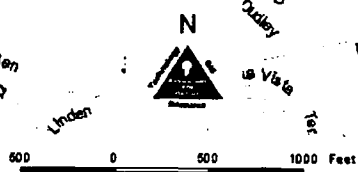
MONTGOMERY COUNTY DEPARTMENT OF PARKS AND PLANNING
 10000 ROCKVILLE PIKE, SUITE 200, ROCKVILLE, MD 20850
 TEL: 301-231-7000 FAX: 301-231-7001

45

Grosvenor Metro Station Policy Area



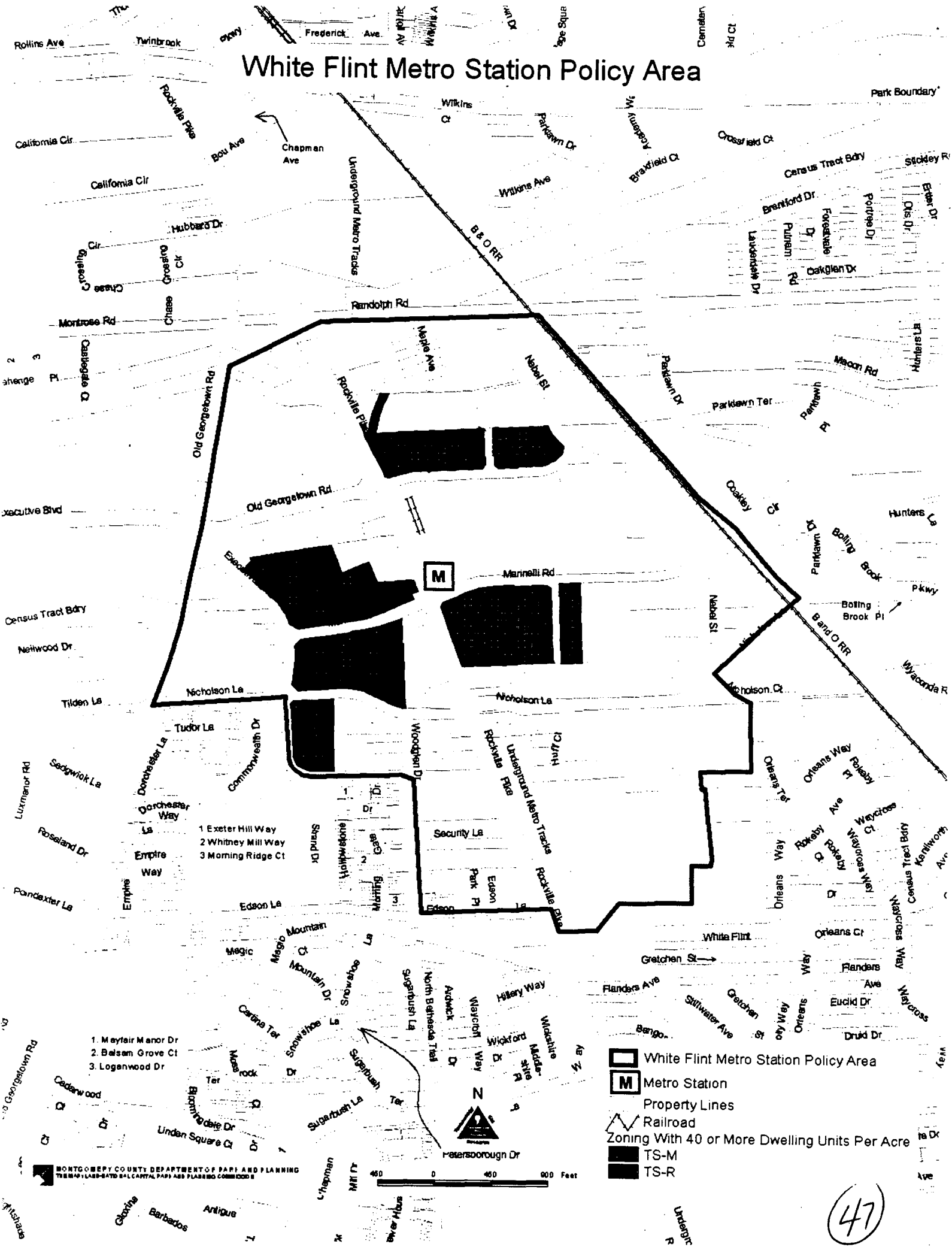
-  Grosvenor Metro Station Policy Area
-  Metro Station
-  Property Lines
- Zoning With 40 or More Dwelling Units Per Acre
-  PD-25
-  PD-28
-  R-10



MONTGOMERY COUNTY DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
 1100 EAST WASHINGTON AVENUE, SUITE 200, ROCKVILLE, MD 20850
 TEL: 301-287-3000 FAX: 301-287-3001

46
 CLAYTON P. KING

White Flint Metro Station Policy Area



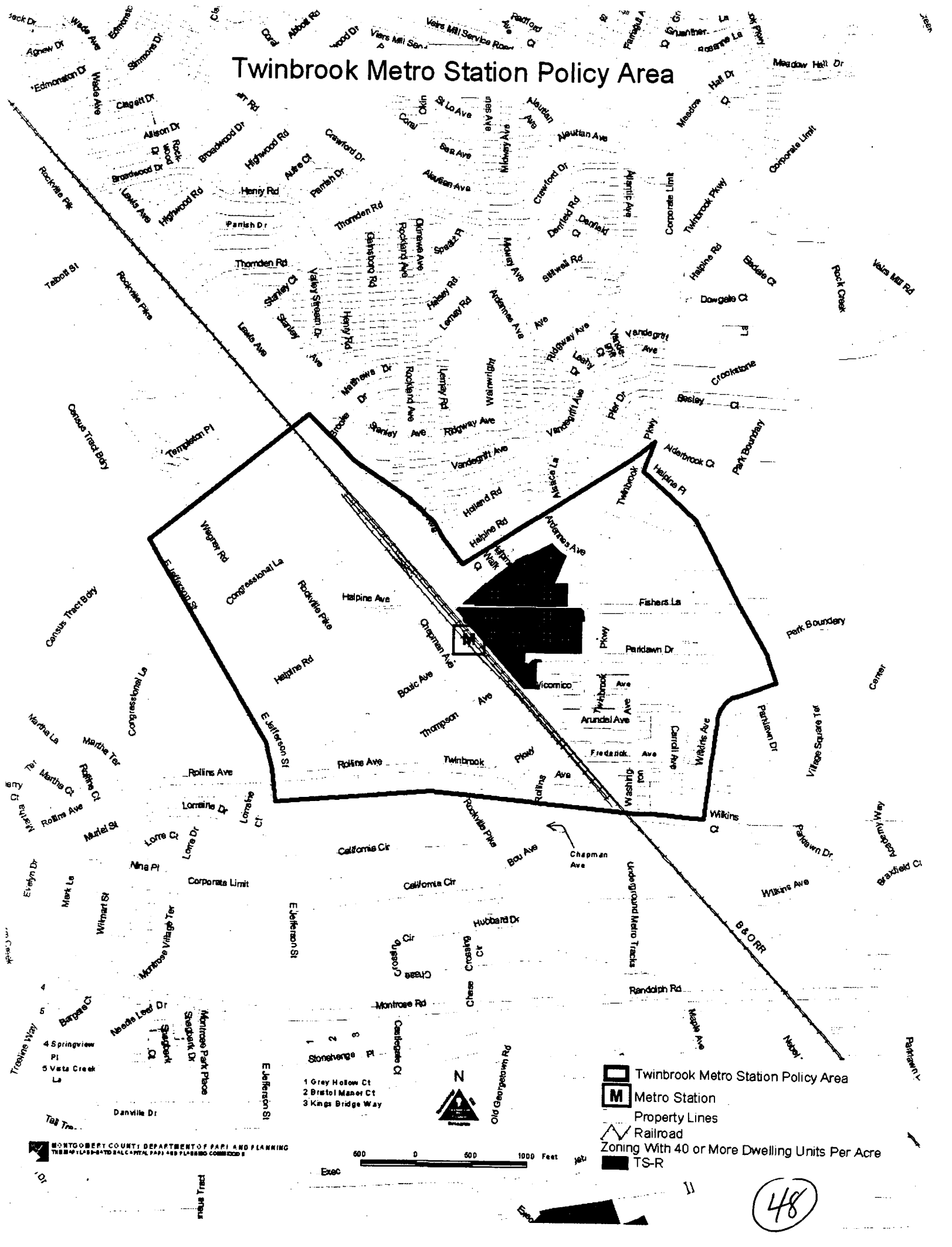
- 1 Exeter Hill Way
- 2 Whitney Mill Way
- 3 Morning Ridge Ct

- 1 Mayfair Manor Dr
- 2 Balsam Grove Ct
- 3 Logenwood Dr

MONTGOMERY COUNTY DEPARTMENT OF PLANNING
 THE MAPPING DIVISION
 4500 ROCKVILLE PIKE, SUITE 200, ROCKVILLE, MD 20850

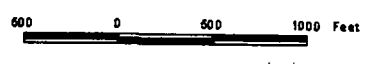
47

Twinbrook Metro Station Policy Area



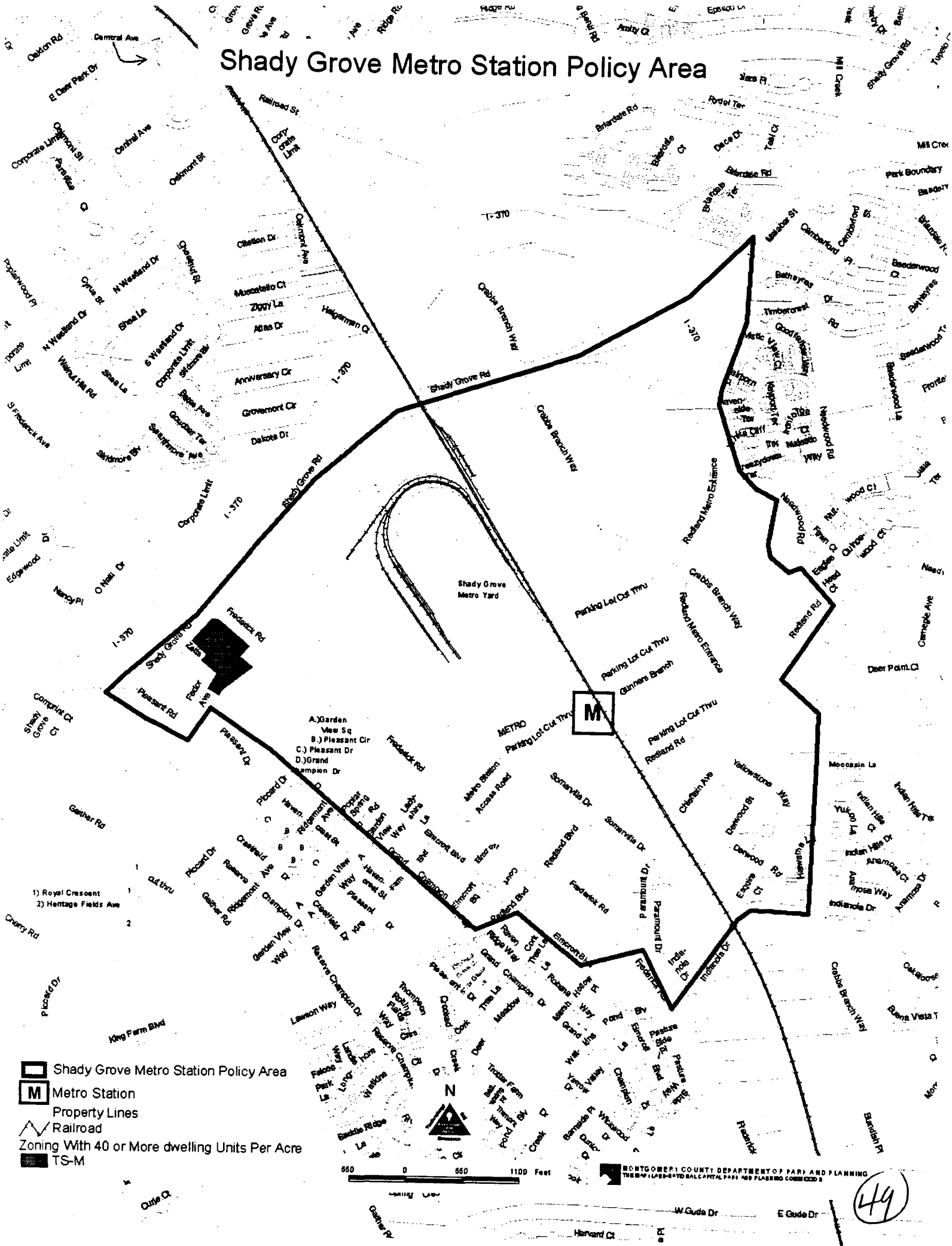
- 1 Grey Hollow Ct
- 2 Bristol Manor Ct
- 3 Kings Bridge Way







- Twinbrook Metro Station Policy Area
- Metro Station
- Property Lines
- Railroad
- Zoning With 40 or More Dwelling Units Per Acre
- T-S-R



48

Shady Grove Metro Station Policy Area



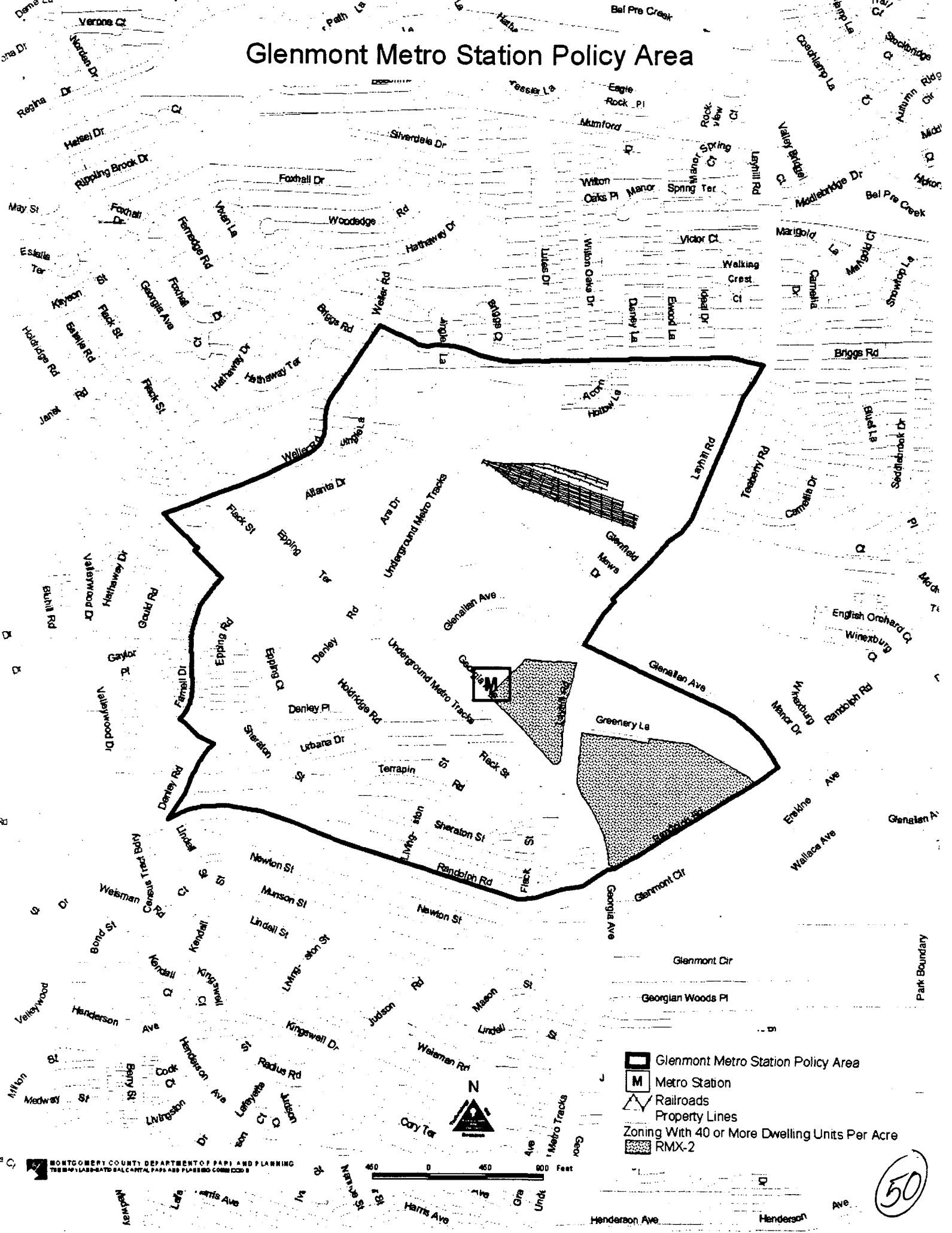
-  Shady Grove Metro Station Policy Area
-  Metro Station
-  Property Lines
-  Railroad
-  Zoning With 40 or More dwelling Units Per Acre
-  TS-M







550 0 550 1100 Feet

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE SHADY GROVE METRO STATION POLICY AREA PLANNING COMMISSION

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Glenmont Metro Station Policy Area



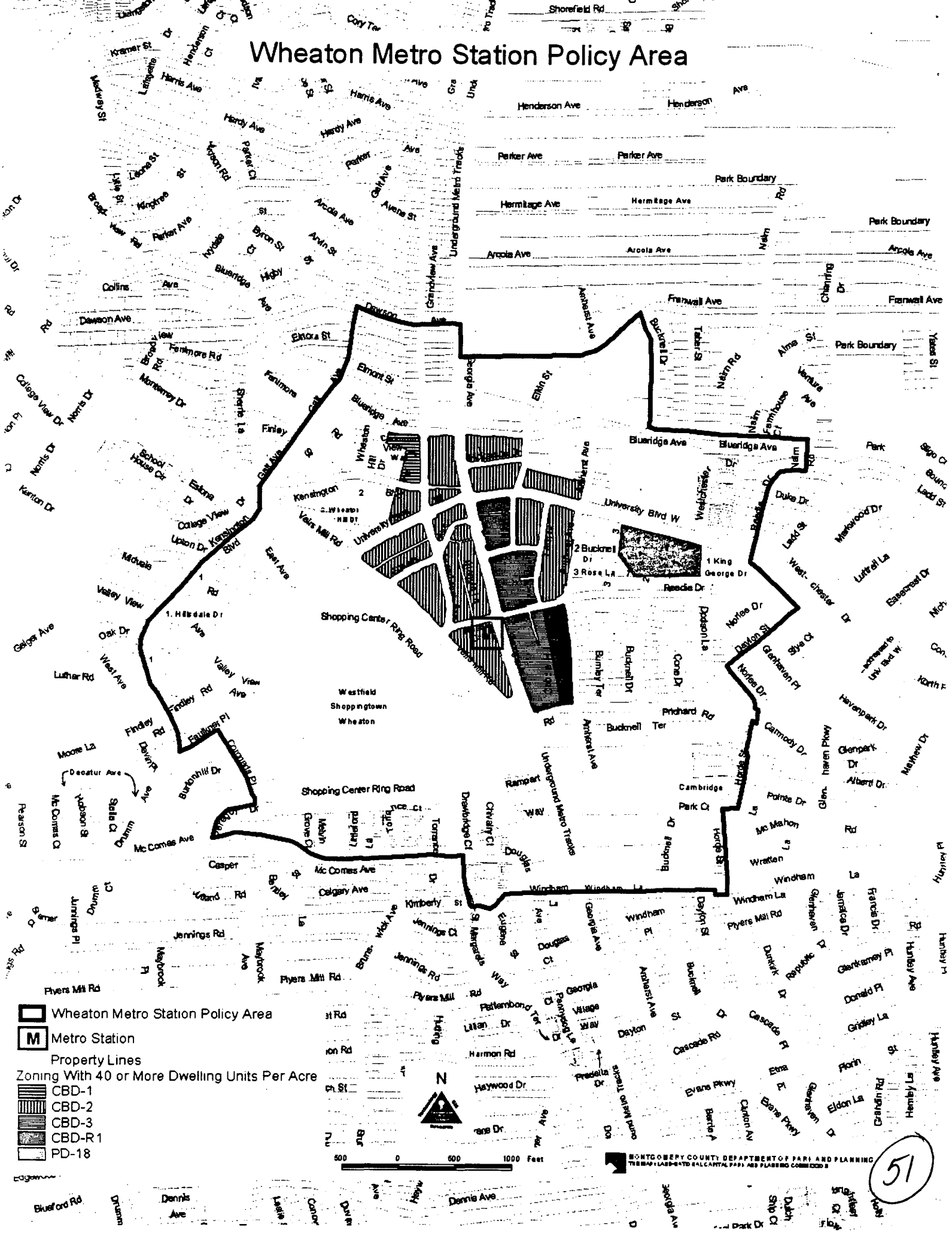
-  Glenmont Metro Station Policy Area
-  Metro Station
-  Railroads
-  Property Lines
-  Zoning With 40 or More Dwelling Units Per Acre
-  RMX-2










0 450 900 Feet

50

Wheaton Metro Station Policy Area

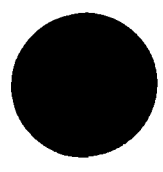


-  Wheaton Metro Station Policy Area
-  Metro Station
- Property Lines
- Zoning With 40 or More Dwelling Units Per Acre
-  CBD-1
-  CBD-2
-  CBD-3
-  CBD-R1
-  PD-18

MONTGOMERY COUNTY DEPARTMENT OF PARKS AND PLANNING
 THE MAPY LABS-GATED CAPITAL PARKS AND PLANNING CONSULTANTS

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Attachment C
Letters and Testimony



**MID-COUNTY
CITIZENS
ADVISORY
BOARD**

018725

November 22, 2005

Honorable Thomas Perez, President
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: ZTA 05-16

Dear Mr. Perez:

On behalf of the Montgomery County Citizen's Advisory Board (MCCAB), the Legislative Committee provided comments in response to the Workforce Housing Legislation Zoning Text Amendment No. 05-16. The MCCAB Legislative Committee strongly supports the concept of workforce housing. However, in its review of ZTA 05-16, the Legislative Committee advises that the Council review the following comments during the legislative process.

First, consider the legal Implications of a "workforce housing unit," a term defined as a unit that is subject to rent limits or sales controls under Chapter 25B; and of "special regulations for optional method development using transferable development rights."

Second, evaluate additional housing solutions for Montgomery County. The Legislative Committee recognizes that this legislation is designed for areas around Metro centers and thinks that the 10% minimum units designed for workforce may be a good start. However, the Committee suggests that the Council address the Metro center developments' impact on the total workforce housing needs of the County. It is further suggested that the Council discuss other options being considered to address workforce housing shortages, if any, in Montgomery County. As a historical and policy matter, determine the pros and cons of developments for the construction of workforce housing, in addition to a 10% set-aside around Metro centers.

Finally, the legislative committee advised the creation of a task force to address workforce housing in Montgomery County.

Thank you for your consideration of this very important matter.

Sincerely,

Alec Stone

Alec Stone, Chair
Mid-County Citizen's Advisory Board

2424 Reddie Drive
Wheaton, Maryland 20902-4669
240/777-8100
240/777-8112 TDD
240/777-8110 FAX
240/777-8111

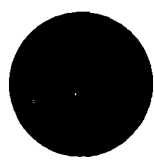
53

ZTA 05-16
BILL 30-05

RW
CC
SBF
LL
MF



**MID-COUNTY
CITIZENS
ADVISORY
BOARD**



018724

November 22, 2005

Honorable Thomas Perez, President
Montgomery County Council
100 Maryland Avenue
6th Floor
Rockville, Maryland 20850

Re: ZTA 05-16 and Impact on Wheaton Urban District

Dear Mr. Perez:

On behalf of the Montgomery County Citizen's Advisory Board (MCCAB), we share this letter in response to the Workforce Housing Legislation Zoning Text Amendment No. 05-16. MCCAB strongly supports the concept of workforce housing. However, we advise that the Council review the current proposal's impact on downtown Wheaton, the only Urban District in which the optional method of development is not allowed in a significant part of the downtown. We are concerned that Wheaton would be at a disadvantage to the other Districts in Montgomery County. We hope that the Council will consider closing this loophole during the legislative process.

Thank you for your consideration of this very important matter.

Sincerely,

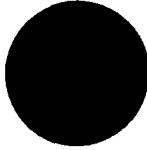
Alec Stone, Chair
MidCounty Citizen's Advisory Board

2424 Reddie Drive
Wheaton, Maryland 20902-4669
240/777-8100
240/777-8112 TDD
240/777-8110 FAX
240/777-8111

54

MF.
CC
RW.

30-05
TA 05-16



018799

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

November 23, 2005

The Honorable Thomas Perez
President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Workforce Housing – Proposed Amendments to Zoning Text
Amendment No. 05-16 and Bill No. 30-05

Dear Mr. Perez:

The purpose of this letter is to present testimony on the proposed legislation to create and implement a Workforce Housing Program in Montgomery County. Unfortunately, I am unable to attend the public hearing, so please include this letter in the Record of the proceedings.

This letter presents proposed language to amend Section 9 of Zoning Text Amendment No. 05-16 (the "ZTA") and to amend Section 2 of Bill No. 30-05 (the "Bill") with regard to the applicability of the new legislation to pending development applications.

The draft amendments propose to limit the applicability of the ZTA and the Bill with respect to certain applications that have been filed in advance of action on the legislation. With this new language, the ZTA and the Bill would not apply to projects which have already filed applications for: (a) Preliminary Plan of Subdivision, (b) Project Plan for Optional Method of Development, and/or (c) Local Map Amendment that includes a Development Plan. Each of these three application processes requires substantial advance preparation such that workforce housing should not be required in pending applications.

At the time these applications are filed, the scope, design and related economics of the project and its public facilities have been carefully balanced with the density to meet the requirements of the Ordinance and, perhaps more

55

importantly, to address the marketability of the eventual product. In some instances, these applications are the result of lengthy negotiations and executed contractual agreements with the County. Completion of the negotiation and execution of the contract necessarily precede the ability to file. All of this design and planning must be based on the law that exists at the time. Each such application would, of course, incorporate the expectation of moderate-priced dwelling units, as those requirements already exist at the time the applications are filed. Provisions for workforce housing that have not been enacted, and therefore did not exist at the time the applications were filed, could not have been taken into account. To require that workforce housing be added retrospectively is inequitable.

The filing of these applications is the point in the development approval process at which the applicant proposes to establish the density of the project and how that density fits into the physical envelope within which the project is to be constructed. At that point, the applicant must also identify the number of units, the mix of different unit types, and, from practical standpoint, the size of the future residential units themselves. All of this establishes the envelope for development and the parameters by which the proposed development meets the requirements of the Ordinance for each process. These applications are therefore the appropriate stages at which to provide grandfathering, because the scope and financial assumptions of the development are set at the time of filing these applications.

For all the foregoing reasons, the time of "filing" of these applications is the appropriate time for grandfathering, relative to the new workforce housing requirement. Modification to the grandfathering provisions should occur in both the ZTA and the Bill.

The existing language in Section 9 of the ZTA should be replaced with the text below. (Attachment No. 1 is a copy of the existing text of Section 9 of the ZTA and of the proposed replacement language that has been marked to show the changes from the text as introduced.)

Replacement Text for ZTA No. 05-16:

Sec. 9. Plans approved or filed before (ZTA Effective Date).

The requirement to construct workforce housing under Chapter 25 B and Section 59-A-6.17 does not apply to development for which a complete application for preliminary subdivision plan, project plan for optional method of development, or local map amendment which includes a development plan was approved or filed before (ZTA Effective Date).

The existing language in Section 2 of the Bill should be replaced with the text below. (Attachment No. 2 is a copy of the existing text of Section 2 of the Bill and of the proposed replacement language that has been marked to show changes from the text as introduced.)

Replacement Text for Bill No. 30-05:

Section 2. Applicability

Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which a complete application for preliminary plan of subdivision, project plan for optional method of development or local map amendment which includes a development plan was filed or approved before this Act took effect.

Thank you for your consideration of these comments. I will be glad to discuss them further at your convenience.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

Enclosures

3402028_v1

57

ATTACHMENT No. 1

Zoning Text Amendment No. 05-16

Original Text in ZTA No. 05-16

Section 9. Preliminary subdivision plan approved before (ZTA Effective Date).

The requirement to construct workforce housing under Chapter 25A and Section 59-A-6.17 does not apply to any preliminary subdivision plan approved by the Planning Board before (ZTA Effective Date).

Proposed Amendment to ZTA No. 05-16 (Marked to Show Changes)

Sec. 9. [Preliminary subdivision plan] Plans approved or filed before (ZTA Effective Date).

The requirement to construct workforce housing under Chapter 25[A]B and Section 59-A-6.17 does not apply to development for which a [any] complete application for preliminary subdivision plan, project plan for optional method of development, or local map amendment which includes a development plan was approved [by the Planning Board] or filed before (ZTA Effective Date).

ATTACHMENT No. 2

Bill No. 30-05

Original Text in Bill No. 30-05

Section 2. Applicability.

Article V of Chapter 25 B, as inserted by Section 1 of this Act, does not apply to any development for which a preliminary plan of subdivision was approved before this Act took effect.

Proposed Amendment to Bill No. 30-05 (Marked to Show Changes)

Section 2. Applicability.

Article V of Chapter 25 B, as inserted by Section 1 of this Act, does not apply to any development for which a complete application for preliminary plan of subdivision, project plan for optional method of development, or local map amendment which includes a development plan was filed or approved before this Act took effect.

③ ZTA 05-16

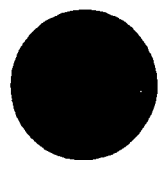
MF
CC
RW

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

018885

December 5, 2005

Barbara A. Sears
301.961.5157
bsears@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com



Thomas Perez, President
And Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Proposed Workforce Housing Legislation; Bill No. 30-05, ZTA No. 05-16

Dear Council President Perez and Members of the Montgomery County Council:

On behalf of our client, Home Properties of New York L.P, and its Co-Chairman and Co-Founder Nelson Leenhouts, we would like to express our appreciation for Mr. Leenhouts' opportunity to address you at your November 22, 2005 public hearing regarding the proposed workforce housing legislation. As requested, attached please find fifteen (15) copies of an outline of Mr. Leenhouts testimony from that hearing for submission into the record.

We understand that the PHED Committee will hold its first worksession on the legislation on December 12th. Mr. Leenhouts plans to attend this worksession and will be available to further discuss the points he made during the public hearing, or to provide any other assistance the Committee may deem appropriate and desirable. In the meantime, if you have any questions or concerns regarding the attached, please feel free to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

Barbara A. Sears
llg.

Barbara A. Sears

Erin E. Girard
Erin E. Girard

cc: Nelson Leenhouts

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ATTORNEYS

The Honorable Thomas Perez and
Members of the Montgomery County Council
December 2, 2005
Page 6

meaningful loss of workforce housing. It is the equitable course of action for the Council to take, particularly when an applicant like WFC has spent years working on this development, has received and relied on the rezoning approval to the TS-M zone from this Council and already has filed and is diligently pursuing both the Preliminary Plan and Site Plan approvals. Any other result would be unjust.

Thank you for your consideration on this matter. We will be available at the PHED Committee worksession to answer any questions regarding our position.

Sincerely,

Steven A. Robins

- Cc: The Honorable Douglas Duncan
- The Honorable Derick Berlage
- Scott Reilly
- Elizabeth Davison
- Karl Moritz
- Michael Faden, Esq.
- Ralph Wilson
- Ben Jacobs
- Rod Lawrence
- Matthew Hurson

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The Honorable Thomas Perez and
Members of the Montgomery County Council
December 2, 2005
Page 5

by WFC in reliance on certain approvals already received or those that are well underway).

THE SOLUTION: REVISE THE GRANDFATHER CLAUSES

We would respectfully request that Section 9 of the ZTA and Section 2 of the Bill be modified to include language that appropriately protects a project like WFC. We would recommend that the Council include the following language in the ZTA and the Bill:

Section 9 of the ZTA. "This requirement to construct workforce housing . . . does not apply to any preliminary subdivision plan . . . or, in the case of a property for which a local map amendment is required, a development plan was approved by the Council before (ZTA effective date)."

Section 2 of the Bill. " . . . This requirement to construct workforce housing . . . does not apply to any preliminary subdivision plan . . . or, in the case of a property for which a local map amendment was required, a development plan was approved by the Council before (ZTA effective date)."¹

The Council needs to recognize that a portion of the workforce housing is being targeted for sites that require a rezoning before a project can even apply for subdivision and site plan approvals. Properties located in central business districts do not need to be rezoned before seeking the various land use approvals. The grandfather provisions, as presently proposed, fails to recognize this very significant, time consuming and expensive step – one that certainly indicates a major commitment to the development. WFC's proposed modifications appropriately recognizes the rezoning effort and, at the same time, ensures that the grandfathering provisions will not result in any material proliferation of attempts to beat the deadline or result in any

¹ We would note that the filing of a Development Plan application or, in the case of central business districts, the filing of a Project Plan application, also involves significant efforts and resources, all of which reflect major commitments made to a particular development. These situations merit consideration by the Council as part of the grandfathering discussion.

The Honorable Thomas Perez and
Members of the Montgomery County Council

December 2, 2005

Page 4

effort included, but was not limited to, working with Staff on the application, designing the buildings, public use and amenity space, preparing extensive analyses regarding Executive Boulevard extended, continuing leasing efforts on certain portions of the commercial retail space and addressing matters with community leaders that live in close proximity to the property. As recently as November 21, 2005, our development team again participated in the DRC Committee meeting on the Site Plan application. At this meeting, Staff indicated that, once certain technical and design issues were addressed, both applications would be brought to the Planning Board for review and approval. We anticipate being heard by the Planning Board in the first quarter of 2006 and are planning to begin construction as early as the fourth quarter of 2006. WFC cannot afford to have its schedule slip if it is able to comply with terms of the lease agreement with Whole Foods that specifies required milestones for approvals, construction start and delivery of the premises dates. Any requirement to include workforce housing at this stage of the process would completely shatter WFC's development schedule.

We are providing the Council with this information regarding the WFC development approval process to illustrate the overwhelming amount of work and effort that has been put into this development, pre and post zoning, and how WFC would be severely prejudiced if the grandfather provisions are not modified to address this situation. Without correcting the grandfathering provisions, WFC essentially would be required to start over by first amending its Development Plan and then revising both the Preliminary Plan and Site Plan applications that are already so far along in the development review process. Besides the unrecoverable loss of time due to a "redo" of all of the approvals, WFC also would incur significant financial and economic harm as a result of this legislative action. Again, WFC has made commitments to tenants, signed leases and arranged for financing based on a development schedule that does not include starting over - entirely reasonable assumptions (and actions) based on the process and requirements already in place. Fairness and equity dictates that the Bill and ZTA provide a grandfather provision that protects projects like White Flint Crossing (by recognizing the significant commitment and investment made

The Honorable Thomas Perez and
Members of the Montgomery County Council
December 2, 2005
Page 3.

classification. The Planning Board conducted its hearing and recommend approval on May 13, 2005. The Hearing Examiner heard the case on May 17, 2005 and recommended approval on July 21, 2005. On September 20, 2005, the Council approved Local Map Amendment G-830 by a vote of 9-0. The Council also approved the Development Plan for the WFC project that included approximately 235,000 gross square feet of retail, approximately 435 apartment units (including 66 MPDUs all to be located on-site), extensive public use and amenity space and other significant public benefits. The Development Plan, that already has been certified by the Hearing Examiner (as required by the Zoning Ordinance), also contains a detailed development standards table and certain binding elements. The Council recognized the many positive benefits that this rezoning would bring to the County and the White Flint area and specifically found that the application was in the public interest. The rezoning would serve to further the goal of providing transit oriented development in a location that is in close proximity to the White Flint Metro station and would serve to redevelop a site that is significantly underutilized at this most important location. The Council's approval was the culmination of over two years' worth of work, including but not limited to, WFC's assemblage of the entire track of land to accommodate the TS-M zoning and the WFC development. The assemblage also served to accommodate a very important master planned road connection – the extension of Executive Boulevard that WFC has agreed to both dedicate required right of way and fund 100% of the construction costs.

Immediately upon the approval of the rezoning application, WFC prepared and filed its Preliminary Plan of Subdivision application with the Maryland-National Capital Park & Planning Commission. This application is based on the approved Development Plan, including but not limited to, the development standards table and the binding elements. The Development Review Committee (DRC) met to discuss the Preliminary Plan and WFC thereafter spent significant time and resources addressing the various comments raised by agency representatives at the DRC meeting. During the time period in which the Preliminary Plan was making its way through the development review process, WFC and its consultants worked diligently on the preparation and filing of the Site Plan application. This



ATTORNEYS

The Honorable Thomas Perez and
Members of the Montgomery County Council
December 2, 2005
Page 2.

the project by many months or perhaps years. Such delays could force WFC to default on commitments contained in an executed, enforceable lease agreement (an agreement entered into long before the introduction of this legislation).

- The proposed legislation would add significant costs to the development. The economic foundation of the project is the 235,000 gross square foot retail center for which the developer has been offering space over the last year or so based upon cost estimates that could not possibly have included the cost of adding workforce housing to the development. Moreover, earlier this year, WFC executed a long term, fixed rate lease agreement with Whole Foods Market based upon thoroughly considered cost data that again did not include a workforce housing requirement.

The grandfather provision, if enacted as proposed, would severely prejudice WFC and create undesirable and unintended consequences that need to be corrected, particularly with a legislative effort that WFC generally supports (with certain qualifications) and believes has the potential to be so positive. We hope the Council shares our belief that in order for the public and private sectors to work cooperatively to solve critical problems like affordable housing, new programs to address those problems must be implemented in a manner that allows the program requirements to be included in business plans at their inception - not months or even years after acquisition, financing and lease commitments have been completed, as is the case at White Flint Crossing. Even the most well intentioned legislation like the Bill and ZTA, if enacted, must be implemented in a manner that is equitable and promotes fairness. To do otherwise would significantly detract from the positive aspects of this legislative effort.

To illustrate how deep our concern is regarding the prejudicial effect of the grandfathering provision, one only needs to look to the procedural history for this matter and how far the WFC project is in the development approval process. On October 24, 2004, WFC submitted an application to amend the zoning map from C-2 to the TS-M zoning

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ATTORNEYS

STEVEN A. ROBINS
DIRECT 301.657.0747
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December 2, 2005

BY TELECOPIER

The Honorable Thomas Perez, President
and Members of the Montgomery County Council
Stella B. Warner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Workforce Housing Bill 30-05 and ZTA 05-16

Dear Mr. Perez and Members of the Council:

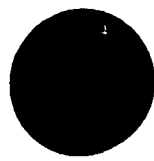
Our firm represents White Flint Crossing LLC (WFC), the owner, developer and Applicant of the White Flint Crossing development (and an affiliate of the JBG Companies). This development will be located on a 5.9 acre parcel along Rockville Pike that presently houses the Park Inn hotel along the Pike and the surface parking lot to the rear, off of Woodglen Drive. The purpose of this letter is to provide comments and to request a certain change to the proposed Workforce Housing Bill 30-05 (the Bill) and Zoning Text Amendment 05-16 (the ZTA). In particular, we would like to address one specific component of the legislation - the grandfathering provision. Both the Bill and ZTA state that the requirement to construct workforce housing does not apply to any preliminary subdivision plan approved by the Planning Board before the effective date of either the Bill or ZTA. This provision adversely impacts WFC for two principal reasons:

- Implementation of the legislation as proposed would require WFC to extensively re-structure the development proposal (project density, traffic counts, unit mix, parking, etc.) that is far along in the land use approval processes. As explained in detail below, this would force WFC to literally scrap plans in which hundreds of thousand of dollars have been invested over numerous years and even more costly, time-consuming development applications would have to be revised and resubmitted, unquestionably delaying the construction and opening of

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**MID-COUNTY
CITIZENS
ADVISORY
BOARD**

018725

November 22, 2005

Honorable Thomas Perez, President
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: ZTA 05-16

Dear Mr. Perez:

On behalf of the Montgomery County Citizen's Advisory Board (MCCAB), the Legislative Committee provided comments in response to the Workforce Housing Legislation Zoning Text Amendment No. 05-16. The MCCAB Legislative Committee strongly supports the concept of workforce housing. However, in its review of ZTA 05-16, the Legislative Committee advises that the Council review the following comments during the legislative process.

First, consider the legal implications of a "workforce housing unit," a term defined as a unit that is subject to rent limits or sales controls under Chapter 25B; and of "special regulations for optional method development using transferable development rights."

Second, evaluate additional housing solutions for Montgomery County. The Legislative Committee recognizes that this legislation is designed for areas around Metro centers and thinks that the 10% minimum units designed for workforce may be a good start. However, the Committee suggests that the Council address the Metro center developments' impact on the total workforce housing needs of the County. It is further suggested that the Council discuss other options being considered to address workforce housing shortages, if any, in Montgomery County. As a historical and policy matter, determine the pros and cons of developments for the construction of workforce housing, in addition to a 10% set-aside around Metro centers.

Finally, the legislative committee advised the creation of a task force to address workforce housing in Montgomery County.

Thank you for your consideration of this very important matter.

Sincerely,

Alec Stone

Alec Stone, Chair
Mid-County Citizen's Advisory Board

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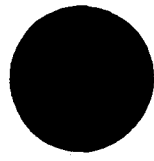
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**MID-COUNTY
CITIZENS
ADVISORY
BOARD**



018724

November 22, 2005

Honorable Thomas Perez, President
Montgomery County Council
100 Maryland Avenue
6th Floor
Rockville, Maryland 20850

Re: ZTA 05-16 and Impact on Wheaton Urban District

Dear Mr. Perez:

On behalf of the Montgomery County Citizen's Advisory Board (MCCAB), we share this letter in response to the Workforce Housing Legislation Zoning Text Amendment No. 05-16. MCCAB strongly supports the concept of workforce housing. However, we advise that the Council review the current proposal's impact on downtown Wheaton, the only Urban District in which the optional method of development is not allowed in a significant part of the downtown. We are concerned that Wheaton would be at a disadvantage to the other Districts in Montgomery County. We hope that the Council will consider closing this loophole during the legislative process.

Thank you for your consideration of this very important matter.

Sincerely,

Alec Stone

Alec Stone, Chair
MidCounty Citizen's Advisory Board

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B 30-05

To: The Montgomery County Council (Fax 240 777 7989) PLEASE DISTRIBUTE TO ALL COUNCIL MEMBERS

From: Mr. Courtenay Ellis

November 11, 2005

COMMENTS ON BILL No. 30-05 Workforce Housing Program
Council Hearing 7.30 p.m. November 11, 2005

1. In the midst of the Clarksburg débâcle, the Council would be well advised to get its development house in order before it sets up a new development program.
2. You already have an affordable housing program (MPDUs) that in the public perception, like Clarksburg, has not been properly applied. Before adopting a new "workforce housing program" you should reform the existing MPDU program so that it works and then re-examine whether other programs are needed.
3. The broader-based MPDU program should avoid the problems of discrimination inherent in any workforce housing program that just benefits a select few.
4. You should examine whether, if the MPDU program is properly implemented, there is a need for workforce housing directed only to certain workers. Note, for example, that MCPS hired more than 800 new teachers beginning this fall. They all signed on with out being offered subsidized workforce housing. News articles on this topic have revealed that many workers in the preferred classes are not interested in the program.
5. If there is a need, query whether the answer is a discriminatory subsidy. They tried this in Harold Wilson's socialist Britain. Underpaid smart young people who were discriminated against left the country in the "brain drain" and paid millions in taxes elsewhere. Better to pay deserving workers a fair wage, and let the market economy work.
6. You already know the elements of discrimination inherent in this plan:
 - The average retired person's income in Montgomery County is reportedly well below the income level qualifying the preferred classes for subsidized workforce housing. Why should retired people who paid their way for years be taxed to benefit people making more than they do, especially when many retired taxpayers are having difficulty meeting the burden of ever-increasing real estate taxes? Is this a Robin Hood plan, or an Oliver Twist plan?
 - How do you decide fairly on the preferred classes? Why not trash collectors, private nurse making less than public nurses, dental hygienists, community college professors (if them, why not university professors), and so on ad infinitum?
 - What do you say to those excluded who earn less than those included, and then claim discrimination?
7. On the plus side, it is certainly better to place affordable housing near Metro stops instead of taking school property for housing development - a course which engenders vehement political opposition from taxpayers who moved to Montgomery County for the schools.

Thank you.

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**TESTIMONY OF THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®
BEFORE THE MONTGOMERY COUNTY COUNCIL REGARDING
"BILL 30-05, HOUSING – WORKFORCE HOUSING PROGRAM AND
ZONING TEXT AMENDMENT 05-16, WORKFORCE HOUSING"**

November 22, 2005

Council President Perez and members of the council, my name is Susann Haskins and I am the 2005 President of the Greater Capital Area Association of REALTORS® (GCAAR) – the voice of Montgomery County and the District of Columbia’s nearly 11,000 REALTORS®, property managers, title attorneys and other real estate professionals. On behalf of GCAAR, I would like to express our support for Bill 30-05 and ZTA 05-16.

As we all know there is a growing crisis in housing affordability and ownership that is affecting Montgomery County. The number of working families unable to find decent and affordable housing has increased sharply over the past several years. And the stock of housing that is affordable and available has rapidly declined. Home sales prices in many market areas, particularly the DC Metropolitan area, have risen far faster than the U.S. average, resulting in an exacerbated affordability crisis.

GCAAR has always been on record supporting the MPDU program and we also supported many of the changes to the program in 2004. However, as REALTORS®, we clearly understand and see the need for a housing program that caters to families whose income is near the median but whose incomes are above the qualifications for the MPDU program. Workforce housing may be a relatively new concept but it is one that works. It helps to improve and enhance housing opportunity that will bring homeownership and decent rental housing within reach for many of these families.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial and industrial growth, as well as quality of life and a healthy local economy. Land use planning should also take into account the impact of planning on housing affordability. Therefore, we agree that given our land constraints in Montgomery County, building workforce housing around Metro Station Policy Areas will help relieve traffic congestion. And by building in these Smart Growth areas you are giving families the opportunity to live closer to work and have the ability to travel to work without using their car.

As REALTORS®, one of our guiding principles is to provide housing opportunity and choice. Homeownership is the cornerstone of the American dream and deserves a preferred place in our system of values as it contributes to community responsibility; civic, economic, business and employment stability; family security and well being. These objectives can be met through market-driven housing approaches that foster a wide-range of urban, suburban and rural housing choices at all price levels to suit a diverse population. And this is why we strongly support a Workforce Housing Program for Montgomery County.

Thank you for your consideration of GCAAR’s perspective.

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**Workforce Housing
Alternative Initiatives
MNCBIA
November 22, 2005**

- 1.) Evaluate the Productivity Housing Program
 - Determine why it has not worked and make changes to the program
 - Eliminate the special exception requirement for productivity housing
 - Broaden the program to include more zones

- 2.) Emphasize the creation of mixed use communities by creating "Workforce Housing" optional method
 - encourage housing in office zones by trading office FAR for residential component (major employers could create housing on site)
 - encourage housing at government facilities (i.e. NIH, DOE) by allowing a residential component within these projects

- 3.) Create a workforce housing overlay zone that provides incentives to provide workforce housing
 - provide incentives to create workforce housing near Metro stations
 - provide incentives to redevelop aging commercial and retail properties
 - provide incentive to create mixed-use communities where only single used (retail, office) exist today.

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As our testimony stated, we are very concerned about the lack of housing that is affordable across many spectrums, including workforce housing.

We think that there are other alternatives. **Provide the private sector the incentives to create workforce housing, rather than imposing mandatory requirements.** One alternative, which Park and Planning has discussed, is to create an optional overlay zone that could be used in older commercial centers or in commercial/office zones to create viable mixed-use neighborhoods. For additional consideration, we are providing the attached list which suggests several broad ways in which housing opportunities could be increased, hopefully resulting in increased workforce housing.

Provide the private sector the reasons and the incentives to participate in workforce housing-it will result in the workforce housing you desire. Thank you.

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Bill No 30-05
Workforce Housing
MNCBIA
November 22, 2005

President Perez and members of the Montgomery County Council, thank you for the opportunity to speak before you this evening. I am John Clarke, representing the Maryland National Capital Building Industry Association.

Workforce housing is an issue that our industry has been concerned with for some time. There indeed is a shortage of housing for our County's residents, not just for residents in the 80-120% of median income range. As a community we need to find ways to create housing to meet this housing shortage. However, we do not feel that this Bill is the best way to achieve this goal for the following reasons:

- 1.) Inability to achieve allowable density. Few properties currently achieve the density allowed by zoning, because of a series of requirements ranging from environmental preservation to storm water management to onsite forest conservation, just to name a few. Despite Montgomery County's commitment to Smart Growth in metro transit areas, there appears to be increasing opposition to higher density in-fill projects. Requesting even more housing in these areas will likely increase opposition, making approval of projects more challenging, regardless of how much demand exists. We have enough challenges building to the currently allowed density. Implementation of this Bill will make the approval process even harder.
- 2.) Precedent. It is not inconceivable, and it is in fact probable, that over time the applicable zones of this legislation will be expanded to other residential zones in the County. This would be a problem because it is typically even more challenging to achieve allowable density in the lower density single family zones due to reduced site planning flexibility.
- 3.) Income Range. There is a broad range between 80 and 120% of median income. The lack of a specific level on the income limits will lead to implementation problems with regard to sale prices and rent levels.
- 4.) Control Period. The control period for rental units of 99 years is a strong disincentive to providing rental housing, currently the most affordable housing product type. This proposal may have the unintended consequence of encouraging the building of condominiums instead of rental housing, typically a more affordable alternative.

For these reasons, we oppose Bill 30-05.

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The Honorable Thomas Perez
November 22, 2005
Page 3

This legislation also raises another question. Is the MPDU calculation, which is based on total units, now to include the workforce housing units? I do not think that is the intention, but the legislation needs to make it clear that a developer does not have to provide MPDUs based on the extra workforce housing units.

In summary, rental apartments are already a valuable part of this County's affordable housing stock. Existing apartment rents, even for Class A luxury apartments, are generally significantly more affordable than a monthly mortgage at today's for-sale housing prices. The County Council should think long and hard about any legislative initiatives that would have the unintended consequences of discouraging the development of more rental housing in this County. For the reasons stated above, we are concerned that the current workforce housing legislation will do just that. To avoid that consequence, we suggest the following:

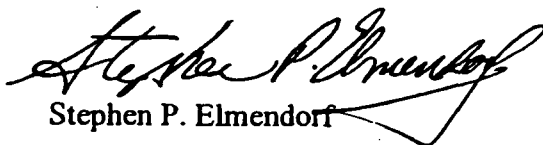
1. Exempt rental developments from the workforce housing program; and
2. Require that exempted rental developments participate in the program if and when those developments are converted to condominiums.

In addition, the legislation should be amended to include the same types of development standard provisions that were included in the recent MPDU legislation. The Council should also only consider this legislation along with the proposed rent/for sale levels that will be part of its regulatory framework.

Thank you for your anticipated consideration of the matters raised in this testimony. Please include a copy of this letter in the public hearing record for both the proposed ZTA and the proposed legislation.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen P. Elmendorf

SPE:rlb

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The Honorable Thomas Perez
November 22, 2005
Page 2

rental community, the percentage of rent control units would be even higher with 35% Productivity Housing Units and 10% of the market rate units as workforce housing. Rent control, at such significant percentages of the total number of units, also discourages the development of rental housing.

Finally, the recommended control period of 99 years is extremely onerous when compared to the recommended control period for for-sale workforce housing units. The control period actually outlasts the life of most apartment communities.

The proposed legislation is a particular concern with rental developments that are wood-frame. Although wood-frame developments provide the County with more affordable housing stock than high-rise, wood-frame developments are unlikely to be able to take advantage of the legislation's provisions for exceeding a zone's density limits to accommodate the workforce housing units, because to do so would require additional building height that cannot generally be realized with wood-frame construction. In addition, unlike the recent changes to the MPDU Program, this legislation does not currently recommend softening any of the other development standards (green space, building coverage, etc.) that might make it possible for wood-frame rental developments to be able to at least partially absorb some of the negative fiscal impact of the controlled rents on the workforce housing units. As currently drafted, the legislation also does not give wood-frame product the option of locating the workforce housing units elsewhere in the same policy area like it does for high-rise.

We understand that there may be a concern that exempting new rental developments from this legislation would encourage the approval of these developments as rental with the subsequent conversion of these units to for-sale units, as a means of avoiding a requirement for workforce housing for for-sale developments. That concern can be effectively addressed by providing in the legislation that, while rental developments are not subject to this workforce housing requirement, the conversion of those units to for-sale units would subject the development to the workforce housing requirement as a condition of the conversion. That solution would also serve to address another of the County's current concerns, the rapid loss of rental housing to condominium conversion.

With the regulations for this new program still to be written and with the wide range of income levels (and thus rent/sale levels) that will be part of this program, it is difficult to evaluate the full fiscal impact of this new legislation. It certainly would be helpful if this legislation were considered along with a draft of the regulations, or at least a draft of the proposed rent/sale levels. It would seem that if the Council wants an accurate picture of the fiscal impact of this legislation, the Council would want this information as part of its deliberations on this legislation.

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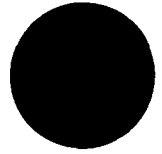
① BILL 30-05

② ZTA 05-16

LINOWES
AND BLOCHER LLP
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except
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December 9, 2005

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Via Email and Hand Delivered

The Honorable George L. Leventhal
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Workforce Housing - Zoning Text Amendment No. 05-16 and Bill 30-05

Dear Mr. Leventhal and Members of the County Council:

On behalf of KSI Services, Inc. ("KSI"), we need to express our comments on the proposed workforce housing legislation to provide an example of possible unintended consequences of the legislation as drafted and how this legislation will impact projects that are currently in the approval process (and what impact the legislation may have on future projects). Specifically, if the intention of this new affordable housing program is to provide an additional level of affordable housing without economic detriment to the developer, we will demonstrate that the provision of workforce housing as a mandate may not be feasible in certain situations unless there is significant flexibility in zoning standards or exemptions. KSI is supportive of equitable programs to encourage and provide a diversity of housing opportunities in Montgomery County. However, as noted in the testimony of the Department of Housing and Community Affairs ("DHCA") and others, the workforce housing legislation relies on incorrect assumptions regarding the financial impacts of the proposed workforce housing on certain development and the ability to accommodate the density within the existing building envelope provided by the Zoning Ordinance, and could create the unintended consequence of diminished

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The Honorable George L. Leventhal

December 9, 2005

Page 2

density and housing in the Metro Station areas that have existing infrastructure and services. In addition, by limiting this legislation to Metro Station areas, to the extent any workforce housing units are produced, these units will only be high-rise units (rental apartments or condominiums). This housing type is the most expensive to produce (when land prices are excluded) and is generally the least preferred housing choice for families with children in residence.

In September 2004, KSI obtained project plan approval of a mixed-use development in the Ripley District of downtown Silver Spring (north of Ripley Street, south of the Bonifant Street Public Garage, east of the rail tracks and Metro, and west of proposed Dixon Street extended) consisting of approximately 336 housing units, ground floor retail uses and significant community amenities, including a public urban park and provision of a pedestrian and vehicular connection through an existing public garage (the "Project"). Recently, on November 8, 2005, KSI filed an amended project plan (and preliminary plan of subdivision) to further refine the Project to a different unit mix of 317 residential units, including 40 on-site MPDUs, in response to current market demand and design considerations. The critical element of the Project to note, in terms of the proposed workforce housing legislation, is that the Project is designed to utilize fully the maximum 5 FAR on the site without utilizing any MPDU bonus density, but the building is already at the maximum 200-foot height permitted in the CBD-2 zone (since it is within 800 feet of the Metro Station). The building envelope created by a combination of the maximum height of buildings allowed in the zone, dedication of Sector Plan roadways through and adjacent the site, provision of required on-site amenity areas, and limitations of building function and efficiency would not allow for the addition of 10 percent workforce housing units on top of the 317 units (277 market units and 40 MPDUs). Hence, the 10 percent workforce housing units would be required to come out of the 277 market units. The result would be to have KSI providing MPDUs and workforce housing not only without any density bonus or additional density allowance, but coming out of the market units for the Project. This elimination of market rate housing in addition to the typical costs associated with optional method development (on and off-site public amenities, off-site infrastructure, etc.) will have significant, negative impacts on the economic feasibility of this Project and threaten the ability to move forward with this transit-oriented development that KSI and the County (MNCPPC and DPWT) have invested significant time and expenses planning, designing and reviewing (with mutual goals of "jump starting" the redevelopment of the Ripley District).

Singling out the primary cause for this result is maintaining the existing height restrictions under the current zoning while trying to increase the density incrementally to accommodate workforce housing units. While the maximum 5 FAR (and maximum dwelling units if strictly a residential project) could (as we understand the legislation) be exceeded to accommodate the

The Honorable George L. Leventhal

December 9, 2005

Page 3

workforce housing (as theoretically the MPDUs as well if the MPDUs were to be increased to 15% with a resulting 22% density bonus), exceeding 5 FAR is infeasible within the limits of the 200-foot building height allowance (as indicated, the Project is at 200 feet without workforce housing or any MPDU density bonus). Further, regardless of the additional height, the workforce housing units in high rise development require additional structured or underground parking and increased base building structural costs which again create burdens that threaten the financial viability and feasibility of the Project. We can only surmise that these difficulties will be experienced in other optional method projects, especially when building heights may be lower, and hence more restrictive, than the 200-foot allowance at this location.

We would suggest that the maximum height of the zone must be allowed to be extended to permit the workforce housing program to be successful without creating an unintended reduction in market rate units to allow for provision of workforce housing. This additional height must also carry with it a legislative directive that the height is deemed to satisfy any compatibility requirement in balance of the affordable housing policy and flexibility with MPDU and workforce housing unit pricing in consideration of the construction cost impacts (parking, structural, etc.) of the provision of such units. Alternatively, workforce housing units should be exempted where a project cannot maintain maximum market units with the provision of the minimum 12.5% MPDUs and allow for the additional 10 percent workforce housing units without exceeding height limits of the zone. Further, a development that has already been through the arduous process of obtaining project plan approval and submission of detailed subdivision and site plan applications (and purchasing property in reliance on such density and financial considerations of project plan density), should be grandfathered and exempt from the workforce housing provisions.

We know you have heard these concerns regarding building envelope constraints within the maximum heights of zones, financial burdens that will result in diminished housing by transit stations and the equitable and realistic need for grandfathering provisions, but we thought the description of a specific transit-oriented development that faces all of these obstacles would be helpful for the County Council members to understand and identify the significance and practical impact of these concerns. Please let us know if you would like us to provide more specific information on the Project and the detrimental impact of the legislation as currently proposed and drafted.

The Honorable George L. Leventhal
December 9, 2005
Page 4

Thank you for your consideration of our request.

Very truly yours,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple ~~AM~~
C. Robert Dalrymple

Anne C. Martin
Anne C. Martin

cc: Mr. Ralph D. Wilson
Michael Faden, Esq.
Mr. Don Hague

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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

November 22, 2005

Stephen P. Elmendorf
301.961.5110
selmendorf@linowes-law.com

The Honorable Thomas Perez
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Workforce Housing - ZTA 05-16 and Bill 30-05: Public Hearing

Dear Council President Perez:

This law firm represents AvalonBay Communities, Inc., the developer and owner of several multi-family rental communities in Montgomery County. On behalf of our client, we are requesting that the County Council amend the above-referenced legislation to exclude its applicability to rental housing. We make this request because we believe that, without such changes, the unintended effect of this legislation will be to discourage the development of rental multi-family communities, which provide the County with much of its most affordable housing stock.

Unlike new for-sale, multi-family developments, new rental developments cannot raise rents on the market units to absorb the lost rental income on the workforce housing units, particularly where those units' rental levels are set for incomes at or below 100% of the median income. This is because the market rents for these new rental developments are largely controlled by the rent levels of the existing rental communities, that would not be subject to this 10% workforce housing obligation. The same is not generally the case for new, for-sale developments whose chief competition is other new, for-sale developments, both of which would be subject to this legislation. The interesting unintended result of this legislation is that it could result in less affordable housing rather than more, since it could push multi-family development towards for-sale rather than rental product, where although the County gets the 10% workforce housing units, the for-sale price on the market rate units become increasingly unaffordable.

Further, with the addition of the workforce housing units to the current MPDU requirement, just under a quarter of the rental units for a typical apartment community would be subject to rent control for essentially the life of the project. For a Productivity Housing

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County owned sites. After subjecting the list to reasonable parameters, such as suitable acreage, absence of right of way restrictions, etc. we were able to narrow this list to 67. After eliminating sites with safety zone restrictions, storm water management requirements, and sites potentially not surplus to Montgomery County School Board, we were left with about 17. AIM members then personally surveyed the balance to determine each site's suitability for residential development, considering such factors as physical site characteristics, existing structures, neighboring and surrounding uses, access and available utilities. We finally concluded, along with the Department, that none of the sites initially provided were feasible candidates for affordable or workforce residential development. The lack of suitable public land in the County emphasizes the challenge of meeting AIM's vision from any single resource, and argues emphatically for support of legislation like that introduced by Councilmember Silverman. The Council must act to spur the creation of rental and sale workforce housing units, and amend zoning laws to address this critical shortage.

We hope the Council will adopt this bill.

Thank you

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AIM Testimony at Nov. 22nd Council Hearing on Workforce Housing Bill

Good evening, my name is Tap Taplin; I am a resident of Potomac and a parishioner of Our Lady of Mercy Catholic Church. For the last two years I have been a member of Action in Montgomery and currently honored to serve as one of the Co- Chairs of AIM's Housing Team.

Action in Montgomery is a broad, non-partisan coalition of 32 religious congregations in Montgomery County. Our member congregations represent a variety of faiths, and the 40,000 members of these churches and synagogues come from diverse, economic, social and racial backgrounds, from every district in the County.

Over the past few years AIM has sponsored campaigns that have resulted in significant improvement in the lives of Montgomery County residents, particularly the less affluent and elderly. AIM successfully worked with you to win dedication of \$16 million a year to the Housing Initiative Fund and for reform of the taxi system to promote an increase of cabs serving consumers. Currently AIM is campaigning to establish an immigration office in Montgomery County to more effectively service the needs of 45% of the state's immigrant population that reside here.

The identification of an agenda for AIM campaigns originates with small house meetings held in member congregations to identify the most pressing needs of our congregants and to build a consensus on action. No issue resonates more than the acute crisis in the shortage of affordable homes in this County. The projected increase in conversion of rental units in the County over the next few years will only exacerbate what is already an issue of monumental proportion. AIM leaders and AIM clergy view addressing this problem as a civic and moral obligation.

AIM's vision is to add 1,000 affordable and workforce housing units in the County over four years. Montgomery County, home of one of the nation's more innovative and copied Moderately Priced Dwelling Unit laws has provided less than a thousand units in the past 5 years. On October 13th, last year, the County Executive and some members of this Council pledged to 1,047 AIM leaders to support that vision, work with AIM and hold themselves accountable to meet that goal. At our recent Action on November 2nd of this year, over 400 AIM members heard the County Executive report on our progress and recommit to achieving this goal.

In the past year alone AIM has supported the Council in it's successful reform of the Moderately Price Dwelling Unit legislation, urged review and simplification of the Accessory Apartment approval process, and promoted the accelerated release of Request for Development Proposals on sites identified by the County Executive's Office as being desirable for development of affordable housing. With the considerable help of the Department of Housing and Community Affairs, and the staff of the County Executive's Office, AIM has focused its efforts on the identification of surplus public land for residential development. The Department initially provided us with a list of over 2,500

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costs associated with housing for those earning Area Median Income or higher. We also urge that any voluntary provision of WH units be specifically disallowed, either above the required 10% in affected projects or at all in projects of such a size as to not require their provision.

MCCF delegates are also concerned that the proposed Workforce Housing Program, if created, would be administered by the Department of Housing and Community Affairs. As we have repeatedly asserted, MCCF believes that current DHCA leadership and staff have shown themselves to be inadequate to the task of administering the MPDU Program laws they are charged with enforcing. We urge the Council, therefore, to require that DHCA provide the Council with monthly, or at least quarterly, status reports that include details of all WH Agreements entered into with developers, if such program is created.

Other Options

Finally, we offer the following three initiatives for Council consideration, which we think would be as effective as the proposed Program, or more so, in meeting the need for housing that is affordable to the middle and upper-middle income level households targeted for assistance in this legislation. We urge the reinstatement of the ceiling element in the growth policy so that the rate of new job approvals can be reduced in relation to housing approvals, thus increasing the supply of housing in relation to the demand. Next, although MCCF does not endorse the concept of using publicly owned land for housing, as we consider these properties to be part of the investment portfolio we should leave to future generations, we believe the county should insist on 100% affordable housing (perhaps a mix of 25% MPDUs and 75% WH units) if such deals are transacted. Finally, we urge the Council and the Executive to consider creating a county employer-assisted housing, similar to that in place in the City of Alexandria, Virginia. Existing rental housing could be purchased by the county, perhaps units targeted for condo conversion, then rented to our fire fighters, police and teachers at an affordable rate.

The MCCF Planning and Land Use Committee will submit to the PHED Committee a list of other minor suggested changes to the language of the bill and ZTA, for consideration during their worksessions on this legislation. Thank you.

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November 22, 2005

TESTIMONY BEFORE COUNTY COUNCIL ON BILL 30-05 AND ZTA 05-16, TO
CREATE A WORKFORCE HOUSING PROGRAM

My name is Jim Humphrey and I am testifying as a volunteer representative of the Montgomery County Civic Federation. At the outset, I must report that MCCF delegates voiced substantial opposition to this proposal and determined that there are other more appropriate methods by which county government could influence the creation of housing for middle income households earning up to 20% more than Area Median Income. (Those methods are listed in the "Other Options" section near the end of this written testimony.) Most delegates also see this legislation to be a "master plan buster," because it grants density beyond master plan recommendation *by right* and fails to consider the adequacy of the infrastructure in the affected areas to accommodate this added density. That having been said, a majority of the delegates at the November 14 MCCF assembly voted to endorse the following changes should a Workforce Housing Program be created.

Language on page 4 of the bill states that regulations should "be similar to or at least consistent with the regulations that govern the MPDU program." In that spirit, we suggest that any Workforce Housing Program be applied to residential projects of 20 units or larger in size (bill recommends 35 or larger), sale units should remain under Program control for 30 years (bill recommends 10 years) with such period restarting if units are sold within the control period, and the breakdown of WH units by number of bedrooms should be in the same ratio as market rate units—all provisions similar to MPDU Program ones. Also similar to the MPDU Program, we suggest that failure to provide in a timely fashion all required WH units in a project should result not only in suspension of building permits or withholding of occupancy permits for that project but similarly affect any permits issued to the parent development company for all other projects of theirs in the county.

Again, while questioning the appropriateness of creating such a program, the MCCF delegates voted overwhelmingly to urge the following changes be made, if Workforce Housing legislation is approved. We urge the Council to delete the alternative location provision and insist all required WH units be provided on site; and, we urge that no other form of alternative agreement, such as a buyout, be considered. We firmly believe that WH units should NOT be exempt from payment of development impact taxes, since we do not think it is fair that income and property taxes paid by those most in need—low-income households and seniors on fixed income—should go toward meeting infrastructure

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THE LEAGUE OF WOMEN VOTERS
of Montgomery County, MD, Inc.

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TESTIMONY BEFORE THE MONTGOMERY COUNTY COUNCIL: BILL# 30-05,
WORFORCE HOUSING AND ZTA# 05-16, WORKFORCE HOUSING

November 22, 2005

Good evening. I am Melpi Jeffries, speaking for Nancy Soreng, President of the League of Women Voters of Montgomery County, MD (LWVMC). Housing issues have been a focus of LWVMC research, study, discussion, and consensus leading to position statements since the early sixties. In June, 2005, LWVMC studied, discussed and developed positions on several current housing issues, including that of workforce housing. LWVMC's comments on Bill # 30-05 and ZTA# 05-16 are based on following new positions:

LWVMC supports measures that will increase the supply of workforce housing, defined as serving individuals and families whose incomes exceed the Moderately Priced Dwelling Unit Law (MPDU) maximum but are up to 120% of the median income, including:

- 1) a combination of incentives, employer assisted housing and mandatory requirements
- 2) increased density consistent with smart growth.

Workforce housing affordable to people earning from the MPDU maximum to 120% of the median income is preferable to housing affordable to people earning between 80% to 120% of the median income, as those immediately above the maximum MPDU limit often are county employees or skilled and semi-skilled workers essential to the county.

We strongly support the provision which states that any alternative location must provide at least the same number of units in the same planning area. We applaud the 99 year control period for rental housing which will preserve affordable rental housing. In the light of recent revisions of the MPDU law, which increased the control period of for sale MPDUs to 30 years, we question the control period of 10 years of for sale workforce housing. Such a short control period will lead to the same loss of workforce housing that occurred to MPDUs.

Finally we support the provisions of ZTA# 05-16 which will provide workforce housing in metro station areas. We agree that it is critical that residents of all incomes be provided with the opportunity to reside in Smart Growth zones. Transportation will be facilitated by the provision of housing near employment.

Thank you for your consideration.

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59-C-7.14 Density of residential development.

(c) The density of development is based on the area shown for residential use on the master plan and must not exceed the density permitted by the density category granted. However, the maximum density [prescribed by Subsection] allowed under subsection (a) may be increased to accommodate the construction of Moderately Priced Dwelling units and Workforce Housing Units as follows:

- (1) For projects with a residential density of less than 28 dwelling units per acre, the number of Moderately Priced Dwelling Units must not be less than either the number of density bonus units or 12.5 percent of the total number of dwelling units, whichever, is greater.
- (2) For projects with a residential density of more than 28 dwelling units per acre, the number of Moderately Priced Dwelling Units must be at least 12.5 percent of the total number of dwelling units in accordance with Chapter 25A. Any project with a residential density at or above 40 dwelling units per acre must provide workforce housing units as required by Section 59-A-6.17 and Chapter 25B.

59-C-7.16. Green Area.

Green area must be provided in amounts not less than indicated by the following schedule:

<u>Density Category</u>	<u>Green Area</u> <u>(Percent of Gross Area)</u>
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Urban High

PD-60	30	<u>20'</u> ¹
PD-68	30	<u>20'</u>
PD-75	30	<u>20'</u>
PD-88	30	<u>20'</u>
PD-100	30	<u>20'</u>

Footnote 1: At the time of site plan review the Planning Board may reduce the maximum percentage of green space, or may permit some or all of the green space to be satisfied off-site.

Sec. 7. DIVISION 59-C-8 is amended as follows:

DIVISION 59-C-8. TRANSIT STATION DEVELOPMENT AREA ZONES.

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Zoning Text Amendment No.: 05-16
Concerning: Workforce Housing
Draft No. & Date: 7 - 10/4/05
Introduced: October 11, 2005
Public Hearing:
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: **Councilmember Silverman**

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

- defining the term "workforce housing unit";
- requiring any residential development at or above a certain density, located in a metro station policy area, to include a certain percentage of workforce housing units; and
- generally providing standards for the development of workforce housing units.

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

Division 59-A02 "DEFINITIONS AND INTERPRETATION"

- DIVISION 59-C-7 "PLANNED UNIT DEVELOPMENT ZONES"
- Section 59-C-7.14 "Density of residential development:"
- Section 59-C-7.16 "Green Area"
- DIVISION 59-C-8 "TRANSIT DEVELOPMENT AREA ZONES"
- Section 59-C-8.4 "Development standards"

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whatever land use approval is necessary to establish the development parameters -- in some cases a local map amendment and development plan, in others a project plan or a preliminary plan.

Two other provisions we recommend for your consideration are the use of the housing trust fund as an acceptable option in order to provide affordable housing in other locations where a dollar buys more and, quite frankly, where many would prefer to live. The second recommendation is to allow for the transfer of densities to or from other sites in order to recapture any lost density that can not be accommodated on a given site.

The proposed legislation is complex and we urge your thorough review of it. It is important to keep in mind that imposing too great a burden on a site -- and a total of 22.5 percent MPDUs and workforce housing is significant, will only result in projects becoming economically infeasible and not going forward at all -- resulting in a loss of needed MPDUs as well.

Thank you for the opportunity to express our views and I would be happy to answer any questions.

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In order to make the 10 percent additional density provision meaningful, there needs to also be a corresponding allowable increase in height. The Workforce Housing legislation needs to go beyond what the MPDU law allows and permit an increase in height beyond either a Sector Plan recommendation or a Zoning limitation, in order to accommodate the 10 percent workforce housing. The legislation also needs to provide somehow that the additional height should be deemed compatible and may not be used by surrounding neighbors as a basis for a claim of incompatibility in their opposition of the needed land use approval.

The second concern relates to the additional financial burdens placed on a project required to provide the workforce housing. Assuming that a project can physically accommodate the additional 10 percent of housing, allowances must be made if this extra 10 percent forces the developer to change construction methods which increases construction costs and makes it difficult to break even. Similarly, any regulations implementing the workforce legislation must ensure that the sale price or rents are adjusted frequently to keep pace with rapidly rising construction costs.

The third concern is the legislation's effective date. Property owners and developers are often working on a project for one or two years BEFORE it even gets filed. From the time of filing to the time of Preliminary Plan approval, depending on the requisite process, can involve another year or more. To require a project that has been three years in the making to go back and be redesigned if the legislation is adopted prior to Preliminary Plan approval is simply unjust. For this reason we would recommend that the grandfathering be at the time a project files for

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**Workforce Housing ZTA 05-16, Bill 30-05
Testimony of Patricia Harris, Holland & Knight
November 22, 2005**

Good Evening. I am Patricia Harris with Holland & Knight here this evening on behalf of several property owners and developers of properties with an interest in the proposed workforce housing legislation.

While the goal is laudable, we have significant concerns with the legislation. My testimony this evening will focus on three areas: 1) utilization of the "extra" 10 percent of density to accommodate the workforce housing; 2) additional financial burdens imposed by the legislation; and 3) the grandfathering clause or effective date provision of the legislation.

A fundamental premise of the legislation is that a development will be able to accommodate the additional 10 percent density allowed by the legislation to provide for the workforce housing. However, this assumption is not necessarily true. It is often the case that the building envelope simply can not accommodate the density allowed by zoning, much less an extra 10 percent for workforce housing. There are a variety of reasons for this, including artificial height limits imposed by a Sector Plan, that restrict the project from achieving the maximum heights allowed by zoning. Another reason is the expectations of surrounding neighbors who do not want to see heights or densities any higher than what is provided in a relevant Sector Plan. Absent relief from the height limitations, in many cases the requirement for 10 percent workforce housing, translates into a corresponding 10 percent reduction in the amount of market housing.

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We urge you to keep these two goals in mind. The first is that you craft the bill that will provide for the greatest increase in affordable housing units. And second, that you craft public policies that do not contribute to further overcrowding of our schools.

Workforce Housing

We are pleased to see the attention being given by the Council to the issue of workforce housing. Although part of the broader issue of affordable housing, this is an area of particular concern to MCEA and its members. We can serve our students best when our time can be focused on developing solid instructional programs and in communication with students and parents. The time for these critical activities is drastically reduced when there are long commutes.

This is a problem not only for new hires, but for current employees as well. We know from our data that a larger and larger proportion of county teachers can no longer afford to live in Montgomery County. As of 2002, approximately 30% of Montgomery county teachers did not live in the county. We are expecting updated numbers soon. Based on everything we know, we anticipate the situation to have grown worse.

I know that this is also true of our principal and supporting services colleagues. I expect the same is true of county firefighters, police officers and county government employees.

Montgomery County is at serious risk if growing numbers of public employees who work here can no longer afford to live here. Therefore, we support the Council's efforts to ensure that new development includes units set aside for workforce housing.

We are not experts in this field, and therefore cannot testify to the merits of specific provisions in the proposal before you. We will leave the details to you and your staffs. But we wish to wholeheartedly endorse the effort to increase workforce housing.

However we also want to emphasize that no single bill will solve the problem. We are hopeful that the bill before you will make at least some initial small steps to increase the stock of affordable housing for county and school system employees. But we urge you not to believe that the problem is solved by taking this first step.

We strongly encourage you to continue to pursue strategies for increasing workforce housing. If we are truly to ensure that teachers and other county employees can work and live in Montgomery County, then we must continue to seek additional means of achieving that goal.

Thank you for all your efforts in support of the educators hard at work in our schools.

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Montgomery County Council
Public Hearing on Workforce Housing Legislation

November 22, 2005

Testimony of
Bonnie Cullison, MCEA President

Good evening Council President Perez and members of the County Council. Thank you for this opportunity to speak before you tonight on the very critical issue of affordable housing in Montgomery County.

MCEA, and the more than 11,000 professional educators who belong to the union, have two primary interests in this issue.

First, we strongly believe that our county must do more to ensure that sufficient affordable housing is available to county residents.

- Every year our members see the growing number of students who come from families that are either homeless or are in substandard or overcrowded living conditions. These students face much more difficult obstacles to success in school when they lack such basics as a quiet room in which to do homework at night. Let there be no misunderstanding – affordable housing is an education issue.
- We also see the growing housing shortage affecting our own members. The Montgomery County Public Schools continue to hire close to 1,000 new teachers a year. The majority of those new hires come from outside the county, and they increasingly find it difficult to secure affordable housing in Montgomery County. As a result, an increasing number of teachers are forced to live outside the county. This means longer commutes, less time for our students, and less connection to our community.

Second, we believe that the County's housing policies must not contribute to the serious overcrowding problems in our schools.

- The Council is to be applauded for the massive investment it is making in school construction. You have stepped up to the plate at the very time that our state government's commitment to school construction is tenuous at best and under-funded. Yet even after completion of the six year, \$1 billion dollar construction program, our school system will still need an estimated 200 portable classrooms.
- Clearly there are many factors which contribute to the overcrowding problem. New housing development is just one - and it may not be not the most significant. But there is no denying that it does have an impact on school overcrowding, and that it may be one of the few factors over which we have some control.

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**Testimony to Montgomery County Council
Workforce Housing Program
Bill 30-05
November 22, 2005**

Introduction

I am Richard Pavlin, Executive Director of TLC-The Treatment & Learning Centers, located at the Life Science Center Campus in Rockville. TLC is a 55 year-old non-profit service provider serving 2,000 children and adults annually with five distinct services. One of TLC's services supporting adults needing vocational rehabilitation receives funds from the County Department of Health and Human Services. Another one of TLC's services, The Katherine Thomas School, receives funds for students placed by Montgomery County Public Schools.

Discussion

TLC employs 188 individuals, one third of whom live outside Montgomery County, primarily due to the high cost of housing. Here are a few examples of where these TLC employees live:

The Director of Information Technology who earns nearly \$70,000 lives in Westminster, Maryland.

The Payroll administrator who earns a little over \$40,000 lives in Hagerstown, Maryland.

The Outpatient Coordinator who earns over \$50,000 lives in Mt Airy, Maryland.

In the last year, TLC has lost 3 therapists to Frederick County – therapists who we in the non-profit sector refer to as the endangered species of therapists – occupational and speech therapists – who are in short supply throughout our region. All three moved to Frederick County to live and work there due to more affordable housing. They are a permanent loss to TLC – and Montgomery County.

Members of TLC's Board of Trustees who work for for-profit companies report the same problem. Two examples are -

Rockville Fuel & Feed, a major provider of concrete to the building industry in the County, says that 50% of its' concrete truck drivers live outside the County.

Magruder Companies, a well-respected residential developer in the County, may have as much as 75% of their construction crews residing outside the County.

Conclusion

With TLC and other employers at greater risk of losing their workforce, the Council's vote for affordable housing is critical to the welfare of County businesses. With the increased cost of gas, we are less able to attract and retain employees if they can't live in the County they work in. And that means we can't deliver the services we provide or the products we sell.

Two important considerations in mandating work force housing are -

- 1) The 10% workforce housing requirement should not be a substitute for the MPDU requirement already in place. The workforce housing requirement must be in addition to the MPDU requirement.
- 2) A longer period than 10 years for price controls on work force housing should be set. Given that MPDUS have 30 year price controls, fifteen years would appear to offer the County a longer term to maintain the housing as workforce units.

You understand the relationship between housing and jobs – I and other employers in the County urge you to vote in favor of this legislation for work force housing. We are depending on you to keep our employees here.

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return of market rate or workforce housing units as the way to satisfy the 10% requirement. When you couple that provision with the definition of a workforce housing project that includes the full range of housing affordable to families earning up to 120% of Area Median Income (AMI), we think there could be a problem. Our concern is that some of those "market" or "workforce housing" units could be converted from being affordable to families at or below 60% of Area Median Income to being affordable to families in the 80-120% range.

Finally, we support the provision that permits a development to exceed a zone's density to the extent necessary to include the 10% workforce housing component. In this one element, the legislation supports two of the county's longstanding and fundamental policies.

One of those policies is that the county will locate its most concentrated development in Metro station areas. It is good planning. Dense development there maximizes the use of transit and the return on the considerable public investment in Metro. It also protects areas where we want low density, such as the Agricultural Reserve. The other significant policy is that we will make available housing for all incomes and all life stages throughout the county.

Development at Metro stations has proved to be highly attractive and, accordingly, very expensive. If we are committed to an economically integrated community, we must permit the density and also have the regulatory framework that accomplishes it. The market, left to its own devices, will not.

Thank you.

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TESTIMONY ON BILL 30-05 AND ZTA 05-16
November 22, 2005

Scott Minton, Executive Director
Housing Opportunities Commission

Good evening Mr. President and members of the County Council. My name is Scott Minton and I am the Executive Director of the Housing Opportunities Commission. I appreciate the opportunity to talk with you this evening about Bill 30-05 and Text Amendment 05-16, which together create a workforce housing program.

We have three comments, all supportive of the proposed program, and one concern.

First, it is a dramatic demonstration of the seriousness of the county's affordable housing crisis that the council is considering the creation of a workforce housing program. Think about it. This program is concerned with housing availability for families earning in excess of \$100,000. Now we all know that \$100,000 isn't what it used to be. But it's still a substantial family income. And it dwarfs the \$14,000 that the average housing voucher family earns. We certainly acknowledge that middle income families in Montgomery have trouble finding affordable homes. Imagine then what faces the county's low income families.

The second point relates to the implementation of a workforce housing program without eroding resources devoted to our most vulnerable families. HOC is pleased that the proposed program doesn't rely on the use of public funds. Homes and services for low income families are expensive. If, in its deliberations, the council modifies the program so that public monies are committed to workforce housing, our plea would be that the council find new funding rather than stretching existing resources even further.

The potential loss of housing affordable to our lower income families is our area of concern. Section 25B-26 describes the options for alternative locations for the workforce housing units. Subsections b(2) and b(3) permit the rehabilitation and/or

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WRITTEN TESTIMONY

Bill No. 30-05, Workforce Housing Program
and Zoning Text Amendment TXT 05-16

Page 3

DHCA is especially mindful of the fiscal impacts of this bill and has submitted a separate fiscal impact analysis memo. The conclusion of this analysis is that the need to process the applications for interested buyers in the workforce housing program will likely double the workload of our already heavily worked MPDU staff. In addition, depending upon how the resale prices are set, there may be a substantial fiscal impact if the County is required to subsidize such sales.

The Executive Branch has several comments on the text amendment. First, it appears inconsistent to have the requirement for providing Workforce Housing units in the Planned Unit Development (PD) Zones be based on the project having a residential density at or above 40 dwelling units per acre, when the general requirements for workforce housing base the requirement on being located in a zone that has a maximum permitted density of 40 dwelling units or more. It is also inconsistent to state in the Requirements section of the text amendment that "the Planning Board must permit any residential density or residential FAR of the applicable zone to be exceeded" when in the PD zone standards language it says that the maximum density "may" be increased.

Second, it should be clarified whether workforce units are required in zones that may have residential density calculated in FAR rather than dwelling units per acre, including the TSR and TSM zones. Also, the CBD 0.5 zone requires permits a maximum density under the standard method of less than 40 dwelling units per acre, and it should be made clear that this zone would not require workforce housing as the text amendment is drafted. Generally, it may be clearer to simply specify the zones in which the workforce housing is required and not use the standard of any zone that allows a maximum permitted density over 40 dwelling units per acre.

Also, under the requirement section of the text amendment, there may need to be clarification that workforce units are not required for all developments with 35 units or more, but only for those that have 35 units or more, *and* are in zones that have a maximum permitted residential density at or above 40 dwelling units per acre *and* are located in a Metro Station Policy Area. In other words, it is not clear in the text amendment as drafted that the requirements are cumulative.

Thank you again for the opportunity to review and address this bill and text amendment. Executive branch staff will be available to participate in the work session.

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sales and rentals, foreclosures, and other relevant procedural matters” but this is not clear from the current draft of the Bill. There should be consideration of who the target buyers will be for workforce housing, such as those who hold specific types of jobs within the County, or who already hold jobs in Montgomery County. Also, there needs to be analysis of how pricing would be set for a band of incomes rather than a specific income, such as exists in the MPDU program.

We believe that the control period for for-sale workforce housing program outlined in the bill is appropriate at 10 years, and that an additional provision needs to be added that would reset the control period if the unit is sold within the original control period. In addition, we support the concept of an equity recapture provision during the control period. While buyers of workforce housing units experience difficulty in affording units in the County, they do have additional options available to them such as buying less expensive housing located outside of Montgomery County. The recapture provision will make the workforce housing option more equitable when measured against housing prices in the outer suburbs.

We are concerned, however, that the need to sell the unit during the control period to an individual with a household income that does not exceed 120 percent of the median income may cause the workforce housing unit to be sold for less than the maximum allowable resale price, and would not allow the equity recapture as envisioned. In this situation, to avoid a penalty to the seller, it may be necessary for the County to subsidize either the seller or the buyer. This policy decision needs to be made during the consideration of the legislation.

We do not support the 99 year control period for workforce rental housing units. We recommend a 20 year period instead. There is some question as to whether it is advisable to include rental units at all, and it may be worthwhile to study this issue in greater depth. We question whether rental buildings will survive for 99 years, and are also concerned that rental units in Metro station policy areas will be competing against units that do not have a workforce housing requirement. Rentals are different than for-sale products because the sales prices can be raised on the market units to offset the cost of providing the workforce housing units, but rents cannot be sustained at higher levels. Also, stick built rental projects are not able to take advantage of any density or height bonuses because higher density would change their construction to include steel and concrete. There is concern that developers of rental projects will not remain in the Montgomery County market, causing a lack of rental units.

With regard to the definitions section of the proposed bill, we are concerned that these definitions do not include all terms that need to be defined for the Workforce Housing Program. For example, the bill as drafted, does not define “control period,” a term critical to the meaning and understanding of the Workforce Housing Program, nor does it define Planning Board.

There is inconsistency between the bill and the text amendment in that the text amendment specifies in the Requirements section that all workforce housing units must be on site. In the bill, however, there is a provision for an alternative location agreement that allows the units to be located on another site within the same policy area. This inconsistency needs to be resolved.

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WRITTEN TESTIMONY

BILL NO. 30-05, WORKFORCE HOUSING PROGRAM AND ZONING TEXT AMENDMENT TXT 05-16

November 22, 2005

Good evening. For the record, my name is Elizabeth Davison, Director, Department of Housing and Community Affairs. I am speaking tonight on behalf of Montgomery County Executive Douglas Duncan. Thank you for the opportunity to comment on this bill and text amendment.

In general, the County Executive and DHCA support the policy concepts contained in the bill and text amendment. We do think that there are several issues that need more work, especially to clarify the policies and ensure implementation. When the announcement was made about the proposed Lot 31 redevelopment in downtown Bethesda, our telephones began ringing immediately with calls from people interested in the workforce housing, and we have continued to receive calls. Many of the inquiries are from employees of municipal governments, just as we anticipated. DHCA conducted a survey of over 100 of the individuals who inquired. While this survey was not statistically significant, it does provide an indication of who the target workforce housing program participants would be. Our results found that almost 75 percent of the respondents had commutes of over one hour to their jobs and over half expressed an interest in living at a location near a Metro station. Over eighty percent of respondents ideally wanted to live in workforce housing units that are single family homes or townhouses. This last finding is of concern in that there seems to be a mismatch between unit types likely generated by this bill and those of most interest to workforce housing buyers.

We are concerned about the inherent assumption in this legislation that builders will be able to provide workforce units with a "break even" financial outcome, on top of the MPDU requirement to which they are already subject. The cost of construction is increasing dramatically, as recently evidenced in estimates we received for the Wheaton Metro project being planned by the Housing Opportunities Commission and Bozzuto. New estimates of the cost to build the project increased approximately \$8 million over the original estimates of one year ago. The dual requirement of MPDUs and workforce housing has not been tested. There needs to be a thorough analysis of the costs of the program. We need to be sure that we avoid unintended consequences that would diminish the amount of new development in the Metro station areas where our current policies indicate is the best location, given the existing infrastructure.

The Workforce Housing Bill does not include provisions related to the sales and marketing of the units. Under the MPDU law, which the Workforce Housing Bill is based on, there are requirements for how units are marketed and sold that provide guidelines for the process by having DHCA certify that prospective buyers are eligible for the program. Absent these guidelines, there is no definition of how buyers are identified or qualified. This may be the intent of Section 25B-24(c)(2) that states: "The regulations must govern notice to the Department of

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afford during various control periods. First-time owners can easily become renters if they must move for legitimate reasons--because they will not be able to afford to buy in the future.

Long term affordability is a laudatory goal, and we agree with it, but its burden shouldn't be placed solely or disproportionately on the shoulders of low income folks. Individual homeownership must continue to be used to enhance community and individual stability, to catalyze neighborhood revitalization, and to promote wealth sharing and wealth creation. For the majority of Americans who are fortunate enough to be homeowners, their homes represent their most significant asset. Stripping the financial gains from the low-income homeowners is unfair and, in a sense, discriminatory. There are other existing legal structures available to provide long term affordability, e.g. rentals, limited equity coops, and community land trusts. There are recapture mechanisms which can be used to recycle subsidies back into affordable housing. These can and should be used by governments and housing producers to accomplish long term affordability goals. But don't saddle the low-income homeowners with this responsibility.