



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING DEPARTMENT

MCPB _____
Item #3
May 12, 2011

Date: May 5, 2011

To: Montgomery County Planning Board

Via: Rollin Stanley, Director *RS*

From: Joshua Sloan, Coordinator *JS*

Purpose: Zoning Text Amendment 11-01

Concerning: Creation the Establishment of the Commercial/Residential Neighborhood (CRN) and Commercial/Residential Town (CRT) zones and general amendments to the Commercial/Residential Zones

Introduced By: Council President Ervin at Request of the Planning Board

Introduced Date: April 12, 2011

Planning Board Review: May 12, 2011

Council Public Hearing: May 17, 2011

Staff Recommendation

Approve ZTA 11-01 with modifications to the 3 sections outlined below and transmit comments to the County Council. Modifications are recommended to the following three sections of the ZTA based on testimony and discussions with stakeholders:

- 59-C-15.3. Definitions Specific to the CR Zones regarding the definition of "Transit Proximity";
- 59-C-15.43. Sketch Plan regarding the modification of binding elements during site plan review;
- 59-C-15.631. Parking Ratios regarding the non-residential parking ratios in the CRN and CRT zones;

Background

The Planning Board held several public hearings on the proposed ZTA between December 2010 and March 2011 and transmitted a draft for introduction by the County Council on March 11, 2011. After transmittal, Planning Board Staff met with Council and Executive branch staff, the result of which was the introduced ZTA 11-01 that is attached. Changes from the Planning Board-proposed draft and the introduced text are minor in nature and meant only to simply, clarify, and ensure consistency; a specific effort was made not to revisit the substantive issues.

To track the various discussions, drafts, and approvals, a web site was created with numerous resources:

http://www.montgomeryplanning.org/development/com_res_zones.shtm.

This site provides more background, summary tables, and links to the Planning Board-approved drafts and transmittal letter.

Recommended Modifications

Testimony and discussions with stakeholders subsequent to the transmittal of the ZTA to the Council has convinced Planning Board Staff that three sections of the proposed CR, CRT, and CRN zones should be modified. These changes are summarized below.

1. Transit Proximity

In Section 59-C-15.3, Staff recommends removing the last sentence, which was added during discussions of the transmitted ZTA. Testimony provided after the original recommendation has shown this change would be counter to the intent of the County Council based on records of specific discussions regarding transit proximity for properties on or near master-planned transit lines such as the CCT or Purple Line. The modified language would read:

Transit proximity: Transit proximity is categorized in two levels: 1. proximity to an existing or planned Metrorail Station; 2. proximity to an existing or planned station or stop along a rail or bus line with a dedicated, fixed path. All distances for transit proximity are measured from the nearest transit station entrance or bus stop. ~~[[To qualify as a planned station or stop, the station or stop must have funds appropriated in the relevant Capital Improvement Program.]]~~

2. Binding Elements

Section 59-C-15.43 was the subject of considerable debate because of three recently approved sketch plans. Because of this ongoing debate, Council Staff published the introduced text with the existing CR Zones language rather than the language in the Planning Board's transmittal. This was done to allow further discussion and a revised Planning Board recommendation before the Council Hearing.

Staff recommends the following change that is intended to clarify the position of the County Council based on the approved Council Opinion and input from stakeholders present during the original CR Zones adoption. These changes would ensure a reasonable amount of certainty, flexibility, and public notification. To fulfill these objectives, Subsection (d) would be modified to read:

- (d) During site plan review, the Planning Board may approve ~~[[modifications to the binding elements or conditions of an approved sketch plan.~~
- ~~(1) — If changes to a sketch plan are requested by the applicant, notice of the site plan application must identify those changes requested. The applicant has the burden of persuading the Planning Board that such changes should be approved.~~
- ~~(2) — If changes are recommended after the application is made, notice of the site plan hearing must identify changes requested.~~
- ~~(3) — In acting to approve a sketch plan modification as part of site plan review, the Planning Board must make the findings required in Section 59-C-15.42 (e) in addition to those required by Section 59-D-3.]]~~
- amendments to the binding elements of an approved sketch plan.
- (1) Amendments to the binding elements are permitted if such amendments are:
- (A) requested by the applicant;
- (B) recommended by the Planning Board staff and agreed to by the applicant; or
- (C) made by the Planning Board if the Board finds that a change in the relevant facts and circumstances since sketch plan approval demonstrates that the binding element is no longer in conformance with the applicable master or sector plan.
- (2) Notice of proposed amendments to the binding elements must be identified in the site plan application if requested by the applicant or in the final notice of the site plan hearing if recommended by Planning Board staff and agreed to by the applicant.
- (3) For any amendments to the binding elements, the Planning Board must make the applicable findings under Section 59-D-43(e)3.4(c) in addition to the findings necessary to approve a site plan under Section 59-D-3.

3. *Parking Ratios for the CRT & CRN Zones*

Additional testimony was received regarding the parking ratios for the CRT & CRN Zones and Planning Board Staff has further analyzed the recommended requirements for non-residential uses. The Town of Kensington raised the concern that parking requirements are too low in non-metro station areas. In order to address this concern, Staff recommends raising certain parking ratios. Further refinement can be done through selection of the appropriate zones that have different parking requirements during the mapping process. An alternative is to remove any reduction in the CRN or CRT zones for distances greater than ½

mile from transit. Staff has reviewed these numbers in light of the recent Montgomery County Parking Study, existing parking ratios, and usage numbers and recommends the table be modified to increase the minimum parking requirement in the CRT & CRN zones:

<u>Use</u>	<u>CRN</u>		<u>CRT</u>		<u>CR</u>			
	<u>Up to</u>	<u>Greater</u>	<u>Up to</u>	<u>Greater</u>	<u>Up to</u>	<u>¼ to</u>	<u>½ to 1</u>	<u>Greater</u>
<u>Distance from a level 1 or 2 transit station or stop</u>	<u>½ mile</u>	<u>than ½ mile</u>	<u>½ mile</u>	<u>than ½ mile</u>	<u>¼ mile</u>	<u>½ mile</u>	<u>mile</u>	<u>than 1 mile</u>
<u>(a) Residential</u>								
<u>Maximum:</u>	<u>None</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.8</u>	<u>1.0</u>	<u>0.7</u>	<u>0.8</u>	<u>0.6</u>	<u>0.7</u>	<u>0.8</u>	<u>0.9</u>
<u>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</u>								
<u>Maximum:</u>	[[59-E]] <u>None</u>	<u>None</u>	[[59-E]] <u>None</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	[[0.6]]	0.8	0.4	0.6	4 per 1,000 square feet	4 per 1,000 square feet	4 per 1,000 square feet	0.8]]
<u>4 per 1,000 square feet</u>								
<u>(c) All other non-residential uses</u>								
<u>Maximum:</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	[[0.6]] <u>0.8</u>	[[0.8]] <u>1.0</u>	[[0.4]] <u>0.6</u>	[[0.6]] <u>0.8</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>

Additional Testimony and Staff Responses

As an addendum to the Analysis of Written Testimony spreadsheet published February 25, 2011, the following table addresses correspondence received after transmittal of the ZTA to the County Council. The original source material is attached.

#	Section	Source	Comment Received	Staff Response
178	59-C-15.62[4].	G1	The proposed ZTA requires too many bicycle parking spaces in the CRT & CRN zones for residential uses.	The examples provided to illustrate this position are that an 80 unit apartment would have to provide 8 public bike spaces and 40 private, secure spaces – or 1 per every other unit. 40 secure spaces requires approximately 480 square feet, which is just over 3 parking spaces. Staff feels that the requirements are appropriate and will not overburden development, which is meant to encourage multi-modal travel.
179	59-C-15.854(e).	G2	The dwelling unit mix public benefit requires too many 3 bedroom units.	The proposed language would decrease the dwelling unit mix to require only 5% efficiency, 15% 1-bedroom, and 10% 2-bedroom units. Staff does not feel this adequately addresses the reason for the public benefit, which encourages a diversity of housing types and unit types so families can “age in place”. Because this is a public benefit, it simply may be one that is not appropriate in areas where the market doesn’t support 3-bedroom multi-family units; it is not a requirement.
180	59-C-15.856(e).	G2	The vegetated area public benefit requires too much space for small sites.	The proposed language would modify the minimum requirement from 5,000sf to 5% of “developable area”. (This would actually increase the requirement on lots over 100,000sf.) Staff is amenable to a change along the lines of a minimum area equal to the lesser of 5% or 5,000sf if the implementation guidelines establish an area threshold under which the public benefit would not be granted, such as 100sf.
181	59-C-15.3.	D20	The transit proximity definition should not limit acceptable sites to those proximate to stations or stops within the CIP.	Staff agrees and has recommended removing the language as drafted in this staff report.
182	59-C-15.43.	D20	The ability for the Planning Board to unilaterally change binding elements removes necessary citizen and developer protections.	Staff agrees the language needs to be modified to reflect the original Council intent regarding modifications to binding elements and has recommended new language.
183	59-C-15.41(b).	J2	The standard method density for the CR zones should be increased to 2.0 FAR in line with the CBD-2 zone.	Staff disagrees with the recommendation and given significant more testimony regarding the impacts of development, the Planning Board accepted a recommendation to maintain the 0.5 FAR standard method threshold. Given one of the primary objectives of the zone to provide public benefits to incentivize greater densities, increasing the standard method density threshold would be counter to the goals of the zone. Properties that are zoned for total densities over 2.0 FAR can provide public benefits and expect a reasonable return on investment. Further, projects can be phased over

				time for interim uses and phase their public benefits commensurate with development.
184	Process	J2	A “fast-track” site plan process should be established for small projects.	Such a streamlined process is not under the purview of this Division; changes would have to be made to Section 59-D-3. Staff is not making any recommendation for or against such changes.
185	59-C-15.9(a).	R21	Add language to existing approvals section ensuring conformance of uses within protected buildings.	This was accepted by the Planning Board and included in the transmittal.
186	59-C-15.2.	W35 (suggested language on W37)	Changes should be made to the objectives section of the CR zones to establish the standards by which the Planning Board can make the finding that a sketch plan meets the objectives of the zone.	An early suggestion that the objectives of the CRN, CRT, and CR zones be split was considered and ultimately rejected by the Board. A similar recommendation was put before the Board during its pre-transmittal discussion, and some modifications were made. The ultimate language in the introduced text has been reviewed by technical and legal staff for the various agencies and branches and has been found sufficient for Planning Board review of applications.
187	59-C-15.43(d).	W35	Testimony that only the applicant could make changes in binding elements is contrary to the record.	Staff agrees and has recommended language that addresses this concern.
188	59-C-15.5.	V13	Add “Vehicle Inventory Storage” as a limited use in the table of land uses.	This request was also made in earlier correspondence and not accepted by the Planning Board.
189	59-C-15.3.	V13	Add a definition of “Vehicle Inventory Storage”.	Not necessary unless the above request is approved.
190	59-C-15.512.	V13	Reduce or eliminate the development standards proposed for Limited Uses.	This suggestion was put before the Board and approved with the transmitted text.
191	59-C-15.61.	W45	“All standard method projects without site plan will not conform to the master plan.”	This is a logical fallacy: because one set of applications must be found to conform to the master plan does not entail that a different set of applications without a similar requirement will – be definition – not conform to the master plan. The development standards and requirements in place for standard method development have been created to ensure consistency with the master plans where these zones are recommended. The elimination of standard method development is not recommended by Staff because of its deleterious impacts on interim development and revitalization.
192	<u>59-C-15.851.</u>	W45	Staff’s characterization of the Friendship Heights recreation facility was inaccurate; the sector plan recommendations came to fruition.	The proposed language for this section would not hinder such a development but allows flexibility to ensure public facilities (or locations for such facilities) that were not necessarily conceived during the master-planning process can be accepted for incentive density.
193	<u>59-C-15.43(d).</u>	W45-W46	The proposed change further confuses the situation regarding how binding elements may be changed.	The subject proposal was removed from the text under consideration; new language has been proposed.
194	<u>59-C-15.43(d).</u>	N1	It should be clarified that changes to this section are based on the understanding of existing law, not a change in the law. The term “binding element” should be replaced with a term that is less	The first point was addressed in the transmittal letter and Council staff’s introductory memo. The second point was discussed but ultimately rejected by the Planning Board.

			associated with rezoning cases.	
195	59-C-15.5.	N2	Too many uses that are (in other zones) special exceptions are permitted in the CRN & CRT zones; the site plan process does not allow for effective testimony regarding Limited Uses.	Each of the uses proposed in the CRN and CRT zones, and their categorization as Permitted, Limited, or Special Exception, was reviewed and found appropriate by the Planning Board. The special finding for Limited Uses during the site plan review process will not only adequately address adverse effects, but “ <u>ensure compatible relationships with existing and proposed adjacent residential housing through mitigating factors...</u> ”.
196	<u>59-C-15.121(a).</u>	P3	Reduce CRN allowed heights to 0’-60’.	Staff does not recommend lowering the heights allowed in the CR zones below that allowed by adjacent residential properties, which is 35’. To make mixed uses possible with adequate flexibility for higher ground floor ceiling heights, 40’ is more practical.
197	59-C-15.5.	P3-P4	Land uses should be reviewed by community members.	Agreed.
198	<u>59-C-15.63.</u>	P4, C6	Parking numbers are too low near Ride-On and MARC.	Revised. (Ride-On stops do not qualify for transit proximity.)
199	Proposed development	P4	Building is too large and will create a traffic burden.	Not an issue that can be addressed by the ordinance.
200	Sector plan density & character	C6	Heights in the sector plan are too high. Proposed development is not appropriate. Kensington should not look like Rockville, Silver Spring, etc.	Not issues directly addressed by the ordinance. Sector plan zoning & design recommendations should address.
201	<u>59-C-15.8.2.</u>	C6	Public benefits should be required for all redevelopment.	The claim that without public benefits, development will continue to look like existing development is inaccurate. The development standards and review process in the CR zones is significantly different than the requirements under the existing commercial zones along Connecticut Avenue.
202	59-C-15.41.	S10	Are standard method height thresholds being reduced?	The transmitted text removed height as a consideration for standard versus optional method because the real difference is the public benefits required by optional method. Instead, the site plan requirement threshold for height ensures adequate review of higher buildings.
203	59-C-15.41.	S10-S11	Standard method FAR of 1.5 does not ensure public benefits.	Staff continues to recommend that the CRN zones not require any public benefits, instead relying on master plan recommendations, guidelines, and the zoning standards and requirements to achieve better land use and building design; the CRT standard method threshold, however, was lowered to 1.0 FAR.
204	Density in Kensington	S11	Provide examples of densities at 60’ and 2.0 FAR to help envision potential development.	Examples used by a concerned citizen as revered places that developed over time by locals (Georgetown, Rhinebeck, Telluride, Santa Barbara, Athens, Burlington) all developed with zoning in place. And all have central nodes that allow taller heights and more density than proposed for Kensington. They are good examples of vibrant places, but as examples they are taller & denser than potential development in

				Kensington.
205	Subdivision law	A15	Subdivision law does not apply to CR zones because development can be built across lot lines.	Subdivision law continues to apply to all development that changes any lot line; buildings and structures may not cross lot lines. Virtually all development that occurs on more than one lot will remain subject to Chapters 50 (subdivision) and 59 (zoning).
206	59-C-15.51.	A15	Limited Uses are a misnomer for development if access would be prohibited.	This section has been rewritten to address site plan and neighborhood compatibility issues.
207	59-B-5.1.	A16	Provide clarification of how lots recorded before March 16, 1928 would be redeveloped.	No change in the provisions or interpretation of this section is intended.
208	59-C-15.41.	A16	Development under a zone that does not require a site plan circumvents and makes useless the sector plan.	Sector plans often recommend zones that get mapped that do not require site plans – virtually every single-family-zoned lot. That does not mean the sector plan was circumvented or useless, it means implementation of the sector plan is through alternative means.
209	59-C-15.855.	A16	The objectives of the quality building and site design public benefits do not apply to any development under 0.5 FAR or the CRN zones.	This is a logical fallacy similar to comment 191 above.
210	Binding elements and covenants	A16	How will binding elements & covenants be upheld.	Under the existing approvals, Section 59-C-15.9. They continue to apply until a choice is made by the property owner to redevelop under the new zone.
211	Housing Element of the General Plan	A17-18	7 quotations from the Housing Element of the General Plan are quoted. Unless CRN development requires a site plan, conformance with the Sector Plan & design guidelines, these objectives cannot be met. The CRN zones introduce multiple commercial uses and potential for more surface parking lots into currently stable neighborhoods.	Staff does not consider the lack of a requirement for site plan to entail the inability of development to meet the policy objectives of the Housing Element of the General Plan. Subdivision, stormwater and sediment control, building codes, etc. still apply. Also, see 191 and 209 above. No existing single-family house that is being used as a residence is being recommended for CRN zoning. Stable residential neighborhoods are recommended to retain their single-family zoning.
212	59-C-15.5.	A19-A20	The permissive list of uses does not function to protect the residential integrity of the borders of Kensington View. Permitted uses in the CRN zones should be restricted to Dwellings, Live/Work units, Personal living quarters, Home occupations (reg. & no impact), and Offices. Only Cultural Institutions should be allowed as a Limited Use.	Several tables with similar comments received by the community were presented to and reject by the Board. Numerous changes were made to the original land use table, but Staff continues to believe the table is appropriate and the process has significant protections against adverse impacts. Staff also believes that the particular situation in question, along East Avenue, will not be appropriate for most commercial uses because of the configuration, access, and visibility issues that will deter most allowed uses. Allowing residential uses and services for residents will serve as a proper edge to the commercial areas and protect the residential neighborhood. Creep of special exceptions on residentially-zoned land is a much more worrisome issue; a cleaner line based on a policy of creating small-scale, mixed-uses at nodes and along corridors is a better position to set up a

				defense of single-family neighborhoods.
212	59-C-15.121(a).	M3	Maximum building height limit be set at 45 feet, not the proposed 65 feet (43 feet, or 3 stories, is the existing height limit of C-2 Zone, a commercial category currently deemed compatible with nearby single-family residential use).	Staff disagrees because all flexibility for small centers or properties that – for land use reasons – may be deemed appropriate for CRN may not be adjacent to residential properties. Mapping considerations should address these concerns by policy. Further, the angular plane setback requirement of the zone ensures stepped building heights from 35’ if any property is zoned above 40’ and is adjacent to residential zones.
213	59-C-15.121(a).	M3	Maximum density be set at 1.0 FAR1, not the proposed 1.5 FAR, in order to assure compatibility with abutting or confronting single-family homes. By comparison, the density limit for a house on a standard R-60 lot equals 0.91 FAR (2.6 stories x 35% lot coverage), and on a standard R-90 lot equals 0.78 FAR (or 2.6 stories x 30% lot coverage).	By the logic of comment 212 above, C-2 zones, which allow an FAR up to 2.5, are transitional. 1.5 FAR is a reasonable FAR for transitional uses given the compatibility, master plans, design, and use considerations built into the ordinance. Any building over 10,000sf, 10 units, 40 feet in height, or any application that proposes a drive-through or a Limited Use must submit a site plan with all of its concomitant findings.
214	59-C-15.141(c).	M3	Site Plan approval be required for any development on a CRN zoned property that is adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by a right-of-way of a primary, secondary or tertiary street.	Staff considers the development standards and restricted uses as significant protections against incompatible development and does not think site plan review would provide a meaningful enough difference in these cases to require it.
215	59-C-15.5.	M3	Uses marked as Limited (with an "L" on the Land Uses chart, see lines 305-314), which are proposed to require additional mitigating factors aimed at reducing their incompatibility (see lines 330-335), be disallowed on properties adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by a right-of-way of a primary, secondary or tertiary residential street.	Staff devised the use of limited uses to retain flexibility for mixed-use development with appropriate oversight through site plan review to ensure compatibility and master plan/design guideline conformance.
216	CRT zone, generally	M3-M4	CR Town Zone - CRT is proposed as a medium density mixed use zone with a maximum density of 4.0 FAR and building height of 150 feet and, therefore, should never be applied to a property adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by the right-of-way of a primary, secondary or tertiary residential street, due to incompatibility of scale of CRT allowed buildings with existing or proposed residential housing.	While this is a mapping issue, more so than a zoning ordinance issue, staff disagrees with the premise. The zone allows for stepping down allowed densities and heights adjacent to residences if necessary. Not all CRT zones allow densities up to 4.0 FAR or heights up to 150’ (see Kensington and Takoma proposed zoning maps). For example, a CRT1.0 C0.5 R1.0 H40 zone would be quite compatible in terms of height and mass to a R-60 home. It’s a question of allowing a greater range of uses to develop places with integrated services, jobs, and housing over a range of densities. Each piece of the puzzle: density, height, use, and review process needs to be considered to implement the zones effectively and compatibly.
217	59-C-15.41(b).	M4	We recommend the "Maximum Total Density" for Standard Method development in the CRT Zones be the	Various thresholds were discussed and it was felt that stepping the standard method threshold up to 1.0 FAR for the CRT zones was most in line with

			same as that existing for the CR Zones-- "the greater of 0.5 FAR or 10,000 gross square feet of floor area" (not the proposed 1.0 FAR or 10,000 gsf).	the PHED committee's direction on decreasing the public benefit requirements for properties in Kensington, Takoma, etc.
218	Residential forecasting and planning.	M4	As MCCF noted in our testimony to the County Council on legislation creating the CR Zone, the absence of dwelling-unit-per-acre limits in CR zones means that the number of housing units in any project will not be known until Planning Board approval. This prevents the county government from doing accurate, fiscally sound long-range infrastructure planning.	Similar to other mixed-use zones that calculate residential density based on FAR, rather than units per acre (CBD, TMX zones), the goal of the zone is to establish maximum building envelopes. Average unit sizes can be determined and applied in forecasting models. Further, all preliminary and site plans will detail maximum units per acre for adequate public facilities tests and MPDU review.

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

None of this is making any sense to our residential neighborhood, as we are not a 'commercial area' and where we are located, do not need or want 'neighborhood serving' commercial development. As zoning pertains to all of Montgomery County our concerns further points out that a more protective zone must be established even if there is only one community the Amended zones will not work for.

It appears to our community that, with the introduction of the CR Zones, subdivision laws are no longer necessary since most developments under the CR Type Zones can be built across lot lines.

According to the planners, Westfield Mall is an auto centric regional shopping mall and deserves special consideration because it will always attract cars, yet, our small subdivision, across University Blvd. with one drive-through McDonald's and two drive-through banks, needs reduced parking to try to get people out of their cars. As a result we are not clear how this is protective.

The CRN zone, adjacent to or confronting single-family homes, does not require site plan if the structure is under 0.5 FAR because 'some single-family homes are larger than 0.5 FAR' as stated by staff in work sessions. New single-family homes cannot cover more than 30% of the lot and are specifically designed to be sold as single-family homes. Their market value is directly related to their design and how they relate to other homes. Business structures are designed simply based on function and economics.

Some uses in the CRN zone are limited, unless of course, they can't be limited as proposed in the 'online presentation' for the March 3, 2011 work session:

59-C-15.12.

(c) If the required setback cannot be met, the structure, parking spaces, or driveway entrances associated with a limited use may be built closer than 100 feet subject to reasonable mitigating requirements above the minimum standards imposed through site plan approval by the Planning Board, such as additional visual or noise buffering.

Currently, all of the properties on East Avenue can only be accessed from a tertiary road across from single-family homes. All of the current corner lot C-T zoned properties on University Blvd., adjacent to single family homes, have access on the tertiary residential streets. For some, this is their only access. So, "limited" is only limited if the business owner requests this by planning their entrance 100' from the adjacent/confronting residential properties.

**Kensington View Civic Association
CR Zone - Zoning Text Amendments
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In prior testimony we have pointed to the following facts that that we again ask be clarified as staff moves forward on the adoption of the Amendments to the CR Zones.

Our subdivision was platted and recorded in 1925. Many of the lots being changed to CRN have not been re-subdivided and recorded since 1925.

Section 59-B-5.1 Buildable lot under previous ordinance states:

Any such lot may be developed under the zoning development standards in effect when the lot was recorded except that:

(a) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance;*

East Avenue has 25' building restriction lines, University Blvd. has 40' building restriction lines.

The 1928 Ordinance defines a building restriction line as "a line beyond which property owners or others have no right to extend a building or any part thereof".

Without re-subdivision and recordation, we believe these lots cannot be redeveloped to the design standards of the CR zones.

Unless the CRN requires site-plan and conformance with the Sector Plan, the words in the Sector Plan are useless. Why assign a zoning code specifically designed to circumvent the stated plan?

The desires of eight property owners, most of which bought residential properties, now outweigh the desires/economics of a residential subdivision.

59-C-15.855 Quality Building and Site Design states:

- "High quality design is especially important in urban, integrated-use settings to ensure that buildings and uses are visually compatible with each other and adjacent communities and to provide a harmonious pattern of development."
- "Due to increased density in these settings, buildings tend to be highly visible and high quality design helps to attract residents, patrons, and businesses to these areas."
- "Location, height, massing, façade treatments, and ornamentation of buildings affect sense of place, orientation, and the perception of comfort and convenience."
- "The quality of the built environment affects light, shadow, wind, and noise, as well as the functional and economic value of property."

Unless, of course, the development is under 0.5 FAR and is assigned the CRN zone.

We still don't understand how binding elements and covenants, recorded in the land records, will be addressed by this CR Zone amendment in 59-C-15.9. In the case of BBT, the land records will state that a drive-through is allowed no closer than 65' from the adjacent single family homes, yet the zone will state that it may not be closer than 100'.

**Kensington View Civic Association
CR Zone - Zoning Text Amendments
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The following statements are quoted from the Planning Board Draft *Housing Element of the General Plan, an Amendment to the Housing Element of the 1993 General Plan Refinement, July 2009* and speaks to the protection of neighborhoods.

On Page 8, the first of the three goals meant to 'inform' states the following:

1. **Conservation of the stable neighborhoods containing the existing housing stock. Maintaining the quality of established neighborhoods is essential to sustaining the quality of their homes. (emphasis added)**

Older neighborhoods of modest single-family and townhomes or garden apartments are especially vulnerable to decline if services are not provided and maintained, and housing and zoning codes are not enforced. They are also susceptible to redevelopment and infill development because they are often well-situated in downtown and midtown residential employment and shopping centers, services, and public transit routes. These neighborhoods also contain the bulk of affordable and workforce housing in Montgomery County. Over 100,000 affordable units in 2009. This is double the number of affordable new units that are projected to be added to the housing stock by 2015. **Master plans, in particular, must devote special attention to protecting existing neighborhoods. (emphasis added).**

Page 11, **Strategic Statement** states:

Master plans must address existing and future housing needs **with particular attention to protecting and enhancing neighborhoods (emphasis added)** that contain a substantial stock of affordable units and to increasing opportunities for a high jobs-housing ratio including affordable housing in areas served by public transportation.

Page 13, **Objective 1: Housing and Neighborhood Connectivity Policies** states

1.5 As older strip commercial areas and surface parking lots are redeveloped, **include housing (emphasis added)** and improve non-vehicular connectivity through the most direct pedestrian and bike routes between homes, jobs, retail, recreation, schools, and public services.

Page 14, **Objective 2: Diverse Housing and Neighborhoods Policies** states:

2.1 **Strengthen the stability of established neighborhoods (emphasis added)** through targeted programs that improve schools, parks, safety and, new or upgraded pedestrian and bicycling facilities.

Page 15, **Objective 3: Housing and the Environment Policies** states:

3.1 **Require green and energy efficient design (emphasis added)** and materials to reduce operating and maintenance costs for residents and to create more sustainable housing by increasing the number of buildings and units built or retrofitted for energy efficiency, on-site energy production, and water conservation and reuse.

Page 15, Objective 3 (cont): Housing and the Environment Policies states:

3.3 Provide stormwater management fee credits for pervious pavers and other materials and strategies that reduce stormwater runoff. (emphasis added) These techniques should mitigate the impact of allowable impervious surface rather than increase the footprint of development above what is currently permitted. (emphasis added)

3.7 Require preservation of tree canopy and sustainable site design
including native plants and conservation landscaping techniques.

Page 16, Objective 4: Housing and Neighborhood Design

Create more balanced, attractive, and walkable neighborhoods through regulatory reform of private developments and leadership in design of public projects.

Policies states:

4.2 Facilitate the production of attractive housing and neighborhoods with innovative design of the public realm and architecture, including creative building techniques, materials, and mix of unit types.

Surely this does not mean parking lots!

None of the above, unfortunately, pertains to our current residential community and possibly other communities within walking distance of a metro station or transit that have been assigned the CRN designation. CRN does not always require site plan, conformance with the Sector Plan, conformance with the Design Guidelines, introduces multiple commercial uses and potential for more surface parking lots into the currently stable neighborhoods.

As we understand it, the Zoning Re-write anticipates a 'universal replace' in the future to reduce the multiple zoning categories. Kensington View questions if all the transition properties in the County have been discovered and evaluated for compatibility with the Amended CR Zones. We have a hard time believing that all the current multiple zoning codes will end up as only three CR-type zoning codes.

If this CR-type zoning is applied to our stable residential neighborhood and you are proven wrong, our community must live with this when you go home.

Thank you again for considering our comments.

To: Françoise Carrier, Chair, Montgomery County Planning Board
From: Virginia Sheard, Resident, Kensington View Community
Ref: Item 3: Continued Discussion of CR Zones ZTA

As an active participant in discussion on this proposed ZTA and the Wheaton Sector Plan revision, I am aware of the need for the CRN and CRT zone addition to the approved CR Zone.

However, I strongly believe that the CRN – CR Neighborhood – zone must be applicable to all appropriate situations/locations in the county, not just a selective few.

The CRN zoning designation and the permissive list of uses does not function to protect the residential integrity of the borders of Kensington View, particularly on East Avenue.

While we accept the 45' height and likely setback requirements because of the proximity to owner-occupied R-60 houses, the range of uses must be severely limited to the context of this block—i.e., location on a narrow roadway that ends at Kensington Blvd. which is a dead-end street, sidewalks on only one side, with limited on-street parking, and the contentious portion of East Avenue

On February 24th, you were shown a rendering of what we consider appropriate redevelopment of Lots 13-7, which are owned by the adjacent auto dealership.

Few uses listed on the Use Table would be appropriate in the sketched vision (see page 3) – obviously dwelling units under 45' in height and home occupations, live/work units, general offices if limited in scale to a site, registered and no-impact should be allowed. All other uses depend on client or customer traffic, staff parking, and densities of activities that should not be allowed in such confined spaces embedded into a residential neighborhood, whether here on East Avenue, in Takoma-Langley, Flower Avenue, Kensington or any other county sites with similar constraints.

Reduced parking requirements of the zone do not take into consideration the lack of street parking, distance from public lots, and separation by two major state highways from the Wheaton CBD. Parking and density of activity MUST be analyzed when permitting redevelopment of sites like this.

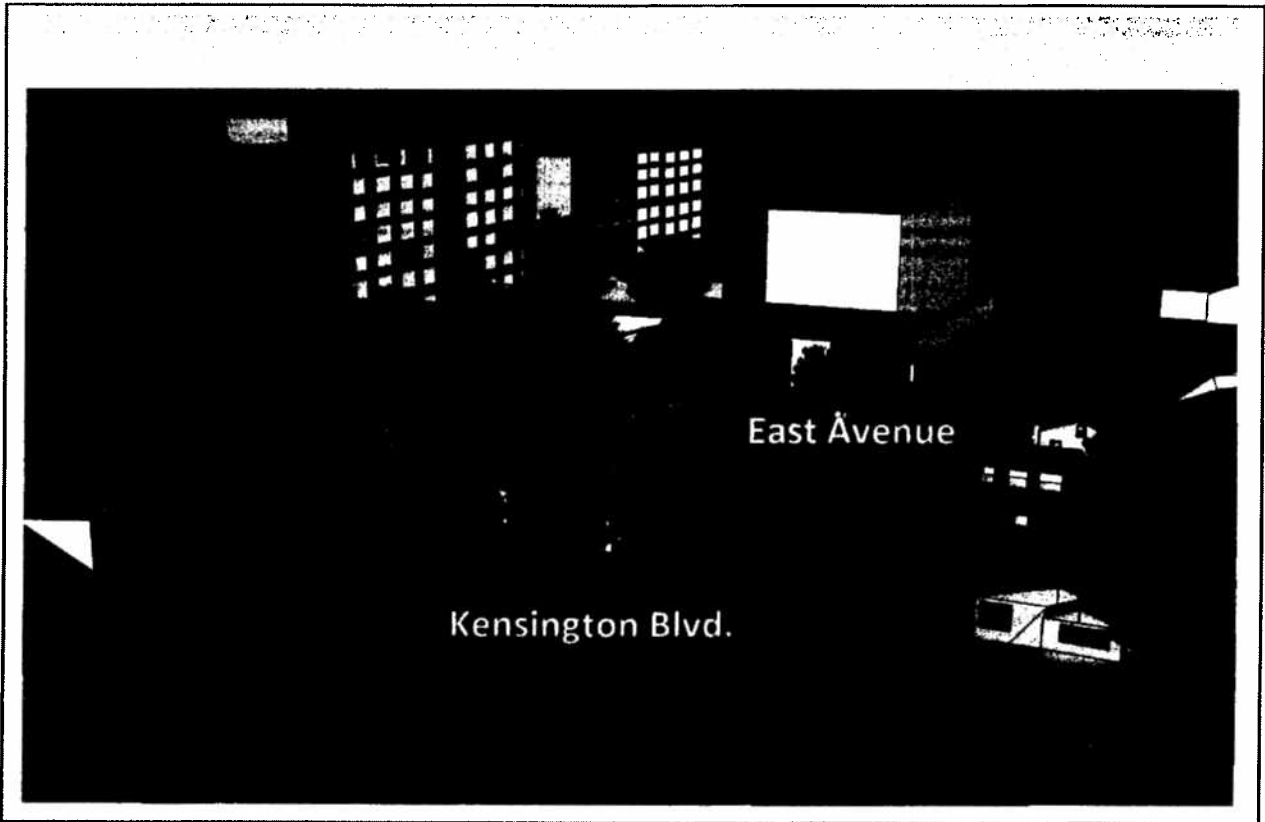
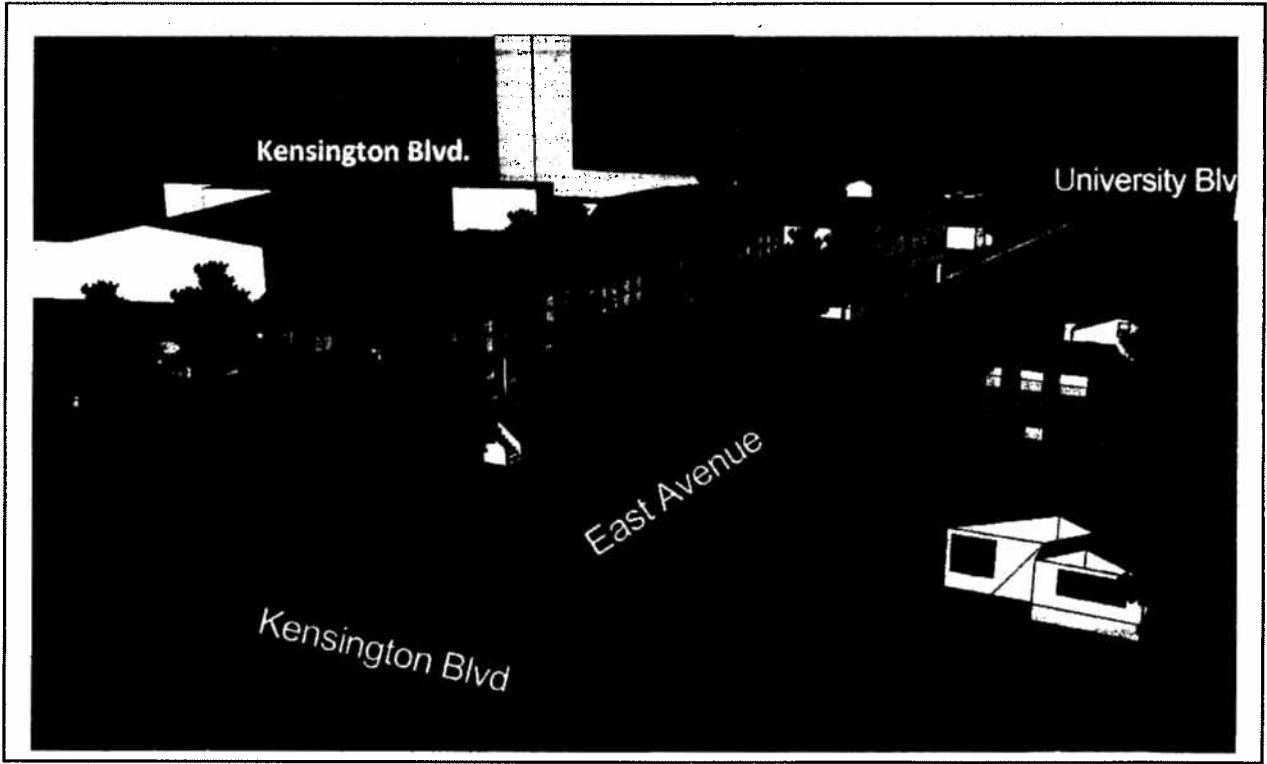
If the ZTA is not modified to respond to the East Avenue constraints, you are condemning Kensington View to constantly having to defend its borders to preserve our residential integrity. That is a breach of the public trust – small sites such as this should be equal stakeholders with larger property owners and not subjugated to other ideas just to encourage a larger mixed use development on Veirs Mill Road.

The attached list consolidates the limited and permitted uses from the published Use Table. Why should most of these activities be encouraged on this particular site?

Why is it necessary or appropriate to permit/encourage most of these activities on CRN zoned parcels in the context of East Avenue?

LIMITED USES	PERMITTED USES
<ul style="list-style-type: none"> • Farm and country markets • Automobile rental services, including storage of vehicles and supplies • Automobile repair and services • Automobile sales, indoors • Automobile sales, outdoors (except where a municipality prohibits the use within its jurisdiction by resolution) • Eating and drinking establishments • Health clubs and gyms • Hotels and motels • Recreational facilities, participatory • Retail trades, businesses, and services of a general commercial nature with each tenant footprint up to 15,000sf • Charitable and philanthropic institutions • Cultural institutions (<i>scaled to site</i>) • Day care facilities and centers - over 30 users • Educational institutions, private • Private clubs and service organizations 	<ul style="list-style-type: none"> • Farm, limited to crops, vegetables, herbs, and ornamental plants • Seasonal outdoor sales • Dwellings • Group homes, small or large • Hospice care facilities • Housing and related facilities for senior adults or persons with disabilities • Life care facilities • Live/Work units • Personal living quarters (<i>limit no. of units</i>) • Automobile rental services, excluding storage of vehicles and supplies • Clinic • Home occupations, registered and no-impact • Dry cleaning and laundry pick-up stations • Laundry pick-up stations • Offices, general (<i>limit no. of daily trips</i>) • Retail trades, businesses, and services of a general commercial nature with each tenant footprint up to 5,000sf • Veterinary hospitals and offices without boarding facilities • Day care facilities and centers with up to 30 users • Parks and playgrounds, private • Publicly owned or publicly operated uses • Religious institutions • Manufacturing and production, artisan • Accessory buildings and uses • Public utility buildings, structures, and underground facilities • Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms

Appropriate Redevelopment of auto dealership properties on Veirs Mill Road and East Avenue



RECEIVED
02 05
MAR 03 2011

MCP-CTRACK

From: Dalferes Condrey, Gail [GDALFERE@gannett.com]
Sent: Wednesday, March 02, 2011 11:45 PM
To: MCP-Chair
Cc: councilmember.erin@montgomerycountymd.gov; jeff.waldstreicher@house.state.md.us
Subject: Caveats for 'general' support of the Kensington Sector Plan

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

Dear Ms. Carrier:

I am writing to communicate to you my concerns regarding the Kensington Sector Plan, which I 'generally' support. It is evident that a great deal of time and work has gone into the plan, but there are a few key points which, if considered from the voters perspective, would slightly change yet drastically improve this plan for the good of the many.

Since 1993 I have been a resident of Parkwood, a neighborhood adjacent to the Town of Kensington (TOK). On February 28 I attended a TOK Council meeting which discussed CR Zones and their application to the Kensington Sector Plan. I was impressed that the meeting was open to non-TOK residents; with the number of citizens in attendance at the meeting; and with the testimony which overwhelmingly asked the Council to revisit important aspects of the Kensington Sector Plan, particularly given the unsettled status of the new CRT and CRN zones. I was baffled to listen as the Council voted 2-1 (and somehow 1 abstaining vote) to pass a resolution to the Planning Board that 'generally' supported the Kensington Sector plan, neglecting to include the specific concerns of the citizens both in attendance and who had communicated concerns prior to the meeting. I understand the Planning Board has expressed a willingness to hear the feedback of the neighborhood, making this a major opportunity missed for the TOK. I am writing to ensure you are aware of these items.

The highlights of the comments, which I too support, overwhelmingly support revitalization in a manner that preserves the essence of Kensington. These include:

1. **Reduce the density** and building heights to safeguard historic and charming Kensington. The maximum height should be 60-65 feet rather than 75; there should be a required step-down to a maximum of 40 feet along all edges of the revitalization area that are adjacent to single-family neighborhoods. Reducing density will also help address concerns in my neighborhood that schools will continue to be overcrowded and more residents may lead to school redistricting. If we do not expect builders to build to the maximum heights, let's zone the area to the heights the area can support. My additional two cents:
 - a. **Say NO to Kontera:** asking to increase the FAR for their property should be a precedent that is not set now or in the future as it violates the step-down and encroaches on residents and small businesses of the community.
 - b. **Say NO to the homogenization of Kensington:** I personally am against making Kensington look like Rockville, Silver Spring, Wheaton and every other revitalized area in commercial terms. Others voiced the same in the meeting. I prefer the Catch Can and their neighboring deli on Metropolitan Avenue to chain food, retail or big box stores we can find anywhere.
2. **Require parking provisions to match the conditions:** MARC service is not level 2 transit. Period. Increase revenues by requiring parking that allows patrons to frequent the commercial establishments while respecting the rights of the residents to also park and live in the area. It will also, by design, reduce the density to more manageable levels by forcing developers to provide convenient and adequate parking within a reasonable distance of their building.
3. **Ensure public benefits** by reducing or eliminating the use of the Standard Method. Most people favor revitalization, but under the Optional Method to avoid the type of development that has been completed in the commercial area on Connecticut Avenue. Today this area's development has resulted in unsafe conditions for pedestrians and bikers and very poor environmental stewardship. I do not claim to fully understand the CR Zones, but the reasoning given by one Councilmember for using the Standard Method is that it is the method used today. We can do better. The residents have made it clear that they want better than the current standard.

C6

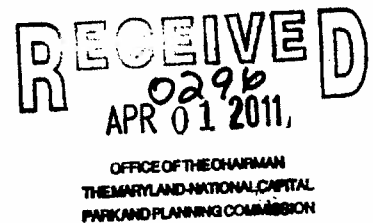
The elephant in the room is that lack of provisions to specifically address the traffic congestion that plagues our area today.

In closing I strongly suggest that we live within our means: If we don't have the funds to improve the roads to support the BRAC, much less the White Flint Sector Plan and countless other growth plans surrounding Kensington, why not revitalize Kensington to a level we can all live with and prosper from instead of knowingly creating more grid-lock, which will decrease the appeal of this wonderful town thus reducing revenues the project is intended to generate?

Thank you for considering these caveats to the 'general' support of the Kensington Sector Plan to ensure we protect the quality of life of current and future residents and the single-family neighborhoods that make Kensington a unique destination as well as a cherished home.

Sincerely,
Gail A Dalferes
10205 Parkwood Drive, Kensington, MD 20895

TIMOTHY DUGAN | ATTORNEY
T 301.230.5228 F tdugan@shulmanrogers.com



March 30, 2011

Council President Valerie Ervin
Members of the Montgomery County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20852

Re: Opposition to CR Zone Changes
DANAC Stiles Corporate Campus (the "DANAC Property")
Key West Avenue and Great Seneca Highway

Dear President Ervin and Members of the Montgomery County Council:

We represent DANAC Corporation, the developer of the DANAC Property in the Life Sciences Center. Someday, Lot 7 (described below) will accommodate a CCT stop. We oppose certain proposed changes to the CR Zone. DANAC was an active participant throughout both the Great Seneca Science Corridor ("GSSC") Master Plan and the CR Zone deliberations.

- 1) We *oppose* the Planning Board's proposal to effectively eliminate the Transit Proximity incentive for the Corridor Cities Transitway ("CCT") by adding the following provision:

To qualify as a planned station or stop, the station or stop must be in the Capital Improvement Program queue.

We ask the Council to reject adopting such language.

- 2) We oppose the Planning Board's elimination of a developer's protections under a Planning Board-approved Sketch Plan by enabling the Planning Board to change it unilaterally, and, further, to allow private parties, other than the owner/developer, to initiate Sketch Plan changes.

Our detailed explanations follow.

1. DANAC's Location in the GSSC and Its CR Zoning Classifications

Since 1963, DANAC has developed over four million square feet of office, retail and residential property, the vast majority of which is in Montgomery County. The DANAC Property was acquired in June 1969.

The DANAC Property is located at the intersection of Key West Avenue and Great Seneca Highway. It is bounded by Key West Avenue to the south, Great Seneca

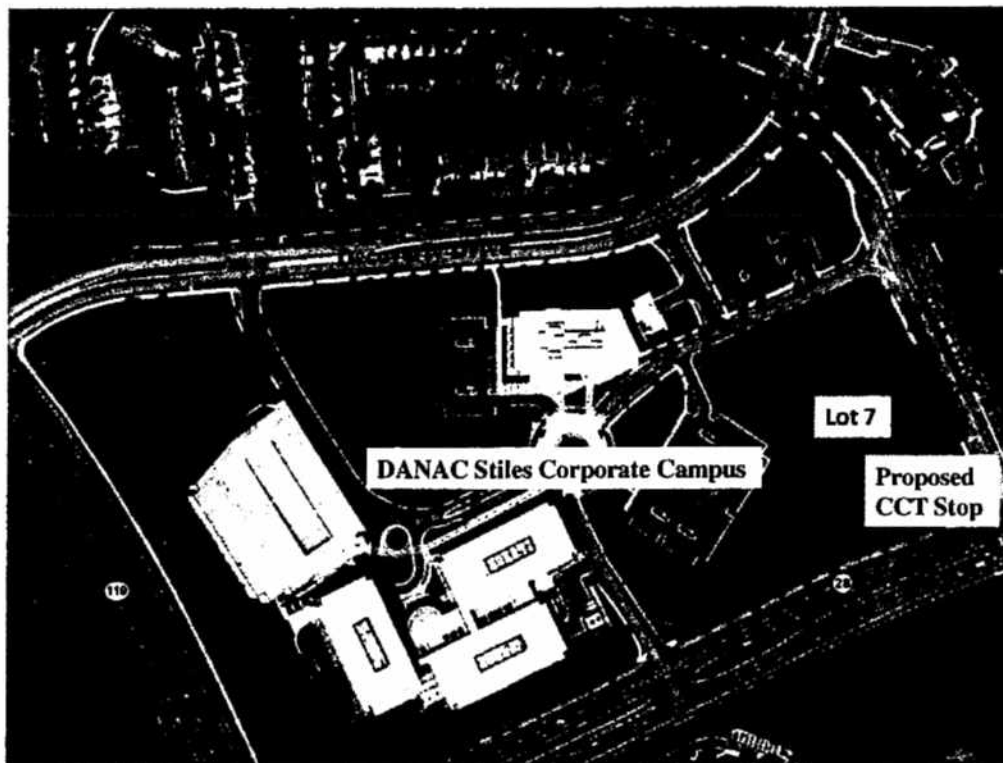
Highway to the west, Decoverly Drive to the north and Diamondback Drive to the east. The DANAC Property consists of Lot 7 and Lots 4-6.

Lot 7 is zoned CR 2.0, C 1.5, R 1.5, H 150.

A Corridor Cities Transitway (CCT") stop is planned for the east side of Lot 7.

Lots 4-6 are zoned CR 1.0, C 0.5, R 0.5, H 80.

Lot 7 contains the substantial land area (7 acres approx.) that has not yet been developed, where someday the CCT stop will be located, in all likelihood.



2. The Transit Proximity Definition Should Remain As It Is.

"Transit Proximity" is defined as:

Transit proximity is categorized in two levels: 1. proximity to an existing or planned Metrorail Station; 2. proximity to an existing or planned station or stop along a rail or bus line with a dedicated, fixed path.

We *oppose* the Planning Board's proposal to add the following:

D (21)

To qualify as a planned station or stop, the station or stop must be in the Capital Improvement Program queue.

When the Council recently considered the GSSC and the CR Zone, everyone recognized that the CCT's funding and construction were not within the near future of the Capital Improvements Program. Nonetheless, incentive density for *planned* transit stations was acknowledged to support the County's goal to steer development near public transportation. Providing the Transit Proximity incentive for a "planned" station establishes an immediate, near term, incentive for developing such areas.

Effectively eliminating the Transit Proximity incentive for the CCT will discourage or delay development. A developer might well find that, on balance, a CCT location is not more attractive than a location further from planned public transportation. Such an outcome would not be good for Montgomery County. The Transit Proximity incentive fosters ridership. Substantial ridership demand must exist before the CCT exists. The CCT needs residents and workers to provide the critical mass to attract federal and other dollars and to justify construction. The County's Master Plan, premised on the CCT, depends on the realization of the population who will use the CCT. In short, continue to foster development now that will support the CCT when it is constructed.

Effectively eliminating the Transit Proximity incentive for the CCT would seriously reduce the market attractiveness of the County's Public Service Training Academy ("PSTA"). It too is zoned CR and includes a planned CCT station.

Contrary to the Planning Board's assertions,¹ the record reflects the Council's intent to provide an incentive density for *planned* transit stations and stops. When the CR Zone was being drafted originally, I specifically recommended adding the word "planned" to the Transit Proximity definition. Mr. Jeffrey Zyontz added "planned" to the definition and recommended the change to the PHED Committee. The PHED Committee discussed and adopted the change. The definition reads, ". . . 2. Proximity to an existing or planned station or stop along a rail or bus line with a dedicated, fixed path." (See 59-C-15.3.) Including "planned" was overt, explicit and intentional. Some of the current Planning Board members might not have been aware of the earlier record. In any case, we disagree with the Planning Board's report to the Council that "[t]he meaning of 'planned' transit for [incentive density] purposes was somewhat unclear in the original CR zone legislation" It could not have been clearer.

¹ Page 4 of the Planning Board's March 11, 2011 transmittal letter to the Council.

D 22

3. The CR Zone's existing balance of incentives and special development standards should be preserved.

The CR Zone incentives are intended to affect behavior now. Incentives work if they may be realized in the near term. The Transit Proximity incentive is intended to steer development where the County believes it would be in the best public interest. Please read the next section that explains one of the parking standards that is a counterweight to the Transit Proximity incentive, and, if the CCT "planned" incentive were not preserved, would be a significant competitive burden.

4. Allowing only a minimum number of parking spaces but effectively eliminating the Transit Proximity incentive for the CCT is an example of how the Planning Board's change would throw the burdens and incentives out of balance.

Under the current CR Zone provisions, *only* the minimum parking spaces required under Section 59-E may be provided. If a potential Life Sciences Center business required a greater number of parking spaces, a CR Zone property, such as DANAC, is prohibited from providing more than the minimum. Section 59-C-15.65(a)(1) reads as follows:

Section 59-C-15.65(a)(1):

For projects that satisfy the requirements for transit proximity levels 1 or 2, the number of parking spaces provided on site **must not exceed the number required under Article 59-E**, except that the maximum number of parking spaces for general retail and restaurant uses is 4 spaces for every 1,000 square feet of gross leasable area, and no parking spaces are required for restaurant outdoor patron areas.

(Emphasis added.)

The parking burden would remain but the Transit Proximity incentive would be eliminated. The incentive/burden balance would be upset.

It would be a poor public policy decision and illogical to eliminate an incentive for Transit Proximity and impose a parking requirement below what the market might demand, even though the parking standard is tied directly to proximity to a planned transit stop.

5. We oppose authorizing the Planning Board to unilaterally change an already-approved Sketch Plan.

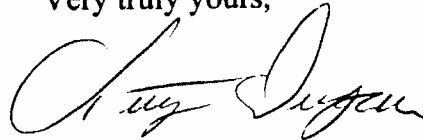
We urge the Council to reject adding a CR Zone provision that would eliminate one of the fundamental purposes of the Sketch Plan process, which was "hammered out"

during the original CR Zone deliberations. The clear understanding is that once a Sketch Plan's amenity package is negotiated, a developer may rely on it to undertake many long term plans and commitments inherent to a mixed use project. The clear understanding is that concrete incentive density amenities may only be modified, if the developer initiates such a change. If the Planning Board may unilaterally compel changes to an already-approved Sketch Plan, it would seriously undermine planning and financing. An equally disturbing proposal is the one that would allow nearly anyone to initiate Sketch Plan changes. Such provisions would leave no certainty. Adding such provisions would call into question the very core purpose of our having a Sketch Plan process.

In pursuing Sketch Plan approval, applicants pay M-NCPPC an enormous application fee and incur significant costs for consultants and time. Sketch Plans are a major undertaking. The cost, time and effort warrant preserving its certainty.

We urge the Council to reject the two provisions that we oppose. Please call with your comments, questions and instructions. Thank you.

Very truly yours,



Timothy Dugan

cc:

The Honorable Phil Andrews
The Honorable Roger Berliner
The Honorable Marc Elrich
The Honorable Nancy Floreen
The Honorable Craig Rice
The Honorable George Leventhal
The Honorable Nancy Navarro
The Honorable Hans Reimer
The Honorable Isiah Leggett
Ms. Diane Schwartz Jones
Mr. Thomas Street
Mr. Steve Silverman
Ms. Marlene Michaelson
Mr. Jeffrey Zyontz
Ms. Francoise Carrier
Mr. Rollin Stanley
Mr. Josh Sloan

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Mr. Thomas Autrie
Mr. Rick Kiegel
Mr. Edgar Gonzalez
Mr. John F. Jaeger, Jr.
Mr. Eugene A. Carlin
Mr. James Hendricks
M-NCPPC Zoning Advisory Panel
Ms. Marilyn Balcombe
Scott C. Wallace, Esq.
Barbara A. Sears, Esq.
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KONTERRA

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Fax: (240) 294-5737

May 3, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Ms. Carrier:

I am writing to you on behalf of Konterra Limited Partnership (KLP) which owns property at 10450 Metropolitan Avenue in Kensington. The draft Kensington Sector and Vicinity Plan rezones KLP's site to CRT.

KLP requests that the Montgomery County Planning Board consider further revisions/amendments for the following sections to the proposed CR Zones ZTA.

CR Zones

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

Under the bike counts, average number of bike requirement is $05\pm$ / unit.

Examples:

80 DUs must provide:

Public accessible bike spaces: $0.1 / \text{unit} \times 80 = 8$
Private, secure bike spaces: $0.5 / \text{unit} \times 80 = 40$
Total = 48 Bikes
Bike ratio / unit: 0.6 / unit

300 DUs must provide:

Public accessible bike spaces: $0.1 / \text{unit} \times 300 = 30$ or 10 max.
Private, secure bike spaces: $0.5 / \text{unit} \times 300 = 150$ or 100 max
Total = 110 Bikes
Bike ratio / unit: 0.366 / unit

From the above example, it is clear that the proposed ZTA requires too many bike spaces for a smaller apartment building making this requirement uneconomical as well as difficult to achieve in medium size apartment complexes. Also, some people may take the bike to their unit instead of leaving in their basement.

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

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

KLP builds mostly 1 BR, Efficiency / studio units due to market conditions. We do not build 3BR units unless it is very exclusive sales units or inside the urban core areas. Under the CRT Zone, one bedroom should have much higher ratio than efficiencies and 2 bedrooms.

KLP suggests the following dwelling unit mix under the CRT Zone:

(e) Dwelling Unit Mix: At least 5 points for integrating a mix of residential unit types with [Provision of] at least 5% efficiency units, 15% 1-bedroom units, and 10% 2-bedroom units.

59-C-15.856 Protective and enhancement of the natural environment

“(e) Vegetated Area: At least 5 points for installation of plantings in a minimum of 12 inches of soil covering at least 5,000 square feet.”

It is unfair for a smaller site to provide 5,000 square feet of vegetated area.

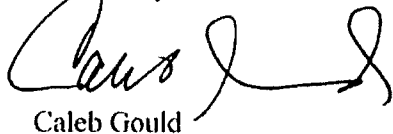
KLP suggests 5% of developable area instead of 5,000 square feet.

(e) Vegetated Area: At least 5 points for installation of plantings in a minimum of 12 inches of soil covering at least 5% of developable area.

We ask the Planning Board to give the above recommendations serious consideration when the Board takes up the proposed CR Zones ZTA this week.

Thank you.

Yours truly,


Caleb Gould

MAR - 7 2011

AGENDA DATE: 3 MARCH 2011
AGENDA ITEM: #3



LAW OFFICES
MILLER, MILLER & CANBY

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** All attorneys admitted in Maryland and where indicated*

JSKLINE@MMCANBY.COM

March 2, 2011

Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: CR Zones Zoning Text Amendment;
Board worksession,
March 3, 2011

Dear Chair Carrier and Members of the Planning Board:

Our client, the Aaronson Family, has periodically provided you with comments on the implementation of the CR zone and its potential impacts on the family's properties that are presently the subject of review in the Wheaton CBD Section Plan Amendment. Recently, Joshua Sloan was kind enough to sit down with representatives of the Aaronson family to explain how the operation of the CR zone would affect development of the Aaronson properties, some of which are modestly sized parcels of land supporting small businesses. Mr. David Aaronson is very appreciative of Mr. Sloan's time and effort in explaining the intricacies of the CR zone and its application in the Wheaton CBD.

JG

Mr. Sloan's explanations have addressed many of the concerns of the Aaronson Family regarding the process which may be required to develop modestly sized projects in the Wheaton CBD. The Aaronson Family would like the Planning Board to consider these further recommendations to streamline and make the CR zone more effective in its application. Those recommendations include:

1. Increase the standard method of development in the CR zone to 2.0 FAR from the 1.5 FAR that was shown in the last version of the CR zone reviewed by the Aaronson Family (proposed Section 59-C-15.41 of the draft ZTA based on the 14 February 2011 version).

The Aaronson family's Wheaton properties are all currently zoned in the CBD-2 classification which allows for "as of right" development up to 2.0 FAR under the standard method. Under the possible replacement CR (Metro) zone, by requiring optional method of development, and the filing of a sketch plan, above 1.5 FAR, small property owners are exposed to an expensive and tedious review process that may well be beyond the ability of an individual property owner to afford such an involved process, or might not be commensurate with the economic value that could be achieved by a modestly sized project.

THE AARONSON FAMILY ASKS THAT THE THRESHOLD FOR STANDARD METHOD OF DEVELOPMENT PROJECTS BE SET AT 2.0 FAR THAT WILL BE EQUAL TO WHAT IS PRESENTLY ALLOWED IN THE CBD-2 ZONE.

2. In addition to the above recommendation, please consider institution of a "fast track" process to handle site plan applications for small projects.

Site plan review is obviously required for all projects going through the sketch plan approval process. Moreover, site plans are also required in the CR (Metro) zone for small projects that (a) exceed 10,000 square feet in area; (b) exceed 40 feet in height; or (c) exceed more than 10 dwelling units. In other words, site plan review is required under the CR zone at a much earlier stage than would occur under the CBD standard method of development.

The Planning Staff's treatment of the initial three sketch plan applications for the CR zone in White Flint were, as promised, more streamlined than had been the review of their counterpart, the project plan application. If such efficiencies could be extended to the site plan review process, "mom and pop" type tenants would not have to wait six to eight months to process applications for site plan approval. Without such a streamlined process, the Aaronson Family continues to believe that the intimidating processes that face property owners contemplating redevelopment in Wheaton could still act as a deterrent to such plans.

A "FAST TRACK" PROCESS WILL SERVE TO REDUCE THOSE CHALLENGES.

The CR zone, its terms and its operation, are intimately related to development within the Wheaton Central Business District. The Aaronson Family wanted you to be aware of its present position regarding the Sector Plan's recommendations and the procedures contained in the current draft of the CR zones.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a bold, slightly slanted, sans-serif style. A horizontal line is drawn above the signature.

Jody S. Kline

JSK/dlt

Enclosure

cc: Rollin Stanley
Joshua Sloan
Sandy Tallant
Khalid Afzal
David Aaronson
Robert Glazer

Draft Position on ZTA 11-01, CR Zone Amendments

by Jim Humphrey, Planning & Land Use Chair

The following is the draft position on ZTA 11-01 recommended by the MCCF Planning and Land Use Committee. The proposed ZTA will amend the CR (Commercial Residential) Zones currently in law, and create a new CR Town and CR Neighborhood Zone. This draft position will be considered and voted on at our meeting on May 9.

CR Neighborhood Zone - We believe CRN is a low density, mixed use zone that will be employed at the edges of agricultural areas or single-family residential neighborhoods, or will be applied as a transitional buffer between such areas or neighborhoods and nearby medium to high density commercial or mixed use areas. Therefore, we urge that:

- Maximum building height limit be set at 45 feet, not the proposed 65 feet (43 feet, or 3 stories, is the existing height limit of C-2 Zone, a commercial category currently deemed compatible with nearby single-family residential use);
- Maximum density be set at 1.0 FAR₁, not the proposed 1.5 FAR, in order to assure compatibility with abutting or confronting single-family homes. By comparison, the density limit for a house on a standard R-60 lot equals 0.91 FAR (2.6 stories x 35% lot coverage), and on a standard R-90 lot equals 0.78 FAR (or 2.6 stories x 30% lot coverage);
- Site Plan approval be required for any development on a CRN zoned property that is adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by a right-of-way of a primary, secondary or tertiary street; and
- Uses marked as Limited (with an "L" on the Land Uses chart, see lines 305-314), which are proposed to require additional mitigating factors aimed at reducing their incompatibility (see lines 330-335), be disallowed on properties adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by a right-of-way of a primary, secondary or tertiary residential street.

CR Town Zone - CRT is proposed as a medium density mixed use zone with a maximum density of 4.0 FAR and building height of 150 feet and, therefore, should never be applied to a property adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by the right-of-way of a primary, secondary or

tertiary residential street, due to incompatibility of scale of CRT allowed buildings with existing or proposed residential housing.

- We recommend the "Maximum Total Density" for Standard Method development in the CRT Zones be the same as that existing for the CR Zones--"the greater of 0.5 FAR or 10,000 gross square feet of floor area" (not the proposed 1.0 FAR or 10,000 gsf).

General note about CR Zones

- As MCCF noted in our testimony to the County Council on legislation creating the CR Zone, the absence of dwelling-unit-per-acre limits in CR zones means that the number of housing units in any project will not be known until Planning Board approval. This prevents the county government from doing accurate, fiscally sound long-range infrastructure planning.

¹ Floor Area Ratio—the ratio of total floor area in the building(s) (all levels) to the area of the lot.

Jim Humphrey, Planning and Land Use & Housing Chair, provided the following information:

The Council amended the housing section of the General Plan. They restored the items urged by MCCF but changed the wording concerning Accessory Apartments. The effect of the wording change would allow the subject to come up later this year, during Council discussion of revision of the Housing Policy, about whether they should be allowed by right or continue only by special exception.

Zoning Text Amendment 11-01 was introduced which would create two new Commercial Residential (CR) zones: CR Town allowing medium density and CR Neighborhood to allow low density mixed use (commercial) development. The hearing before the council will be on May 17. Jim will propose a resolution in the May newsletter for action at the MCCF May meeting.

NORMAN G. KNOPF

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MEMORANDUM

TO: Françoise M. Carrier, Chair
MCP-Chair@mncppc-mc.org
Montgomery County Planning Board

FROM: Norman G. Knopf NK

DATE: March 2, 2011

RE: Continued discussion items on CR Zone for March 3, 2011 session

I request that the Planning Board consider the following comments in its discussion on the CR Zones on March 3, 2011.

I. Sketch Plan/Binding Elements Provision

1. Any revisions must expressly state that they clarify Planning Board understanding of existing law, not change existing law. This will avoid any future dispute as to the application of the revisions to any project already approved under the CR Zone prior to enacting the revisions.

2. The term "binding element" should be eliminated and other words substituted, such as "features, terms and conditions". The term "binding element" comes with too much "baggage" in that it is a term used in floating zone rezonings. In rezoning, binding elements may only be changed by the applicant. That is not the intent or purpose of a "binding element" in connection with the Sketch Plan. The CR regulatory scheme clearly intends that the

Planning Board, upon closer review of a CR Zone project during site plan, has the full discretion to change any features, terms and conditions of the approved Sketch Plan with or without the applicant's concurrence. Of course, the applicant also has the right to request changes subject to the Planning Board's approval.

II. Permitted Uses and Limited Uses In the CR-N and the CR-T Zones

1. Some uses which are currently special exceptions are proposed to be allowed as permitted uses in the CR-N and the CR-T Zones. Other uses which are currently special exceptions are proposed to be allowed in these zones subject to site plan review.

2. These uses were made special exceptions for a reason – they have the potential for greatly adverse effects on adjacent properties and the neighborhood. They should not be permitted as a matter of right. Although greater setbacks or other requirements may help, in most cases, to prevent adverse impacts, the myriad of different circumstances at any given location requires careful review through the special exception process to assure elimination or mitigation of adverse impacts.

3. The site plan review requirement for "L" uses, does not assure lack of adverse impacts. The Planning Board process – three minutes of testimony and no right of cross examination – results in an incomplete record. It is only through the special exception process, where parties have more time and the right to cross examine, that the adverse effects of a special exception proposal can be fully discovered and remedied.

Thank you for consideration of these views.

RECEIVED
0204
MAR 03 2011

MCP-CTRACK

From: Pat Mulready [mulreadyp@earthlink.net]
Sent: Wednesday, March 02, 2011 7:22 PM
To: Capitol View Park; 'margaret turner'; ckclistserv@yahoogroups.com; Karen Jackson; mulreadyp@earthlink.net; Rachel Hayden; Al Geske; boots3303@aol.com; Donna Savage; Pam Morgan; Elizabeth Brennan; Chris S Strong; Judy Higgins; Richard Utyro; Pam Smith; julecrider@comcast.net; MCP-Chair
Subject: Time to act re zoning & Other Issues Inc Konterra

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

Hi--

I know you've been inundated with information re the new CR Zones and the Kensington Sector Plan. As I understand it the County Council will first act on the new CR Zones and then look at the Kensington Sector Plan once CR Zones are defined. This issue is scheduled to go to the Council March 15. So now it is time to express your opinion to P&P (mcp-chair@mnecppc-mc.org) and the County Council (email addresses are at www.cvpca.org). If you can only do one thing then please email or call regarding support for the change in the CRN Zone to be 0'-60'.

The Zoning code rewrite is still underway so some of this information may have changed this afternoon, but the principles are the same. Also, while Kensington and the Wheaton Business District are presently the foci other areas bordering greater Kensington and CVP--on all sides--can also be affected in the near future.

Three issues: Trying to Change CRN Heights to 0'-60' instead of 40'-60'
Make Sure You Agree to the Uses Listed for the Zoning Codes Used Near You
Parking
Konterra proposal is back

Trying to Change CRN Heights to 0'-60' instead of 40'-60'

At present there are 3 CR zones, but the one I'm writing about today is the CRNeighborhood. At present it is defined as being 40'-65' maximums near neighborhoods. (CR means Commercial/Residential and is envisioned as retail in the bottom with apartments above.)

Sarah Sheila Cogan and I have been trying to get an additional shorter height and less dense Transition Zone as commercial properties approach neighborhoods, historic districts, and/or historic buildings. This has been heard but the answer was the 40'-60' CRN Zone. We believe while this may be fine where townhouses are 4 stories high it is not appropriate when commercial properties approach neighborhoods of 1-2 story residences such as Capitol View Park and most of Kensington.

It was suggested by one of P&P's Zoning experts that instead of trying to get a new Zone--difficult when they are trying to streamline the Zoning Code--that we ask for a change of the height limits in the CRN Zone to be 0'-60' with the actual limit to be determined by the various Sector Plans. This would allow for tiny parks, gardens, undeveloped woods, etc., in the midst of commercial/residential areas to be left undisturbed and for CR zoned areas, such as Metropolitan Avenue as it approaches Ferndale and Capitol View Park, to be no taller than 2 stories or ~25'. I.e., buildings would go from the proposed maximum height of 75' near Connecticut Avenue to 45' to 30' to 20' about 2-3 blocks from Ferndale and CVP.

Make Sure You Agree to the Uses Listed for the Zoning Codes Used Near You

Virginia Sheard, a long time community activist, has been trying to get people to pay attention to the actual lists

P 3

of allowed activities under the various CR Zones. I will provide a detailed list in a few days but there are some you may find objectionable. As I mentioned in an earlier email there are efforts to allow/encourage small stores in residential neighborhoods possibly similar to 7-11s. Some of you may want to research this issue on your own--you can get the latest version of the CR Zones at the P&P website.

Parking

Parking issues are a problem since developers who provide certain "amenities" are given parking credits which bring the numbers of spaces they need to build down to as little as 40% of the number of building units. One of the "amenities" has nothing to do with the developers--if ANY (RideOn, MARC stops can be treated the same as Metro under these definitions) kind of mass transit stop is within a certain distance (this is being fought over but varies up to 1000' or 1/4 mile at last week's Hearing) there does not need to be what I consider adequate parking.

It is believed by some residents that it is unlikely most people--even those who would use MARC to get to work--would not also have a car. There are no provisions for visitors and the assumption is the overflow will go into surrounding residential neighborhoods, some of which only have street parking for the people who live there. Part of this issue is the push throughout the County to remove parking everywhere to force people to no longer drive. As you may know, Rollin Stanley (Head of MontgomeryPlanning.org) is trying to urbanize the entire in-county area and wants us all to use mass transit, bicycle, and/or walk to work like they do in European cities. At last week's Hearing (2/17/11) there was a 30+ minute discussion regarding how businesses would be required to put showers in their buildings so people could bike and then shower before work. Please note that in Holland and other European cities people may bike to work but then accept body odor as natural and normal. And the favorite employee benefit is a car.

Konterra Proposal

Konterra's executive did a presentation at the Kensington Revitalization Meeting 2/28/11 where he said the maximum variance is 75', not the 90' on our end mentioned by his colleague at the November 2010 information meeting. When directly asked if he had changed the building's dimensions he said no. It is a very large building stretching east 277.5' (doesn't count entrances to parking lot, etc., so a football field) from next to the train station--an historic resource to near the border of CVP. The plans also request road widening for the building's frontage needs.

It is projected 80 units with 1 or 2 people each and 1 car/unit. And Konterra assumes that most people living there will take MARC to work.

My opinion is 75' or 90', no large building should be at the border of any historic district. And most people will actually take a car to Metro or directly to work, increasing traffic.

I've been asked by some CVP citizens to point out that Konterra is heavily involved in forcing through the ICC and has made millions from it.

Thanks.
Best,
Pat



THE LAW OFFICE OF
Michele
Rosenfeld LLC

February 25, 2011

Joshua Sloan
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20910

RE: Continued Discussion of CR Zones (March 3, 2011 Worksession)

Dear Mr. Sloan:

I am writing in follow-up to a discussion that we had regarding the grandfathering provisions in the CR zone (Zoning Ordinance § 59-C-15.9(a)). In particular, there appears to be an open question as to whether a building or structure that is a "conforming" structure under the grandfathering provisions of the CR Zone can convert existing use(s) to other uses allowed in the CR zone. You had suggested that a proposed text amendment would help clarify that issue.

Accordingly, I am submitting to you for Planning Board consideration a proposed recommended zoning text amendment to the CR Zone grandfathering provisions that expressly authorizes the conversion of uses in an existing "grandfathered" building to be converted to any use authorized in the CR zone, up to the density limit specified in the applicable sector or master plan for that category of use. (Copy enclosed.)

Please submit this proposed text amendment to the Planning Board for its consideration at its March 3, 2011 worksession (Item No. 3).

Thank you in advance for your help, and let me know if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Rosenfeld', written in a cursive style.

Michele Rosenfeld

Enclosure

Cc: Francoise Carrier, Chair, Planning Board

59-C-15.9. Existing approvals.

(a) One or more lawfully existing buildings or structures and the uses therein, which predate the applicable sectional map amendment, are conforming structures or uses, and may be continued, renovated, repaired, or reconstructed to the same size and configuration, or enlarged up to a total of 10 percent above the total existing floor areas of all buildings and structures on site or 30,000 square feet, whichever is less, and does not require a site plan. Enlargements in excess of the limitations in this Subsection will require compliance with the full provisions of this Division. Uses located in a building or structure deemed conforming under the provisions of this Subsection may be converted to any Commercial or Residential use(s) up to the density limits established in the applicable sector or master plan.

* * * *

March 2, 2011

Lydia Sullivan
10310 Detrick Avenue
Kensington, MD 20895

Chair Francoise Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD

Re: CR Zones ZTAs March 3, 2011 roundtable

Ms. Carrier:

(I am writing as a citizen of Kensington and I am not speaking on behalf of the Town.)
The Town of Kensington is forwarding to you a resolution "generally supporting" the
CRN and CRT Zones, from the Town's Feb. 28, 2011 Town Council meeting, last night.
The vote was 2-1, as I opposed the resolution. I believe the Town's vote on general
approval is premature, as the Planning Board and the County Council have not yet
completed review and changes could greatly affect the Kensington Sector Plan in ways
we can't know yet. The resolution included no detailed recommendations, though many
were discussed by residents and the council.

As you know from my prior testimony, which I will not rehash here but still stands, I
have a great many concerns about the application of the CRN and CRT zones in
Kensington under the current language.

We only received the new mapping last week, Feb. 24, two business days before our
Town meeting. Although it was on the Town agenda for discussion last night, there was
no detailed discussion of the mapping for citizens. MNCPPC's Josh Sloan gave a brief
oral presentation of CRN and CRT, and Fred Boyd answered questions, both of which
were helpful.

At our meeting, Mr. Sloan mentioned that Planning staff may recommend lower Standard
Method maximum FAR, either 1.0 FAR or .5 FAR at the March 3 meeting. Will height
thresholds also be reduced? (It would be helpful to see the recommendations or his
Powerpoint prior to your March 3 meeting. Can he send it or post it as an attachment on
the agenda item prior to the meeting?) Reducing Standard Method to .5 FAR and 40-feet
(or 45) height would be a good move for areas such as Kensington, and is necessary to
preserve transitions to R-60, which the current Standard Method recommendation does
not do.

One of my main concerns, under the current recommendation (1.5 FAR/65-foot
threshold) is that much of or a majority of Kensington could be developed under Standard

Method, with no public benefits and no sketch plan review. And, a number of properties (for instance those along Summit Avenue) are also small enough not to have site plans – so no regulatory review.

Also, most of the Sector Plan area was designated CRT, even those properties that would fall within the CRN FAR and height maximums. I would like to hear why. I am concerned about the many properties with CRT uses that are very close to neighborhoods.

Thank you for returning my call regarding modeling. Because of first the CR Zone and Sector Plan being developed concurrently in 2009-2010, and now the CR zones ZTAs and Sector Plan's concurrent re-review, Town residents have been never had the chance to see any modeling showing densities until now. There just wasn't enough information, as it was constantly changing. Please ask your Planning staff to represent, even if rudimentary sketches, what 2.0 FAR/60-feet or 2.5/75-feet maximums mean. This would go a long way toward explaining density to confused residents.

As you consider the Sector Plan further on March 17, I will send further comments. Thank you so much for your thoughtful review of this issue, and consistently providing opportunities for citizen input.

Sincerely,

Lydia Sullivan

March 1, 2011

By email and delivery

Françoise Carrier, Esq., Chair
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910-3780

RE: Additional Changes to Planning Board-reviewed sections of CR-CRT-CRN
zone revisions - Planning Board Worksession of March 3, 2011

Dear Madame Chair and Members of the Planning Board:

We have been closely monitoring the myriad introductions and changes to the existing CR zone and the proposed CRT and CRN zones. We again provide this communication on behalf of 11250 Veirs Mill Road, LLC, owner of the Lindsay Ford properties in Wheaton, Maryland ("Lindsay") for inclusion in the record in the CR/CRT/CRN zones' record and for use in the Planning Board's deliberation. Our comments and observations reflect the changes intended for Planning Board discussion on March 3, 2011.

The March 3rd iteration of Section 59-C-15.4, the idea of which Mr. Sloan introduced to the Planning Board, Staff and Public during the Wheaton Sector Plan worksession of February 24, 2011, proposes making an applicant's use a threshold and determinative factor in evaluating whether to apply site plan. According to this change, any Limited Use must be evaluated by site plan. Where a use is not limited, it is either allowed by right¹ or by special exception. Through site plan review, the Planning Board maintains total control over design and operations of a particular use, including all Limited Uses. Therefore, a minimization of the menu of Limited Uses allowed is unnecessary because the Planning Board will always have the site plan review process through which to obtain public input and place appropriate conditions on a use that might be presented.

As the Board will recall, in our letter of February 17, 2011, we recommended that "Vehicle Inventory Storage" be added to the list of Limited Uses permitted in the CR, CRT and CRN zones. This use category could be defined in the CR Zone definition section as: "A lot or structure used for

¹ As the Maryland Court of Appeals noted in *People's Counsel v. Loyola*, 406 Md. 54 (2008), "[S]ome land uses, at the time of original adoption or later amendment of the text of a zoning ordinance, are placed in the blessed category of permitted uses in a zone or zones while other uses in the same zone or zones receive a more measured imprimatur of presumptive compatibility as allowed only with the grant of a special exception or conditional use."

storage of inventory vehicles on which no sales, service or repairs are allowed. We have also noted that this low-activity interim use provides a needed component for our client's existing automobile dealership. We have been quite clear that reasonable development standards to ensure visual screening, buffering, minimal light and noise minimization are part of the proposal.

We also observe, as was noted by the Planning Board, the prescribed development standards for Limited Uses could unnecessarily hamstring the Board when evaluating a Limited Use at site plan. We encourage the Planning Board to provide itself with greater flexibility to evaluate each application as it is received, rather than attempting to anticipate—in the abstract—land configurations and applicant's potential applications.

In sum, given that all Limited Uses will be subject to mandatory site plan review pursuant to Sec. 59-C-15.12, we request that the Board:

1. Add "Vehicle Inventory Storage" as a Limited Use in the table of Land Uses in Sec.59-C-15.5;
2. Add the above-definition of Vehicle Inventory Storage in Sec. 59-C-15.3; and
3. Reduce or eliminate the development standards proposed for Limited Uses in Sec. 59-C-15.12.

Thank you for your consideration.

Very truly yours,
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: Anne Marie Vassallo
Anne Marie Vassallo

cc: Chair and Members of the Planning Board
Mr. Chris Lindsay
Mr. Josh Sloan
Ms. Sandra Tallant
Larry A. Gordon, Esq.

To: Francoise Carrier
Chair
Montgomery County Planning Board

From: Meredith Wellington

Re: CR Zones ZTA and Amendments

Date: February 22, 2011

I am writing about two matters: 1) the "objectives" clause, and 2) binding elements. I ask that this memo be included with the record for the CR Zones ZTA.

1. "Objectives" Clause

I am attaching a draft with revisions to Sec. 59-C-15.2 Description and Objectives of the CR Zones. Along with other changes that I have suggested in my other submissions, I believe changes of this nature are needed in order to establish standards for the Board to make a required determination that the sketch plan meets the "objectives" of the "Division", i.e., zones. Sec. 59-C-15.43 (c) (1). These changes cure the one problem, but not the larger problem that the CRN and CRT zones have a different overarching objective from the CR zone—revitalization.

2. Binding Elements

Secondly, at the work session there was testimony that the District Council, in enacting the CR zones last March, intended that only the applicant could make changes in binding elements at site plan.

The District Council's Opinion that issued last March at the time of final passage of the CR Zones is to the contrary, as is the language of the ZTA itself.

Sec. 59-C-15.3 (d) currently provides that "During site plan review, the Planning Board may approve modifications to the binding elements and conditions of an approved sketch plan." This sentence states that the Planning Board may approve modifications to the binding elements, with no limitation on who may propose modifications or when those modifications may be proposed.

Sections (d) (1), (2), and (3) establish notice requirements for modifications by the applicant and the Planning Board before and during the site plan hearing. Sections (d) (1) and (2) deal, respectively, with changes that are proposed (1) before the site plan application, and (2) after the site plan application. Section (d) (3) deals with changes that are proposed at the site plan hearing: "In acting to approve a sketch plan modification as part of site plan review, the Planning Board must make the findings required in Section 59-C-15.42 (c) [sketch plan findings] in addition to those required by Section 59-D-3 [site plan findings]." The Planning Board's making the necessary findings for sketch plan and site plan, is the only condition precedent to the Planning

Board making changes at the site plan hearing.

The Opinion discusses Sec. 59-C-15.3 (d) in two different places. First, on page 3, last box, the Opinion summarizes the PHED Committee's recommended revision of ZTA 09-08 as introduced, the reason for the PHED Committee's revision, and alternatives that were rejected, as follows:

"PHED Recommended Revision—Revise the Planning Board's authority to amend a sketch plan (2-1, Councilmember Knapp opposed to a unilateral change)

Reason for the revision—The Planning Board should have the discretion to judge new information when a site plan is approved; discrepancies from the sketch plan should be noted in the staff's report

Alternative considered—Require applicant's consent to change the essential elements"

Second, on page 6, the District Council states that it agrees "with the recommendations of the Planning, Housing, and Economic Development Committee, except as follows :

.....
"2) The process for modifying the binding elements or conditions of an approved sketch plan was clarified to provide for amendments proposed by the applicant or by Planning staff."

Thus, the District Council intended that the Planning Board can make changes in binding elements at the time of site plan, with or without the consent of the applicant.

Finally, I believe that the Planning Board should, nevertheless, delete the term "binding elements" from the ZTA, because it is a term of art for rezoning, and, therefore, confusing in this context. But, whether deleted or not, the Board currently has the authority to make changes to binding elements at site plan.

Thank you for your consideration of these matters.

Meredith Wellington

Sec. 59-C-15.2, as revised by Board Staff on 2/17/11
Changes in Black are by Board Staff; Changes in Red are by Author

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

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

- (a) implement the ~~[policy]~~ recommendations of applicable master and sector plans;
- (b) ~~[target]~~ create opportunities for redevelopment of commercial single-use areas and surface parking lots with a mix of uses;
- (c) reduce dependence on the automobile by encouraging development that integrates a balanced combination of housing types, mobility options, commercial services, and public facilities and amenities;
- (d) ensure compatibility with existing, adjoining neighborhoods by requiring [allow] a [flexible] mix of uses, densities, and building heights appropriate to [various contexts to ensure compatible relationships with] existing, adjoining neighborhoods; and [encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;
- ~~(e) establish the maximum density and building height for each zone, while retaining appropriate development flexibility within those limits; and~~
- ~~(f)]~~(e) [standardize] improve optional method development by establishing

~~[minimum parameters]~~ requirements for the provision by the developer of
~~{the}~~ public benefits and amenities that will create an enhanced environment
that both supports and ameliorates the impacts of the greater densities and
intensities. ~~[that will~~
~~support and accommodate density above the standard method limit].~~

CLERK'S NOTE: Technical corrections made to lines 101-102, 461, 1060, and 1107.

CORRECTED

Ordinance No: 16-44

Zoning Text Amendment No: 09-08

Concerning: Commercial/Residential

(CR) Zones - Establishment

Draft No. & Date: 9 - 3/02/10

Introduced: September 22, 2009

Public Hearing: October 27, 2009

Adopted: March 2, 2010

Effective: March 22, 2010

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

By: District Council at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Establish Commercial/Residential (CR) zones; and
- Establish the intent, allowed land uses, development methods, general requirements, development standards, density incentives, and approval procedures for development under the Commercial/Residential zones.

By adding the following Division to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-15 "COMMERCIAL/RESIDENTIAL ZONES"
Sections 59-C-15.1 through 59-C-15.9

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

OPINION

Zoning Text Amendment No. 09-08 was introduced on September 22, 2009 at the request of the Planning Board, to establish CR zones.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved with amendments.

The County Council held a public hearing on October 27, 2009 to receive testimony concerning the proposed text amendment. The Council received a significant amount of testimony, both in support of and in opposition to ZTA 09-08. The Executive expressed general support for ZTA 09-08 but had some concerns about the ZTA that were discussed during worksessions, including the delegation of authority to the Planning Board with insufficient standards, and density incentives that require ongoing monitoring or are already required by the County Code.

As a general characterization, the development community was generally in support of the ZTA with amendments to clarify the zone's intent, allow flexibility from specific standards, and change transit proximity standards. The civic community expressed concerns about how the zone would be applied to property, the sketch plan process (particularly its ability to provide adequate information to the community), the value to the community of some density increasing attributes, and the ability of communities to negotiate for major public facilities and open spaces. Some testimony suggested using the TMX zone with amendments instead of creating a new CR zone. This testimony questioned the need for the new CR zones in advance of the Zoning Ordinance Re-write project. The City of Takoma Park raised concerns about the impact of the CR zones on small lots. Questions about the zones' legality were also raised.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation. The Committee received briefings from the Planning Department, both before and after the introduction of ZTA 09-08, on July 27, 2009 and on October 13, 2009. In 2009, the Committee conducted worksessions on ZTA 09-08 on November 2, 9, 17, and 23. In 2010, the Committee conducted worksessions on January 11 and 25. Planning Board and Planning Staff recommendations changed over this time period. The Committee allowed interested parties to speak and participate during its worksessions.

On January 25, 2010 the Committee (2-1, Councilmember Elrich opposed) recommended approval of ZTA 09-08 with amendments. A majority of the Committee believed that the ZTA would aid in the implementation of the Gaithersburg West Sector Plan, the White Flint Sector Plan, and other master and sector plans. Councilmember Elrich believed that existing zones could be amended to implement the plans before the Council.

The following table summarizes the Committee's recommended changes from ZTA 09-08 as introduced.

PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow density averaging between different CR zones (line 28) (2-1, Councilmember Elrich would allow density transfers only from a lower to a high density zone)	Density averaging allows for greater design flexibility	Allow density averaging only from a lower density zone to a higher density zone
Apply a CR zone only if it is specifically recommended in a master plan instead of in conformance with a plan	The master plan process allows for a careful consideration of properties; a conformance requirement would allow a sectional map amendment to replace current zones with CR zones	
Delete the definition of locally owned small business	Creating a density incentive for small retail spaces instead would be more easily enforced	
Revise the definition of recreation	Simplifies the allowable land uses	
Add definitions of renovation and reconstruction	This clarification was requested by the City of Takoma Park	
Revise the definition of transit proximity (2-1, Council President Floreen would allow a transit proximity density increase for bus service)	Bus service changes over time and therefore should not justify decreased parking and increased density; proximity should be determined by the building's distance to transit	Create 3 levels of transit proximity; allow some density increase for bus stop proximity
Delete a site plan requirement caused only by trip productions	Buildings smaller than 10,000 feet of floor area should not warrant site plan review in CR zones	
Require a sketch plan application before or with a preliminary plan application	The sketch plan should be the starting point for subsequent applications	
Defined sketch plan process	The process and requirements for approval were not clearly defined; clarification was requested by civic communities	Require a single sketch plan for land under single ownership
Revise the Planning Board's authority to amend a sketch plan (2-1, Councilmember Knapp opposed to a unilateral change)	The Planning Board should have the discretion to judge new information when a site plan is approved; discrepancies from the sketch plan should be noted in the staff report	Require applicant's consent to change the essential elements

PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow Planning Board to adopt design guidelines that implement the master plan; applicant must address the guidelines at site plan	The Planning Board's guidelines can respond to changing circumstances	Require Council approved regulations instead of guidelines
Allow Planning Board guidelines to designate priority retail streets	The Planning Board's guidelines can respond to changing circumstances	Designate priority retail streets in a master plan or in Council approved regulations
Revise the requirement for bike parking	The requirements should be amended to be progressive with the size of buildings; references for free parking should be deleted	
Reduce the number of parking spaces for retail and restaurants (lines 306-315)	The current parking requirements are too high; 4 spaces for every 1,000 square foot of leasable space is sufficient	
Apply parking rates to the gross floor area within each distance category	The distance from transit should determine the parking reduction, not a single categorization of a large site	
Allow drive-through service windows on side walls, if screened	The visual objections to service windows can be mitigated with screening	
Delete the landscaping requirement for internal streets and sidewalks	No buffering should be required internally	
Amend the floor area allowed as a standard method development (the larger of .5 FAR or 10,000 square feet of floor area)	Buildings less than 10,000 sq. ft. are too small to invoke the optional method of development process	
Allow for retaining existing setbacks	Setbacks for existing buildings have established the neighbors' expectations	
Amend public use space requirements and apply the requirement to the total area within a sketch plan application; limit off-site public use space	Open space on an individual lot is unimportant; the amendment would simplify differences to 5% between classifications; allow small developments (less than 10,000 square feet that do not require site plan approval) to have no public use space; large sites should have on-site public use space	Do not require any standard method project to provide public use space; some optional method projects would not be required to provide public use space

PHED Recommended Revision	Reason(s) for the revision(s)	Alternative Considered
Allow the Planning Board to adopt guidelines to determine the density increase for every criteria	Planning Board guidelines can change with changed circumstances	Determine the maximum density increase in the text of the zone or in Council approved regulations
Allow a maximum 70 percent density increase for major public facilities or sites	Major public facilities can be a justification for greater density than other density-increasing criteria; allow the opportunity for a repeat of the type of recreation center in Friendship Heights	
Amend the density increase for proximity to transit	The relative difference of transit ridership for dedicated transitways is closer to heavy rail than was reflected in the Planning Board's numbers as introduced	Do not allow any density increase for transit proximity
Apply density increase for proximity to transit proportionally	The distance from transit should determine the density increase, not a single categorization of a large site	
Amend the BLT provisions to make the purchase of BLT easements in exchange for additional density optional	Requiring BLTs would reduce development in the CR zone by increasing costs; allow 20,000 sq. ft. of floor area per BLT purchased as an option without any requirement; allow payment for a partial BLT	
Prohibit density increases from community gardens, floor plate size, bio-retention and stormwater recharge, rainwater reuse, dark skies, or LEED ratings (2-0, Council President Floreen absent)	These attributes duplicate similar attributes for which there may be density increases, some attributes that can be addressed by other laws or regulations; "Dark Skies" interjects standards on single projects that are effective only when applied to all projects	
Amend the grandfathering provisions	The CR zones should not invalidate approved plans or the conforming status of existing structures; only non-grandfathered increments should be subject to the standards of the CR zone	Provide grandfathering for additions of 30,000 square feet without any FAR limit

The District Council reviewed Zoning Text Amendment No. 09-08 at worksessions held on February 9, February 23, and March 2, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, except as follows:

- 1) Although density may be averaged between different CR zones, the density of a lot or parcel adjoining or confronting one-family residentially zoned or agriculturally zoned lots or parcels may not be increased.
- 2) The process for modifying the binding elements or conditions of an approved sketch plan was clarified to provide for amendments proposed by the applicant or by Planning staff.
- 3) Standards were provided for Planning Board approved guidelines. The standards include a provision so that guidelines could only address the listed public benefits and may not add more public benefit categories.
- 4) The method of determining transit proximity was revised to allow a project that was at least 75 percent of its land area in a single category to be classified in that category.
- 5) Because increased development increases the demand for housing in the Agricultural Preserve, the purchase of Building Lot Termination (BLT) easements was made a requirement for optional method projects; the provisions for the optional purchase of BLT easements were modified to make the option more attractive to applicants.
- 6) In order to address transportation issues, 2 public benefits were added for dedication of rights-of-way in advance of a sketch plan application and for a binding trip mitigation agreement.
- 7) In order to address the need for wheelchair accessible dwellings, the Council added a public benefit for the voluntary provision of such housing.
- 8) The Council allowed outdoor automobile sales to be prohibited by municipalities.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-08 will be approved as amended.

The Council was aware of the Zoning Ordinance Re-write project and it intends to apply CR zones only by the specific recommendations of a master plan or sector plan.

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

To: Francoise Carrier, Chair
Montgomery County Planning Board

From: Meredith Wellington

Date: February 28, 2011

Re: Discussion of CR Zones ZTA on Thursday, March 3, 2011

A lot could be said about the materials placed on the website for Thursday's work session on the CR Zones ZTA. I will comment, however, on only three matters.

My first two comments relate to statements in the Analysis of the Testimony. At #16, Staff states, "CR zones require compliance with the master plan when preliminary, site plans, and sketch plans are required. Without a major governmental restructuring and/or modified review process, it is unfeasible for projects that go directly to DPS for building permits." See also comment at #75. So it is clear that all standard method projects without site plan will not conform to the master plan. This means that there will be pockets of development all through the CR Zones where master-planned recommendations will be missing. We will probably recognize those sections when we see them, because they will be bare of the streetscape and design elements present in surrounding development. Again, this is an important reason to minimize or eliminate standard method in the CR zones.

At #111, Staff comments, "...in the example of the Friendship Heights recreation facility, what was provided was not what was recommended in the master plan and, thus, could not have been accepted for incentive density." This is simply not accurate. The Friendship Heights Sector Plan, at pages 56 and 57 called for "a minimum of 12,000 square feet of flexible, accessible space in a freestanding building, in the lower levels of a building.... Access should be from the ground level.... Plan the space to accommodate all age groups and a variety of uses, such as community meetings, arts, social activities and dance, sports and fitness, to complement the Friendship Heights Village Center.... Arrange for programming and management of the space." Later, in Fig. 45 at page 114, there is a concept sketch of a park, and an "entrance to a community center." The current community center is larger than 12,000 square feet, but the sector plan called for a minimum. Basically, everything that was recommended came to fruition.

Finally, in the Presentation section, Staff has recommended another change to Section 59-C-15.43 (d), adding a new (3):

The applicant is not required to change any binding element approved under this Section unless the Planning Board finds, upon detailed site

plan review, that the binding element does not satisfy the applicable findings.

Again, Sec. 59-C-15.43 will work better if the term "binding elements" is deleted, but whether the term is deleted or not, this proposed section does nothing to give "binding elements" added clarity. It further muddies the waters. Is it meant to shift the burden to the Planning Board? How does "detailed" site plan review differ from the site plan review that has been required all along in old (3)? That section, now (4), provides:

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

"Modification" refers back to (d)—"modifications to the binding elements or conditions of an approved sketch plan." The above-quoted section assures the applicant that the Planning Board may not be arbitrary and capricious, and must provide new findings to support a modification. In fact, that has always been the case.

Thank you for consideration of these comments.