

MEMORANDUM

September 9, 2011

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz  Legislative Attorney

SUBJECT: Zoning Text Amendment 11-01,
Commercial/Residential Zones – Neighborhood and Town Zones
Remaining Issues

This will be the PHED Committee's 9th worksession on ZTA 11-01.¹ The attached draft ZTA is intended to reflect all of the Committee's recommendations.² Staff repeated the text from ZTA 11-01 as introduced in the attached draft, except where the PHED Committee recommended changes.

The Committee's difficulties with ZTA 11-01 reflect competing values in the County. Some people desire development around transit. That desire is tempered by a competing desire for public benefits which make development more difficult to approve. Neighborhoods should be protected, but projects should have land use flexibility. There is a desire for lower cost housing, but there also is a commitment to fund the Building Lot Termination program. If the list of benefits is too long, the community may not get benefits that it really wants. If the list of benefits is too short, with only high cost benefits, the costs of development could put the County at an economic disadvantage. The Planning Board wants discretion, but developers want certainty. It is hard work to reach the appropriate balance. The Planning Board went through the same process, with very different results.

Would the CR, CRT, and CRN zones recommended by the Committee better achieve desired development and avoid undesirable development? That is the fundamental question for the Committee. The Committee tried to address the problem in the current CR zones of developers using the least costly public benefit choices and avoiding the benefits most desired by the Committee. The Committee's approach was to remove a number of public benefit options. The mathematics of the CR zone (how much floor area is gained for providing a benefit) was retained; the mathematics do not directly relate the cost/benefits of additional floor area to the cost/benefits of public benefits. The Committee should satisfy itself that its recommendations do not overburden soft markets.

This worksession will allow the Committee to reflect on the totality of its recommendations and address a few particular issues. Staff proposes the following outline for this worksession.

- 1) Unaddressed Issues
 - a) Definition of Transit Proximity

¹ The Committee conducted worksessions on June 13, 22, 23, 27, and 30. Additional worksessions were held on July 11, 14, and 18. Nine worksessions for 46 pages of submitted text equates to 5.1 pages per worksession.

² A summary of the Committee's recommendation is attached to the memorandum.

- b) Standards for projects that retain existing buildings (providing for interim development)
- 2) Design Guidelines – must site plans conform or address? (Reconsideration due to Takoma/Langley worksession)
- 3) PHED Recommendations
 - a) Hold White Flint and Shady Grove harmless from changes to public benefits
 - b) Public benefit points with transit proximity as a benefit
 - c) Problems with proposed public benefits (guidance for guidelines)
- 4) Comments from Municipalities / Agencies
 - a) Takoma Park
 - b) Kensington
 - c) Housing Opportunities Commission
- 5) Staff Observations
 - a) Appropriate zones for Kensington, Takoma/Langley, and Wheaton
 - b) CR zones applicability (neighborhood protection)

1) Unaddressed issues

a) Definition of Transit Proximity

The Committee recommended transit proximity as a way to earn public benefit points. This would maintain the preferred status of development closest to existing or planned transit facilities. The Committee did not recommend any changes to the definition of transit proximity. ZTA 11-01 as introduced would exclude master planned facilities that were beyond the scope of capital improvements programs.³ This new definition would apply to White Flint and Shady Grove if currently CR zoned properties are not excluded. The Planning Board more recently recommended deleting the funding requirement and recommended the definition read as follows:

Transit proximity: Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master 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 entrance.

The only difference between this definition and the current definition is adding the term “master” to modify “planned”. Under the Planning Board’s most recently proposed definition, there would be no need to exclude currently zoned CR properties because it is not a material change from the current provision. The following table describes 3 definitions of transit proximity:

³ The definition of Transit proximity in ZTA 11-01 as introduced is as follows:

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 entrance. To qualify as a planned station or stop, the station or stop must have funds appropriated in the relevant Capital Improvements Program.

Staff notes that the term “funds appropriated” is not restricted to construction funds. Planning funds are appropriated fund. Both the CCT and the Purple Line have planning funds appropriated. There are no funds appropriated for construction for either project.

Source	What is the meaning of “planned”?	Is MARC included?	Impact on property currently zoned CR
Current definition	Not defined	Yes	None
ZTA 11-01 as introduced	Funds approved in a CIP	Yes	Eliminates the benefit of being near the CCT and the Purple Line if the funding requirement applies to construction
As recommended by the Planning Board	Recommended in an adopted Master Plan	Yes	None

Councilmember Elrich (and former Planning Board member Meredith Wellington) would want to exclude MARC rail from the definition. The Planning Board and the Town of Kensington recommend including MARC service. The Committee did not vote on this specific issue.

Staff recommends amending the definition as introduced to the definition recently proposed by the Planning Board. This definition would not change the public benefit obligations of CR zoned property in White Flint or Shady Grove.

b) Standards for projects that retain existing buildings (providing for interim development)

The most environmentally sound approach to development is to reuse buildings instead of demolishing them. The Planning Board’s adopted CR guidelines purport to allow a reduced public benefit burden for projects that retain existing building. The amount of public benefit required by the guideline is related to the percentage of new construction on the site. There is a correctable problem in this guideline: the CR zone does not currently authorize it. *ZTA 11-01 should be amended to support this guideline.*

Based on the Planning Board adopted guideline, §59-C-15.92 should be amended to add the following provision:

Development in the CR or CRT zones that:

- 1) maintains 75% of the structural system of the existing building;
- 2) uses an architectural deconstruction company or organization to remove recyclable materials prior to any demolition; and
- 3) submits documentation showing compliance with these criteria before the County issues a building permit for a new development

will receive public benefit points, determined by applying the following formula:

Required public benefit points in CR zones =
 $100 - ((\text{Retained gross floor area} / \text{Incentive density gross floor area}) \times 100);$

Required public benefit points in CRT zones =
 $50 - ((\text{Retained gross floor area} / \text{Incentive density gross floor area}) \times 100).$

2) Design Guidelines – conform or address? (Reconsideration due to Takoma/Langley worksession)

The PHED Committee recommended provision for master plan and design guideline conformance reads as follows:

59-C-15.61. Master plan and design guidelines conformance.

Development that requires a site plan must be substantially consistent with the applicable master or sector plan and any design guidelines approved by the Planning Board that implement the applicable plan.

Currently, CR zones only require that site plans “address” design guidelines. The Committee discussed the burdens of requiring substantial consistency with design guidelines when it reviewed the Takoma/Langley Sector Plan. Design guidelines have a vision for the use of maximum density when the reality of market conditions may only allow partial development. Design guidelines are not approved by the Council. The guidelines could create substantial burdens, particularly for interim development.

*Staff recommends that site plans **address** design guidelines.*

3) **PHED recommendations**

a) **Hold White Flint and Shady Grove harmless from changes to public benefits**

The Committee wanted ZTA 11-01 to have no effect on the public benefits provided by CR zoned property owners located in White Flint and Shady Grove. The attached draft ZTA accomplishes that by keeping the current benefits for current CR zoned properties and creating benefits for property zoned CR after October 1, 2011. This solution avoids creating a new type of CR zone with a different name, but it will require every future CR zoned property to research when the zone was applied. Staff was persuaded to use a date approach to assure that the amendments to ZTA 11-01 are within the scope of the public hearing advertisement.⁴

Retaining the current public benefit requirements for existing CR zoned property has the following implications:

The Planning Board recommended adding architectural elevations, wayfinding, live/work units, recycling facilities, and habitat preservation as new public benefits; all of these provisions would not apply.

The ability of the Planning Board to give density credit for non-master planned public facilities would not apply.

For newly zoned areas, the Committee recommended deleting through-block connections, advanced dedication of Master Plan right-of-way, workforce housing, adaptive building, energy conservation, energy generation, vegetated wall, tree canopy, vegetated area, vegetated roof, cool roof, recycling facility plan, and habitat preservation/restoration. These attributes would still be public benefits in White Flint and Shady Grove.

The additional incentives for affordable housing would not apply.

Development in the CR zone outside of White Flint and Shady Grove, where a reduced list of more costly benefits applies, will have more costly obligations than development inside White Flint and Shady Grove, where a longer list of public benefit options applies.

⁴ The ZTA was advertised to establish the CRN and CRT zones and to generally amend the CR zones. It was not advertised to establish a new zoning classification beyond CRN and CRT.

b) Public benefit points developed with transit proximity as a benefit

Councilmember Elrich's public benefit point proposal assumed that no points would be given for proximity to public transit. The Committee included points for proximity to public transit. The original point list proposed by Councilmember Elrich may not yield desirable results when transit proximity points can be added to them. The Committee may wish to consider if the proposed points should be changed.

c) Problems with proposed public benefits

Local neighborhood business benefit

The Committee recommended an incentive for providing below market rental costs to local neighborhood oriented businesses. Confining this benefit to local businesses is a problem.⁵ The Commerce clause of the United States Constitution has been interpreted by the Supreme Court to prohibit local laws from interfering with interstate commerce.⁶ A statute will almost always be struck down if it is facially discriminatory toward out-of-state businesses.⁷ A facially discriminatory statute is one whose language clearly makes a distinction favoring in-state commerce.⁸ The exception is that overtly discriminatory laws may be upheld if they serve a legitimate local purpose and where non-discriminatory alternatives are not available.⁹ A regulation that only benefited local businesses would be facially discriminatory.¹⁰

After consultation with Councilmember Elrich, the term *local* was removed from the provision. There is still an enforcement problem with monitoring rents for neighborhood oriented businesses. There is no term limit proposed for the commercial rent control provision. Councilmember Elrich's recommendation to have a 10 year limit is included in the attached draft.¹¹

Standards for public benefit points

ZTA 11-01 (as introduced) identifies public benefits and provides guidance (sometimes maximum point values; sometimes minimum point values) to determine how the benefit relates to density. The Committee's proposed new benefits do the same. Exactly how a proposal achieves points between the minimum and maximum is left to the Planning Board's guidelines. Other jurisdictions put the formula for rating a public benefit in the text of the zone. The formula method avoids a court finding that the Council delegated its zoning authority without specific standards. The Council may wish to adopt the formula in the Planning Board's guidelines and provide new formulas for the new public benefits.

⁵ See memorandum to Councilmember Leventhal, July 19, 2011.

⁶ *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985). An Alabama statute imposed a substantially lower gross premiums tax rate on domestic insurance companies than on out-of-state (foreign) insurance companies. The statute permitted foreign companies to reduce but not to eliminate the differential by investing in Alabama assets and securities. The Court found that a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence.

⁷ See, e.g., *Granholm v. Heald*, 544 U.S. 460, 487-88 (2005).

⁸ *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994); *Ore. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 107-08 (1994).

⁹ *Maine v. Taylor*, 477 U.S. 131, (1986). The Court held that an overtly discriminatory law (prohibiting the sale of out-of-state bait) is Constitutional only if the law serves a legitimate local purpose (avoiding fish disease) where non-discriminatory alternatives (inspecting all imported bait) are not available.

¹⁰ It is possible to favor physically small businesses, but favoring locally owned small businesses in zoning will lead to Constitutional complications.

¹¹ Councilmember Elrich's recommendation to include subtotal maximums for Public Accommodations and Place Making are also include in the attached draft.

4) Comments from Municipalities

a) Takoma Park

The City of Takoma Park recommends:

* *excluding small sites (less than 1 acre without common ownership with neighboring sites) from the optional method process (small sites would be able to achieve their density through standard method development):*

Staff Comment: Any such provision would have to be drafted in a manner that prevents large sites from subdividing for the purpose of avoiding zoning obligations.¹² Excluding small sites (that exist before October 1, 2011) would mean very few optional method developments in small lot areas such as Kensington and Wheaton. One acre (43,560 square feet) is a relatively large property in a commercial area. The minimum lot size for the optional method of development in CBD zones is 18,000 square feet. If the Council's primary object is to get public benefits from future development, then this is a bad idea.

Excluding small sites from optional method development is a development friendly idea that would reduce the discretion of the Planning Board. The standards for when site plan would be required would not change. The design vision of the master plan would still be obtainable through site plan approval; the public benefits other than those associated with design would not be required, except for sites over an acre. The idea is consistent with developing zones that are less burdensome to developers. It would reduce the steps necessary for approval by removing the sketch plan process (and the Planning Board's approval of benefits). If the Council's primary goal is to create an easier path for lots smaller than 1 acre, then Takoma Park has a good idea.

Takoma Park's idea is a radical departure from the premise that optional method development is preferred and should be encouraged. Their idea was a reaction to the PHED Committee's desire to reduce the number of less expensive benefits and retain more expensive benefits.¹³ Going back to the Planning Board recommended benefits would be another way to fix the problem.

* *eliminating the minimum number of parking spaces required (to avoid parking waivers):*

Staff Comment: After considering testimony from residential property owners near property proposed for CRT and CRN zoning, the Committee recommended **increasing** minimum parking requirement to protect neighborhoods from spill over parking problems. There is a clear difference of opinion on whether on-site parking is a problem or a solution. Staff believes that the parking waiver process is an adequate case by case means to decide that issue.

* *add public benefit points for more small business opportunities (discourage large format retail stores with long stretches of unrelieved wall space along streets; encourage micro retail spaces):*

Staff Comment: Determining how many public benefit points each public benefit achieves is a legislative judgment. To the extent that more points can be gained for small retail spaces, less

¹² The MPDU law counts all land under common ownership at one location to avoid the creation of subdivisions for the purpose of avoiding the MPDU trigger.

¹³ Yesterday's solution always has the potential to be today's problem.

points may be used for affordable housing or other desired benefits. The treatment of the facade along a street can be something in design guidelines rather than a zoning restriction on the format of the retail store. The Committee has already recommended that facade treatments be a public benefit category in CRT zones.

- * *incorporate streetscaping requirement in the ZTA or the Sector Plan:*

Staff Comment: Staff previously recommended that site plans should be required to address guidelines and not conform to them. To the extent that stronger guidance is desired, the Council should recommend streetscaping in the sector plan.

- * *allow site plans to address a portion of the site to allow for interim development:*

Staff Comment: This point relates to the force of design guidelines over “minor” additions. Developers want additional assurance that a site plan for the entire site will not be required and that end state features (new streets, e.g.) are not required in the site plan process for minor additions. There is no requirement for a site plan to cover an entire project, but the Planning Staff wants some assurance that the interim project is not an impediment to full redevelopment. Staff believes development that “addresses” design guidelines instead of substantially conforming to guidelines may lessen some anxiety.

Landowners of an existing shopping center want relief from all aspects of the zone, other than the site plan process, for development larger than 10 percent of the current project but less than 30,000 square feet.¹⁴ There are mandatory design aspects for parking location, drive-through location, landscaping, and lighting in the current zone that will create challenges for relatively small additions to existing structures. To that end, the current provision allows minor additions (the lesser of 10 percent of current development or 30,000 square feet, whichever is less). The Committee previously rejected changes to the grandfathering provision.¹⁵

b) Town of Kensington

With respect to public benefits, the Town of Kensington prefers ZTA 11-01 as introduced. The Town expressed concern that the limited public benefits recommended by Councilmember Elrich would increase the cost of development and thereby would severely handicap new development in Kensington, Takoma Park, and Wheaton.

c) Housing Opportunities Commission

The Commission believes that the revised list of public benefits still does not give sufficient incentives to developers to provide more moderate priced housing than required by law. In their opinion, the less costly benefits will be preferred by developers. The Commission suggests a buyout provision for MPDUs above the 12.5% minimum requirement, to make MDPU an easier choice. This recommendation would require a change to Chapter 25A as well as an amendment to ZTA 11-01.

¹⁴ One landowner proposed the following addition to the grandfathering provision:

Expansions, reconstruction and enlargement of existing buildings totaling more than 10 percent of the existing floor area but less than 30,000 square feet, and construction of new buildings up to 30,000 square feet, on developed sites larger than 8 acres may be allowed through approval of a site plan, and without compliance with the provisions of this Division, provided the development does not prevent future redevelopment of the site in a manner consistent with the master plan or sector plan recommendations and the provisions of this Division.

¹⁵ There is evidence to conclude that if you beat a dead horse, it will not run faster.

The Commission also believes that holding ALL property in White Flint and Shady Grove harmless from the proposed public benefit changes in ZTA 11-01 is excessive. The Commission suggested that development be allowed to proceed for 3 years under the old rules. (The Commission's recommendation was not specific in stating when the current public benefit provision should vest; it could vest at sketch plan application, sketch plan approval, or site.) Development that proceeds after 3 years should follow the new rules. Only 3 properties have started their development process under the old rules. The vast majority of CR zoned property owners have no current plans to develop.¹⁶ Allowing all currently zoned CR properties to use the "old" public benefit provisions is not justified if the Council believes that the public interest lies in changing those benefits.

Staff Comment: The PHED Committee will review MPDU requirements this fall. If the Committee believes that a buyout for "bonus" MPDUs (the amount of MPDUs above the 12.5 percent) is a good idea, the zone can be revised accordingly.

The Maryland Courts respect the Council's right to determine zoning requirements that promote the public's health, safety, and welfare. The Courts further recognize that, from time to time, the Council may change zoning requirements. As such, the vesting rule in Maryland is extremely harsh to developers. Unless a development has footings in the ground under a validly issued building permit, zoning rights are not vested. The Council mitigates this rule by having more generous grandfathering provisions when it deems it appropriate.

A change in zoning rules stems from the Council's decision that new rules promote the general welfare of the County better than the older rules. Grandfathering is clearly defensible when a landowner has relied upon the pre-existing code and made a significant investment in proceeding through the development process. It is less defensible without public evidence of the landowner's efforts. Given the magnitude of the changes recommended by the Committee, Staff agrees with HOC's recommendation to reduce the scope of property owners that are permitted to develop under old rules.

5) Staff Observations

a) Establishing appropriate zones for Kensington, Takoma/Langley and Wheaton

Councilmember Elrich asked for staff's overall comments and recommendations. The following responds to that request.

The CR zones are a response to the 2 major problems of the CBD zones: 1) the public benefits do not sufficiently benefit the public; and 2) the negotiations are open-ended and mostly occur in private meetings with staff. The CR zones are designed for daylight negotiations. The zones list the menu of benefits and their relative value to the community. They provide the Planning Board discretion to develop and use guidelines in general; establish an incentive for the optional method of development; and also provide the Planning Board the opportunity to determine the specific types of public benefits that should be provided by particular sites. ZTA 11-01 and the amendments proposed by the PHED Committee do not change that foundation.

The task given to the Planning Board was to propose zones that could be used in Kensington, Takoma/Langley, and Wheaton. The burdens of the CR zones were thought to be too heavy for these softer markets. By reducing the menu of choices in the public benefit categories, the recommendations of the

¹⁶ The Commission mistakenly believes that the property in Shady Grove has not been mapped as CR. In fact, the Council approved the Sectional Map Amendment for the Great Seneca Science Corridor, which applied CR zones, in July of 2010.

PHED Committee will make optional method redevelopment less likely in CRT and CR zones applied if ZTA 11-01 is adopted.

The Committee is dissatisfied with the current CR zones, but not sufficiently dissatisfied to change the rules for property currently in CR zones (in White Flint and Shady Grove). The results are rules that are more difficult for weaker markets. As proposed by the Committee, development would be more costly in the CR zone in Wheaton than in the CR zone in North Bethesda. The Committee's proposed changes would not achieve the intended benefits in these weaker markets; developers will always prefer to build elsewhere. Reducing the list of public benefits for North Bethesda and Shady Grove may achieve some of the desired benefits, but the Committee wants to hold those areas harmless from changes. Staff agrees with HOC's comments that the grandfathering provision should apply to the properties that have taken action on their CR zone and not to every property owner.

There are 2 more dramatic approaches to increase certainty for developers and transparency for residents: 1) have more development standards and less negotiable public benefits; and 2) establish the formula to determine how much floor area is granted for the volume or cost of each benefit. Both of these options would require significantly more change to the CR zones.

The Code for the City of Chicago provides different equations for various public benefits. Each equation determines how much additional square footage of floor area is allowed for some square footage of public improvement.¹⁷ Under the Chicago approach, the costs and benefits of each public benefit can be a consideration in the equation. This is a different approach that has significant merit.

b) Applicability of CR zones (neighborhood protection)

The elephant in the room is the Zoning Ordinance Rewrite. The Planning Board's recommendation should get to the Council no later than December 2012. ZTA 11-01 includes the same applicability provision adopted by the last Council. It would only apply commercial/residential zones as follows:

59-C-15.13. Applicability.

The CRN, CRT, and CR zones can only be applied when specifically recommended by an approved and adopted master or sector plan and only by sectional map amendment.

Councilmember Elrich requested text to afford residential communities protection from commercial intrusions. The protection of residential communities currently lies in the recommendations of the Master Plan. It would allow master plans to recommend the CR, CRT, or CRN zones when the zones could implement the vision of the plan. Unless the provision is removed or amended, it will not allow a district map amendment following the Zoning Ordinance Rewrite to replace any of the current commercial or mixed-use zones.

¹⁷ Examples from the Chicago Code:

The floor area bonus for qualifying parks and plazas is calculated as follows: Bonus FAR = (area of plaza or park ÷ lot area) × 1.0 × Base FAR.

The floor area bonus for qualifying winter gardens is calculated as follows: Bonus FAR = (area of winter garden ÷ lot area) × 1.0 × Base FAR.

The floor area bonus for qualifying indoor through-block connections is calculated as follows: Bonus FAR = (area of the indoor through-block connection ÷ lot area) × 0.66 × Base FAR.

The Committee discussed and rejected mechanical criteria (minimum distance for single-family homes) for the application of CRN and CRT zones.¹⁸ The Committee's recommended changes to allowable land uses in the CRN zones afford communities protection.

The Planning Department's website and its communications concerning the Zoning Ordinance Rewrite indicate a desire to completely replace all current commercial and mixed-use zones. This would be done in the process of rezoning the entire County by a district map amendment.¹⁹ The applicability provision must be changed if the Zoning Ordinance Rewrite is to completely replace all current commercial and mixed-use zones. If the Council has no desire to ever change the applicability standards for CR zones, it could signal that by not changing this provision. If the Council agrees that the Zoning Ordinance Rewrite project should have the ability to apply CR zones, neighborhood protection can be provided with the following provision.

59-C-15.13. Applicability.

- 1) The CRN, CRT, and CR zones can only be applied:
 - a) by sectional map amendment when specifically recommended by an approved and adopted master or sector plan; or
 - b) by district map amendment if:
 - i) the property was in a Commercial, Central Business District, Transit Station Development, Mixed-Use Town Center, Transit Oriented Mixed-Use, or Transit Mixed-Use zone; and
 - ii) the density allowed by the new zoning does not exceed the density allowed under the pre-existing zoning.
 - c) In the district map amendment process, a property in the C-1 zone or CT zone that abuts a residential or agricultural zone may only be rezoned to a CRN zone.

This provision would allow for the replacement of existing zones but would not allow property residentially zoned to be commercially zoned by a comprehensive rezoning. It would not allow greater density, even though housing would be allowed. Some residents object to any application of CR zones without a master plan amendment's specific recommendation. Staff's provision is a middle ground between residents who want zoning to only be changed by master plan recommendations and the Planning Staff who would like unlimited flexibility in their Zoning Ordinance Rewrite recommendations. It would allow for a shorter new zoning ordinance.

Why address this issue now? Residents will point to **this** Council's approval of the applicability provision as a statement of policy that should be followed by the Planning Board. A Zoning Ordinance Rewrite that

¹⁸ Staff memo for June 17 included the following:

Should the CR and CRT zones be prohibited from abutting one-family zoned property and confronting one-family zoned property across a minor street? In White Flint, the CR zones have already been applied to property abutting one-family zoned property. The reason to choose one CR zone over another is not dependent upon density, major land use limits, or height. Those elements are "controlled" by the master plan. Even if those standards were not controlled, buildings on large sites can be located away from single-family zones in the site plan process. It is more difficult to do that on small sites. Unforeseen future positive opportunities may be missed if there is a firm rule limiting the Council's ability to apply a zone; however, rules for applicability are common in the Ordinance and provide more certainty to residents and landowners.

¹⁹ A district map amendment is like a sectional map amendment, except that it rezones all of the land governed by the Council's zoning powers. Although a sectional map amendment must implement changes that are implemented by a comprehensive plan or functional plan, there is not a similar requirement for a district map amendment under §59-H-2.6. The basis for a district map amendment would be a Zoning Ordinance rewrite and the need to rezone all property in one action.

follows the current applicability provision must retain all current commercial and mixed-use zones. The Council can simplify the Zoning Ordinance Rewrite workload by addressing the issue now.

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Zoning Text Amendment No: 11-01
Concerning: Commercial/Residential
zones – Neighborhood
and Town zones
Draft No. & Date: 6 – 9/9/11
Introduced: April 12, 2011
Public Hearing: May 17, 2011
Adopted:
Effective:
Ordinance No:

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

By: Council President Ervin at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- **establish** the Commercial/Residential Neighborhood (CRN) and Commercial/Residential Town (CRT) zones; and
- generally amend the Commercial/Residential zones.

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

DIVISION 59-C-15 “COMMERCIAL/RESIDENTIAL [(CR)] ZONES”

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

ORDINANCE

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

Sec. 1. Division 59-C-15 is amended as follows:

*** * ***

DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL [(CR)] ZONES

59-C-15.1. Zones established.

59-C-15.11. [The Commercial/Residential (CR) zones are established as combinations of a sequence of 4 factors: maximum total floor area ratio (FAR), maximum non-residential FAR, maximum residential FAR, and maximum building height.]

(a) There are 3 commercial/residential classifications with variable uses, density and height limits, general requirements, development standards, and public benefit requirements to respond to different settings. These zone classifications are:

(1) CR Neighborhood (CRN);

(2) CR Town (CRT); and

(3) CR (CR).

(b) [These zones are identified by] Each CRN, CRT, or CR zone classification is followed by a number and a sequence of 3 additional symbols: [CR,] C, R, and H, each followed by a number where:

[(a)](1) the number following the [symbol “CR”-] CRN, CRT, or CR is the maximum total FAR;

[(b)](2) the number following the [symbol] “C” is the maximum non-residential FAR;

[(c)](3) the number following the [symbol] “R” is the maximum residential FAR; and

[(d)](4) the number following the [symbol] “H” is the maximum building height in feet.

(c) The Commercial/Residential zones must be applied on the zoning map that will show, for each property classified:

(1) the commercial/residential classification; and

(2) the 4 standards (total, non-residential, and residential densities and building height).

(d) This Division uses examples and illustrations to demonstrate the intent of the CR zones. [The] These examples [in this Division] and illustrations do not add, delete, or modify any provision of this Division. [Examples are provided only to demonstrate particular applications of the provisions in the Division. Examples are not intended to limit the provisions.]

59-C-15.12. Density and height allocation.

59-C-15.121. Density and height limits.

(a) Each [[unique sequence of]] CRN, CRT, or CR[[,]] classification and unique sequence of C, R, and H is established as a zone under the following limits:

<u>Category</u>	<u>Maximum Total FAR</u>	<u>Maximum C or R FAR</u>	<u>Maximum H</u>
<u>CRN</u>	<u>0.5 to 1.5</u>	<u>0.25 to 1.5</u>	<u>40 to 65</u>
<u>CRT</u>	<u>0.5 to 4.0</u>	<u>0.25 to 3.5</u>	<u>40 to 150</u>
<u>CR</u>	<u>0.5 to 8.0</u>	<u>0.25 to 7.5</u>	<u>40 to 300</u>

(b) Zones may be established and mapped at densities in increments of 0.25 and heights in increments of 5 feet within the ranges indicated in the table.

Example: Under the provisions of Sections (a) and (b) above, the CRN zones may establish maximum total densities of 0.5, 0.75, 1.0, 1.25, or 1.5 FAR, and maximum heights of 40, 45, 50, 55, 60, or 65. The range of densities and heights

from which the various CRN zones can be established and mapped provides guidance to the Planning Board's recommendation and to the Council when ~~[[applying]]~~ applying a particular zone. Once the zone is approved on a zoning map, it allows a ~~[[developer]]~~ a property owner to build at any height and density up to the maximum. For example, a property owner whose land is zoned at CRN-1.0 C-0.5 R-1.0 H-45 could elect to build at a 1.0 FAR with a height of 35 feet or 0.75 FAR and 42 feet, or any other combination up to 1.0 FAR and 45 feet.

- [(a) the maximum total FAR must be established as an increment of 0.25 from 0.5 up to 8.0;
- (b) the maximum non-residential and residential FAR must be established as an increment of 0.25 from 0.25 up to 7.5; and
- (c) the maximum height must be established as an increment of 5 feet up to 100 feet and an increment of 10 feet from 100 feet up to 300 feet.]

[59-C-15.121]59-C-15.122. Density averaging.

Permitted density may be averaged over 2 or more directly abutting or confronting lots or parcels in one or more CRN, CRT, or CR zones, provided that:

- (a) the lots or parcels are subject to the same site plan or sketch plan; however, if a sketch plan is required, density averaging must be shown on the sketch plan;
- (b) the lots or parcels are created by the same preliminary subdivision plan or satisfy a phasing plan established by an approved sketch plan;
- (c) the maximum total [density and] ~~[[,]]~~ non-residential and residential density limits apply to the entire development, not to individual lots or parcels;
- (d) no building may exceed the maximum height set by the zone;

- (e) [public benefits must be provided under the phasing element of an approved sketch plan] uses are subject to the provisions of the property's zone classification;
- (f) the total allowed maximum density [of] on a lot or parcel [zoned CR] that is adjacent to or confronting [one-family residentially zoned or agriculturally zoned lots or parcels] a lot or parcel in a one-family residential zone or an agricultural zone may not [be exceeded] exceed that allowed by the lot or parcel's commercial/residential zone; and
- (g) [the resulting development must conform to the design and land use objectives of the applicable master or sector plan and design guidelines.] public benefits must be provided under the phasing element of an approved sketch plan.

59-C-15.13. Applicability.

The CRN, CRT, and CR zones can only be applied when specifically recommended by an approved and adopted master or sector plan and only by [the] sectional map amendment [process].

Examples:

- An area zoned [CR-2.0] [CRN1.5, C1.0, R1.0, [H80] H45]] CRN-1.5 C-1.0 R-1.0 H-45 allows a total FAR [of 2.0] up to 1.5, with maximum non-residential and residential FARs of 1.0, thereby requiring [an equal] a mix of uses to obtain the total FAR allowed. The height for any building in this zone is limited to [80] 45 feet.
- An area zoned [CR-6.0, C3.0, R5.0, H200] [CR-6.0 C-3.0 R-5.0 H-200] allows [a residential FAR of up to 5.0,] a non-residential FAR [of] up to 3.0, a residential FAR up to 5.0, and a mix of the two uses could yield a total FAR of 6.0. This combination allows for flexibility in the market and shifts in the surrounding context. The height for any building in this zone is limited to 200 feet.
- An area zoned [CR-4.0] [CRT3.5, [C4.0] C3.5, [R4.0] R3.5, [H160] H100] CRT-3.5 C-3.5 R-3.5 H-100 allows complete flexibility in the mix of uses, including buildings with no mix, because the maximum allowed non-residential and residential FARs are both equivalent to the total maximum FAR allowed. The height for any building in this zone is limited to [160] 100 feet.

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 zones promote economically, environmentally, and socially sustainable development patterns where people can live, work, recreate, and have access to services 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.

The objectives of the CRN, CRT, and CR zones are to:

- (a) implement the policy recommendations of applicable master and sector plans;
- (b) target opportunities for redevelopment of single-use areas and surface parking lots with a mix of uses;
- (c) reduce dependence on the automobile by encouraging development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities;
- (d) allow a mix of uses, densities, and building heights appropriate to various contexts to ensure compatible relationships with adjoining neighborhoods;
- (e) [encourage] allow 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) standardize optional method development by establishing minimum requirements for the provision of [the] public benefits that will support and accommodate density above the standard method limit.

59-C-15.3. Definitions specific to the CR zones.

The following words and phrases, as used in this Division, have the meaning indicated. The definitions in Division 59-A-2 otherwise apply.

Car share space: a parking space that serves as the location of an in-service vehicle used by a vehicle-sharing service.

Cultural institutions: public or private institutions or businesses, including: art, music, and photographic studios; auditoriums or convention halls; libraries and museums; recreational, performance, or entertainment establishments, commercial; theater, indoor; theater, legitimate.

Day care facilities and centers: facilities and centers that provide daytime care for children and/or adults, including: child daycare facility (family day care, group day care, child day care center); daycare facility for not more than 4 senior adults and persons with disabilities; and day care facility for senior adults and persons with disabilities.

Frontage: a property line shared with an existing or master-planned public or private road, street, highway, or alley right-of-way or easement boundary.

Limits of Disturbance: an area on a certified site plan within which all construction work must occur.

Live/Work unit: Buildings or spaces within buildings that are used jointly for non-residential and residential purposes [where the residential use of the space may be secondary or accessory to the primary use as a place of work].

Manufacturing and production, artisan: The manufacture and production of commercial goods by a skilled manual worker or craftsman, such as jewelry, metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food products; however, it does not include any activity which causes noise, odor, or vibration to be detectable on a neighboring property.

Public Arts Trust Steering Committee: A committee of the Arts and Humanities Council that allocates funds from the Public Arts Trust.

Public owned or operated uses: Activities that are located on land owned by or leased and developed or operated by a local, county, state, or federal body or agency.

Recreational facilities, participatory: Facilities used for sports or recreation.

Reconstruction: Building the same or less floor area on or within the footprint of a demolished or partially demolished building.

Renovation: An interior or exterior alteration that does not affect a building's footprint.

Seasonal Outdoor Sales: A lot or parcel where a use or product is offered annually for a limited period of time during the same calendar period each year. The availability or demand for the use or product is related to the calendar period, such as Christmas trees, pumpkin patches, or corn mazes.

Tenant Footprint: The horizontal area measured within the exterior walls for the ground floor of the main structure allocated to each non-residential tenant or owner-occupant.

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 entrance. To qualify as a planned station or stop for property zoned CRN, CRT, and CR after October 1, 2011, the station or stop must have funds appropriated in the relevant Capital [[Improvement]] Improvements Program.

59-C-15.4. Methods of development and approval procedures.

[Two methods of development are available under the CR zones] The CRN zones allow development only under the standard method. The CRT and CR zones allow development under the standard method and may allow development under the optional method.

59-C-15.41. Standard Method.

Standard method development [must comply with the general requirements and development standards of the CR zones] is allowed under the following requirements.

(a) In the CRN zones, the maximum total, non-residential, and residential densities and maximum building height for any property are shown on the zoning map.

(b) In the CRT and CR zones, the maximum standard method density is the lesser of the density shown on the zoning map or:

Category	Maximum Total Density
<u>CRT</u>	<u>The greater of 1.0 FAR or 10,000 gross square feet of floor area.</u>
<u>CR</u>	<u>The greater of 0.5 FAR or 10,000 gross square feet of floor area.</u>

(c) A site plan approval under Division 59-D-3 is required for a standard method development [project] only if the development:

[(a)] (1) is a Limited Use;

(2) [the] includes a gross floor area [exceeds] [[exceeding]] 10,000 square feet more than the floor area on the site when the CRN, CRT, or CR zone was applied; [or]

(3) includes a building height exceeding 40 feet; [[or]]

[(b)] (4) [any building or group of buildings contains] includes 10 or more dwelling units; or

209 (5) includes a drive-through facility.

210 **59-C-15.42. Optional method.**

211 Optional method development [must comply with the general requirements and
212 development standards of the CR zones and must provide public benefits under
213 Section 59-C-15.8 to obtain greater density and height than allowed under the
214 standard method of development. A sketch plan and site plan are required for any
215 development using the optional method. A sketch plan must be filed under the
216 provisions below; a site plan must be filed under Division 59-D-3. Any required
217 preliminary subdivision plan must not be submitted before a sketch plan is
218 submitted] is allowed under the following requirements.

219 (a) The maximum total, non-residential, and residential densities and building
220 height for any property are set by the zone shown on the zoning map.

221 (b) A sketch plan must be submitted under Section 59-C-15.43.

222 (c) Site plan(s) must be submitted under Division 59-D-3.

223 (d) Public benefits must be provided under Section 59-C-15.8.

224 **59-C-15.43. Sketch plan.**

225 Any optional method development in the CRT and CR zones requires an approved
226 sketch plan. Any required preliminary plan of subdivision or site plan may [[not]]
227 be submitted [[before a sketch plan has been approved]] when a sketch plan is
228 submitted or any time thereafter.

229 (a) A sketch plan application must contain:

230 (1) a justification statement that addresses how the project meets the
231 requirements and standards of this Division [for optional method
232 development] and describes how the development will further the
233 objectives of the applicable master or sector plan;

234 (2) [an] illustrative [plan] plans [or model that shows] showing:

- (A) [the maximum densities for residential and non-residential uses, massing, and heights of buildings] building densities, massing, heights, and the anticipated mix of uses;
 - (B) locations of public use and other open spaces;
 - (C) pedestrian, bicycle, and vehicular circulation, parking, and loading; and
 - (D) [the] relationships between existing or proposed adjacent buildings [on adjoining tracts] and rights-of-way;
- (3) [an illustrative diagram of proposed vehicular, pedestrian, and bicycle access, circulation, parking, and loading areas;
- (4)] a table of proposed public benefits and the incentive density requested for each; and
- [(5)](4) [the] a general phasing outline of structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.
- (b) Procedure for a sketch plan:
 - (1) Before filing a sketch plan application, an applicant must comply with the provisions of the Manual for Development Review Procedures, as amended, that concern the following:
 - (A) notice;
 - (B) posting the site of the application submittal; and
 - (C) holding a pre-submittal meeting.
 - (2) A public hearing must be held by the Planning Board on each sketch plan application no later than 90 days after the filing of an optional method development application, unless a request to extend this period is requested by the applicant, Planning Board staff, or other

interested parties. A request for an extension must be granted if the Planning Board finds it not to constitute prejudice or undue hardship on any interested party. A recommendation regarding any request for extension must be acted upon [as a consent agenda item] by the Planning Board on or before the 90-day hearing period expires. Notice of the extension request and recommendation by Staff must be posted no fewer than 10 days before the item's agenda date.

(3) No fewer than 10 days before the public hearing on a sketch plan, Planning Board staff must submit its analysis of the application, including its findings, comments, and recommendations with respect to the requirements and standards of this ~~[[division]]~~ Division and any other matters that may assist the Planning Board in reaching its decision on the application. This staff report must be included in the record of the public hearing.

(4) The Planning Board must act within 30 days after the close of the record of the public hearing, by majority vote of those present and voting based upon the hearing record, to:

(A) approve;

(B) approve subject to modifications, conditions, or binding elements; or

(C) disapprove.

(c) In approving a sketch plan, the Planning Board must find that the following elements are appropriate in concept and appropriate for further detailed review at site plan. The sketch plan must:

(1) [The plan: (A) meets the] meet objectives, general requirements, and standards of this Division;

(2) [(B) will further] further the recommendations and objectives of the applicable master or sector plan;[and (C) will provide more efficient and effective development of the site than the standard method of development;]

[(2)](3) [The proposed building massing and height and public use and other open spaces are located and scaled to achieve] achieve compatible internal and external relationships [with each other and with] between existing and proposed nearby buildings, [and] open space [adjacent to the site and with adjacent communities], and uses;

[(3)](4) [The] provide satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading [areas are adequate, safe, and efficient];

[(4)](5) [The proposed] propose an outline of public benefits [and associated] that supports the requested incentive density [will further the objectives of the applicable master or sector plan and the objectives of the CR zones]; and

[(5)](6) [The general] establish a feasible and appropriate provisional phasing [of] plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site [plans is feasible and appropriate to the scale and characteristics of the project] plan applications.

(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 (c) 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 may be approved 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, based on a staff recommendation or on its own initiative, if the Board finds that a change in the relevant facts and circumstances since sketch plan approval demonstrates that the binding element either is not consistent with the applicable master or sector plan or does not meet the requirements of the zone.

(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(c) in

addition to the findings necessary to approve a site plan under Section
59-D-3.

59-C-15.5. Land uses.

No use is allowed in the CRN, CRT, or CR zones except as indicated below:

- *Permitted Uses* are designated by the letter “P” and are permitted subject to all applicable regulations.
- *Limited Uses* are designated by the letter “L” and are permitted subject to all applicable regulations and the additional restrictions under Section 59-C-15.51.
- *Special Exception Uses* are designated by the letters “SE” and may be authorized as special exceptions under Article 59-G.

Use	CRN	CRT	CR
(a) Agricultural (non-residential)			
Farm and country markets	<u>L</u>	<u>P</u>	P
Farm, limited to crops, vegetables, herbs, and ornamental plants	<u>P</u>	<u>P</u>	P
Nursery, horticultural – retail or wholesale		<u>P</u>	P
Seasonal outdoor sales	<u>P</u>	<u>P</u>	P
(b) Residential			
Dwellings	<u>P</u>	<u>P</u>	P
Group homes, small [or large]	<u>P</u>	<u>P</u>	P
Group homes, large	<u>L</u>	<u>P</u>	<u>P</u>
Hospice care facilities	<u>L</u>	<u>P</u>	P
Housing and related facilities for senior adults or persons with disabilities	<u>P</u>	<u>P</u>	P
Life care facilities	<u>P</u>	<u>P</u>	P
Live/Work units	<u>P</u>	<u>P</u>	P
Personal living quarters	<u>P</u>	<u>P</u>	P
(c) Commercial Sales and Service (non-residential)			
Advanced technology and biotechnology		<u>P</u>	P
Ambulance or rescue squads, private	<u>[[L]]</u>	<u>L</u>	P
Animal boarding places	<u>SE</u>	<u>SE</u>	SE
Automobile filling stations		<u>SE</u>	SE
Automobile rental services, excluding storage of vehicles and supplies	<u>P</u>	<u>P</u>	P
Automobile rental services, including storage of vehicles and supplies		<u>L</u>	<u>L</u>
Automobile repair and services		<u>L</u>	P
Automobile sales, indoors	<u>[[L]]</u>	<u>L</u>	P

Use	CRN	CRT	CR
Automobile sales, outdoors [(except where a municipality prohibits the use within its jurisdiction by resolution)]		<u>L</u>	P
Clinic	[[<u>L</u>]] <u>P</u>	<u>P</u>	P
Conference centers		<u>P</u>	P
Eating and drinking establishments	<u>L</u>	<u>P</u>	P
Health clubs and gyms	<u>L</u>	<u>P</u>	P
Home occupations, major	<u>SE</u>	<u>SE</u>	SE
Home occupations, registered and no-impact	<u>P</u>	<u>P</u>	P
Hotels and motels	[[<u>L</u>]]	<u>P</u>	P
Laboratories		<u>P</u>	P
Dry cleaning and laundry pick-up stations	<u>P</u>	<u>P</u>	P
<u>Dry Cleaner / Laundry Under 3,000 square feet GFA</u>		<u>P</u>	<u>P</u>
Offices, general	<u>P</u>	<u>P</u>	P
Recreational facilities, participatory	[[<u>L</u>]] <u>SE</u>	<u>P</u>	P
Research, development, and related activities		<u>P</u>	P
Retail trades, businesses, and services of a general commercial nature <u>with each tenant footprint up to 5,000[[sf]] square feet</u>	<u>P</u>	<u>P</u>	P
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 5,000[[sf]] square feet and 15,000[[sf]] square feet</u>	<u>L</u>	<u>P</u>	<u>P</u>
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 15,000[[sf]] square feet and 60,000[[sf]] square feet</u>		<u>P</u>	<u>P</u>
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint over 60,000[[sf]] square feet</u>		<u>L</u>	<u>P</u>
Self-storage facilities		<u>SE</u>	SE
<u>Veterinary hospitals and offices with boarding facilities</u>	<u>SE</u>	<u>L</u>	<u>P</u>
Veterinary hospitals and offices without boarding facilities	<u>P</u>	<u>P</u>	P
Warehousing, not including self-storage, less than 10,000 square feet		<u>P</u>	P
(d) Institutional & Civic (non-residential)			
Charitable and philanthropic institutions	[[<u>L</u>]] <u>P</u>	<u>P</u>	P
Cultural institutions <u>less than or equal to 5,000 square feet GFA</u>	[[<u>L</u>]] <u>P</u>	<u>P</u>	P
<u>Cultural institutions greater than 5,000 square feet GFA</u>		<u>P</u>	<u>P</u>
<u>Day care facilities and centers with over 30 users</u>	<u>L</u>	<u>L</u>	P
<u>Day care facilities and centers with up to 30 users</u>	<u>P</u>	<u>P</u>	<u>P</u>
Educational institutions, private	<u>L</u>	<u>P</u>	P
Hospitals		<u>P</u>	P
Parks and playgrounds, private	<u>P</u>	<u>P</u>	P
Private clubs and service organizations	<u>L</u>	<u>P</u>	P

Use	CRN	CRT	CR
Publicly owned or publicly operated uses	<u>P</u>	<u>P</u>	P
Religious institutions	<u>P</u>	<u>P</u>	P
(e) Industrial (non-residential)			
Manufacturing and production, artisan	<u>P</u>	<u>P</u>	P
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, and projects resulting from biotechnical and biogenetic research and development		<u>L</u>	P
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment		<u>L</u>	P
(f) Other (non-residential)			
Accessory buildings and uses	<u>P</u>	<u>P</u>	P
Bus terminals, non-public		<u>P</u>	P
Parking garages, automobile		<u>P</u>	P
Public utility buildings, structures, and underground facilities	<u>P</u>	<u>P</u>	P
Radio and television broadcast studios		<u>P</u>	P
Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms	<u>P</u>	<u>P</u>	P

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350 **59-C-15.51. Limited Uses.**

351 **59-C-15.511. Applicability.** Uses designated by an “L” in the land use table are
352 Limited Uses and must comply with the requirements of this Section if they are on
353 properties that are:

354 (a) [[Located]] located adjacent to a property in a one-family residential or
355 agricultural zone; or

356 (b) [[Separated]] separated from such a property only by the right-of-way of a
357 primary, secondary, or tertiary residential street.

358 Where these circumstances do not apply, the use is considered a permitted use and
359 Section 59-C-15.41(c)(1) does not apply.

360 **59-C-15.512. Requirements of Limited Uses.**

361 Development applications that include Limited Uses must:

362 (a) satisfy the site plan requirements of 59-D-3;

- (b) comply with the design recommendations of the applicable sector or master plan[[,]] and associated design guidelines; and
- (c) ensure compatible relationships with existing and proposed adjacent residential housing through mitigating factors [[including, but not limited to]], such as;
- (1) increased setbacks;
 - (2) sound and visual barriers;
 - (3) decreased structural heights, or
 - (4) diminished site lighting.

59-C-15.6. General requirements.

Development in the CRN, CRT, and CR [zone] zones must comply with the following requirements.

59-C-15.61. Master plan and design guidelines conformance.

Development that requires a site plan must be substantially consistent with the applicable master or sector plan [[, unless the Planning Board finds that events have occurred to render the relevant master or sector plan recommendation no longer appropriate, and must [address] substantially conform to]] and any design guidelines approved by the Planning Board that implement the applicable plan.

[59-C-15.62. Priority retail street frontages.

Development that requires a site plan and is located on a street identified as a priority retail street frontage in the applicable master plan, sector plan, or design guidelines must be developed in a manner that is consistent with the recommendations and objectives of the applicable plan and address any applicable design guidelines approved by the Planning Board that implement the applicable plan.

59-C-15.63. Streetscape.

Streetscape improvements must be consistent with the recommendations of the applicable master or sector plan and must address any Planning Board approved design guidelines that implement the applicable plan.]

~~[59-C-15.64]~~59-C-15.62. Bicycle parking spaces and commuter shower/change facility.

[(a) Bicycle parking facilities must be secure and accessible to all residents or employees of the proposed development.

(b) The number of bicycle parking spaces and shower/change facilities required is shown in the following table (calculations must be rounded to the higher whole number):

Bicycle and Shower/Change Facilities Required			
Use	Requirement		
<i>Multi-family Residential</i>			
In a building containing less than 20 dwelling units.	At least 4 bicycle parking spaces.		
In a building containing 20 or more dwelling units.	At least 0.5 bicycle parking spaces per dwelling unit, not to be fewer than 4 spaces and up to a maximum of 100 required spaces.		
In any group living arrangement expressly for senior citizens.	At least 0.1 bicycle parking spaces per unit, not to be fewer than 2 spaces, up to a maximum of 100 required spaces.		

<i>Non-Residential</i>	
In a building with a total non-residential floor area of 1,000 to 9,999 square feet.	At least 2 bicycle parking spaces.
In a building with a total non-residential floor area of 10,000 to 99,999 square feet.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces.
In a building with a total non-residential floor area of 100,000 square feet or greater.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces. One shower/change facility for each gender available only to employees when the building is accessible.

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Instead of the requirements of Article 59-E regarding bicycle parking spaces,

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development in the CRN, CRT, and CR zones must satisfy the following

403

provisions.

404

(a) Bicycle Parking Spaces

405

<u>Use</u>	<u>Publicly Accessible Bike Spaces</u>	<u>Private, Secure Bike Spaces</u>
(1) <u>Multi-family Residential</u>		
<u>In a building containing less than 20 dwelling units</u>	<u>2</u>	<u>4</u>
<u>In a building containing 20 or more dwelling units</u>	<u>0.1 per unit to a maximum requirement of 10</u>	<u>[[0.5]] 0.35 per unit to a maximum requirement of 100</u>
<u>In any group living arrangement expressly for senior citizens</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>
(2) <u>Non-Residential</u>		
<u>Total non-residential floor area under 10,000 square feet gross floor area</u>	<u>2</u>	<u>2</u>
<u>Total non-residential floor area between 10,000[[sf]] square feet and 100,000 square feet gross floor area [[(sf)]]</u>	<u>2 per 10,000[[sf]] square feet</u>	<u>1 per 10,000[[sf]] square feet, not fewer than 2, to a maximum requirement of 10</u>
<u>Total non-residential floor area greater than 100,000 square feet gross floor area [[(sf)]]</u>	<u>20</u>	<u>1 per 10,000[[sf]] square feet, not fewer than 10, to a maximum requirement of 100.</u>

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407 (b) For office uses with a total non-residential floor area of 100,000 square feet
408 of gross floor area or greater, one shower/change facility is required for
409 each gender; the facility may be made available only to employees when the
410 building is accessible.

411 **[59-C-15.65]59-C-15.63. Parking.**

412 [(a) (1) For projects that satisfy the requirements for transit proximity levels 1
413 or 2, the number of parking spaces provided on-site must not exceed the
414 number required under Article 59-E, except that the maximum number of
415 parking spaces for general retail and restaurant uses is 4 spaces for every
416 1,000 square feet of gross leasable area, and no parking spaces are required
417 for restaurant outdoor patron areas.

- (2) All projects that do not satisfy the requirements for transit proximity levels 1 or 2 must meet the parking requirements established under Article 59-E, except that the number of parking spaces for general retail and restaurant uses in Subsection (a)(1) may be provided without a parking waiver.
- (b) Except for retail and restaurant uses that satisfy Subsection (a)(1) and projects that do not satisfy transit proximity level 1 or 2, the number of parking spaces required is based on a building's distance from transit as follows:

Parking Requirements				
	Transit Proximity (Level 1 or 2)			
	¼ mile from transit	¼ to ½ mile from transit	½ mile to 1 mile from transit	>1 mile from transit
Non-residential: the number of required spaces under Article 59-E multiplied by the following factor:	0.20	0.40	0.60	0.80
Residential: the number of required spaces under Article 59-E multiplied by the following factor:	0.60	0.70	0.80	0.90

The appropriate parking rates apply to the gross floor area within each distance category.]

Instead of the requirements of Article 59-E regarding parking space numerical requirements, landscaping, and surface parking design, development in the CRN, CRT, and CR zones must comply with the following provisions. All standards and

requirements of Article 59-E that are not modified by this Section must be satisfied.

59-C-15.631. Parking Ratios.

Parking spaces must satisfy the following minimums and maximums unless the minimum number of parking spaces is waived under §59-C-15.636. The minimum number of spaces required is equal to the number of parking spaces that would otherwise be required by Division 59-E-3, multiplied by the applicable factor in the table, or at the rate indicated. When a maximum number of spaces is indicated, no more parking than would otherwise be required by Division 59-E-3 may be provided.

<u>Use</u>	<u>CRN</u>		<u>CRT</u>		<u>CR</u>			
<u>Distance from a level 1 or 2 transit station or stop</u>	<u>Up to ½ mile</u>	<u>Greater than ½ mile</u>	<u>Up to ½ mile</u>	<u>Greater than ½ mile</u>	<u>Up to ¼ mile</u>	<u>¼ to ½ mile</u>	<u>½ to 1 mile</u>	<u>Greater 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>	<u>[[59-E]] None</u>	<u>None</u>	<u>[[59-E]] None</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>[[0.6]] 4 per 1,000 square feet</u>	<u>[[0.8]] 4 per 1,000 square feet</u>	<u>[[0.4]] 4 per 1,000 square feet</u>	<u>[[0.6]] 4 per 1,000 square feet</u>	<u>4 per 1,000 square feet</u>	<u>4 per 1,000 square feet</u>	<u>4 per 1,000 square feet</u>	<u>[[0.8]] 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>	<u>[[0.6]] 0.8</u>	<u>[[0.8]] 1.0</u>	<u>[[0.4]] 0.6</u>	<u>[[0.6]] 0.8</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>

(d) The appropriate rates to determine the number of parking spaces apply to the gross floor area of each use within each distance category.

59-C-15.632. Accepted Parking Spaces.

[(c)] Parking requirements must be met by any one or a combination of the following:

[(1)](a) providing the spaces on-site;

[(2)](b) constructing publicly available on-street parking; or

[(3)](c) participating in:

(1) a parking lot district;

(2) [or] a shared parking program established by municipal resolution; or

(3) entering into an agreement for shared parking spaces within ¼ mile of the subject property in a public or private facility [[within]] [1,000 feet] [¼ mile of the subject lot], if the off-site parking facility is not in an agricultural (Division 59-C-9), planned unit development (Division 59-C-7), or one-family residential (Division 59-C-1) zone, unless otherwise allowed by this Chapter.

[(d)] Every “car-share” space provided reduces the total number of required spaces by 6 spaces for a non-residential use or 3 spaces for a residential use.

Example: A non-residential project on a CR-zoned site requiring at least 100 spaces under Article 59-E would be required to provide a maximum of 100 spaces on-site. If that site was within ¼ to ½ mile of a transit station, the minimum requirement for parking would be 40 spaces ($100 \times 0.40 = 40$). If 2 car-share spaces were provided, that requirement would be 28 for non-residential use or 34 for residential use.

59-C-15.633. Parking space location and access.

[(e)] The design of surface parking [facilities] spaces must comply with the following:

[(1)](a) [a] parking [facility at] spaces on or above grade must not be located between the street and the main front wall of the building or the side wall of [a] the main building on a corner lot [unless the Planning Board finds that

safe and efficient circulation would be better served by a different arrangement]; and

[(2)](b) if a site is adjacent to an alley, the primary vehicular access to the parking facility must be from that alley.]; and

(3) curb cuts must be kept to a minimum and shared by common ingress/egress easements whenever possible.]

59-C-15.634. Drive-through facility design.

Any drive-through facility requires the approval of a site plan under Division 59-D-3 and must satisfy the following:

[(f)](a) [The design of parking facilities with drive-through services must comply with the following; however, the Planning Board may approve a design if it finds that the alternative design would provide safer and more efficient circulation:] no part of a drive-through ~~[[service]]~~ facility, including the stacking area, may be located within 100 feet of a property line shared with ~~[[an]]~~ one-family (Division 59-C-1) or agriculturally (Division 59-C-9) zoned land;

[(1)](b) [the driveway must not be] no drive-through service window, drive aisle, or stacking area may be located between the street and the main front wall of [a] the main building [or the side wall of a building on a corner lot];

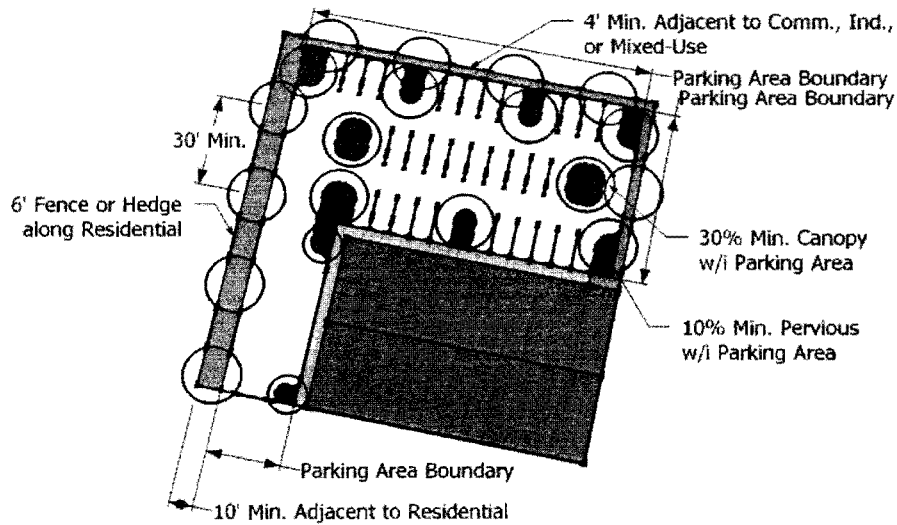
[(2)](c) [the] no drive-through service window [must], drive aisle, or stacking area may be located [on the rear or] between the street and the side wall of the main building [; any service window on the side wall of a building must be] on a corner lot unless permanently screened from any street by a 5-foot or higher wall or fence[[; and]].

500 [(3) curb cuts to a street must be minimized to one drive aisle of no more than 20
501 feet in width for two-way traffic or two drive aisles each of no more than 10
502 feet in width for one-way traffic.]

503 **59-C-15.635. Landscaping and lighting.**

504 [(g)] Except for areas used for internal driveway or sidewalk connections
505 between lots or parcels that are not [in] zoned one-family residential [(59-C-1)] or
506 agricultural [(59-C-9) zones], landscaping for surface parking [facilities] spaces
507 must satisfy the following requirements:
508

Minimum Landscape Standards for Surface Parking	
Subject	Requirement
(a) [Right-of-Way Screening] <u>Property line adjacent to a right-of-way</u>	<u>No less than 6-foot [width of] wide continuous soil panel [or] (excluding any easements) with stormwater [management recharge facility (not including any PUE or PIE) with groundcover] facilities, planting bed, or lawn, including[;] a minimum 3-foot high continuous evergreen hedge or fence; [and] plus one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.</u>
(b) <u>Property line adjacent to a lot or parcel in a one-family residential or agricultural zone</u>	<u>No less than 10-foot [[width]] wide continuous soil panel (excluding any easements) with stormwater facilities, planting bed, or lawn including a minimum 6-foot high continuous evergreen hedge or fence; plus one deciduous tree per 30 feet of frontage.</u>
(c) <u>Property line [Adjacent] adjacent to a lot or parcel in any [Commercial, Industrial, or Mixed-Use Zone] zone not subject to (b), above</u>	<u>No less than 4-foot [[width]] wide continuous soil panel [or] (excluding any easements) with stormwater [management recharge facility with groundcover] facilities, planting bed, or lawn; plus one deciduous tree per 30 feet [of frontage].</u>
[Adjacent to a lot or parcel in an Agricultural or Residential District]	10-foot continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; 6-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of frontage.]
(d) Internal Pervious Area	<u>No less than 10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.</u>
(e) Tree Canopy Coverage	<u>No less than 30 percent of the parking facility area (at 15 years growth).</u>
(f) <u>Lighting</u>	<u>Per the Illuminating Engineering Society of North America standards, or County equivalent, with full or partial cut-off fixtures and no more than 0.5 [[footcandle]] footcandle illumination at any property line subject to (b), above.</u>



Surface Parking Landscape Requirements [[Illustrative]] Illustration

59-C-15.636. Waiver of parking provisions.

The Director, Planning Board, or Board of Appeals may waive any requirement of Section 59-C-15.63 not necessary to accomplish the objectives of this Division and Section 59-E-4.2, and in conjunction with such a waiver may adopt reasonable mitigating requirements above the minimum standards. At least 10 days notice of any request for a waiver under this Section must be provided to all adjoining property owners, affected citizen associations, and Planning Department Staff, if applicable, before a decision may be made.

59-C-15.7. Development standards.

Development in [any] the CRN, CRT, and CR [zone] zones must comply with the following standards.

59-C-15.71. Density and height.

Maximum density and height are specified by the zone established on the zoning map under [[the provisions of]] Section 59-C-15.1.

[(a) The maximum density for any standard method project is the greater of 0.5 FAR or 10,000 square feet of gross floor area. Any single land use or any combination of land uses allowed in the zone may achieve the maximum density.

(b) The maximum total density and mix of maximum non-residential and residential density for any project using the optional method of development is specified by the zone.]

[59-C-15.72. Height.

(a) The maximum height for any building or structure in a standard method project is 40 feet.

(b) The maximum height for any building or structure in an optional method project is determined by the zone.]

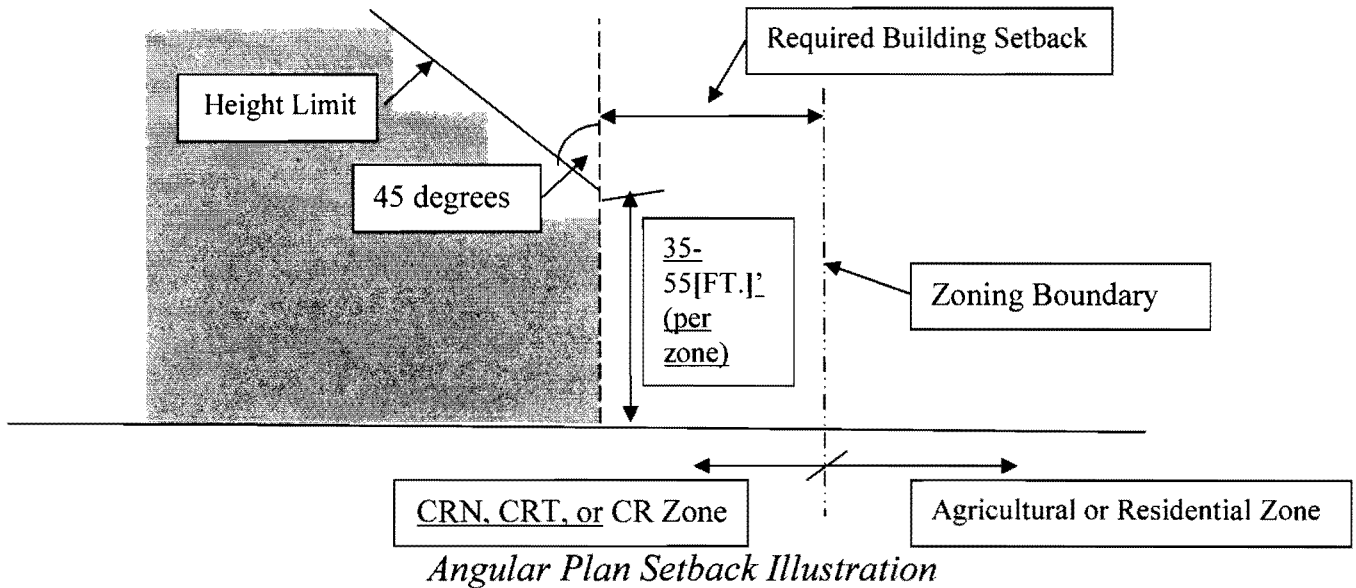
[59-C-15.73]59-C-15.72. Setbacks.

(a) [A building must not be any closer to a lot line shared with] Where a tract of land is adjacent to a lot or parcel in [an agricultural (Division 59-C-9) or residential (Division 59-C-1)] a one-family residential or agricultural zone, [than] any building:

(1) must have a minimum setback of 25 feet or the setback required by the adjacent lot or parcel, whichever is greater; and

(2) [the building] must not project beyond a 45 degree angular plane projecting over the subject lot or parcel measured from a height of 55 feet in the CR zones, 45 feet in the CRT zones, or 35 feet in the CRN zones at the setback line determined above, with the exception of those features exempt from height and setback restrictions under Section 59-B-1.

- (b) The development of a new building in place of a building existing when [the] a CRN, CRT, or CR zone is applied may be built to the [pre-existing setbacks] previously allowed setback if the height of the new building is not increased [over that] above the height of the former building.



[59-C-15.74]59-C-15.73. Public use space.

- (a) Public use space is not required for any standard method project that does not require a site plan. If a site plan is required for the proposed project, [then the minimum] public use space is [10 percent of the project's net land area.] required as follows:

Gross Tract Area	Minimum Public Use Space
Up to 10,000[[sf]] square feet	None
10,001[[sf]] square feet up to 3 acres	10% of net tract area
Over 3 acres	10% of limits of disturbance

- (b) Projects using the optional method of development must provide public use space as follows:

Minimum Required Public Use Space (% of net tract area)				
Acres (Gross)	Number of Existing, Proposed, and Master-Planned Right-of-Way Frontages			
	1	2	3	4+
< ½	0	0	0	5
½ - 1.00	0	0	5	10
1.01 - 3.00	0	5	10	10
3.01 - 6.00	5	10	10	10
6.01 +	10	10	10	10

- (c) Public use space must:
- (1) be [calculated on the net tract area that was included in the sketch plan application;
 - (2) be] rounded to the next highest 100 square feet;
 - ~~[(3)]~~(2) be easily and readily accessible to the public; and
 - ~~[(4)]~~ be distributed within the entire tract area included in the sketch plan application; and
 - ~~[(5)]~~~~(3)~~ contain amenities such as seating options, shade, landscaping, artwork, or [other similar public benefits] fountains.
- (d) Instead of providing on-site public use space, [for any site of 3 acres or less, a development may propose the following alternatives,] an applicant may satisfy all or part of the requirement by one or more of the following means, subject to Planning Board approval:
- (1) implementing public park or public use space improvements of an equal or greater size within [¼ mile of the subject site] or near the applicable master or sector plan area; or

(2) making a payment in part or in full [to the Public Amenity Fund under Section 59-D-2.31.] for design, construction, renovation, restoration, installation, and/or operation within or near the applicable master or sector plan area if the payment is:

(A) equal to the cost of constructing an equal amount of public use space and associated amenities on-site per square foot plus the fair market value of the [[application]] applicable tract of land per square foot;

(B) used to implement the open space, recreation, and cultural goals of the applicable master or sector plan; and

(C) made within 30 days of the release of any building permit for the subject application.

[(e) A development on a site larger than 3 acres may only provide off-site public use space in order to provide master-planned open space improvements, or a payment under Subsection (d)(2), for an area of equal or greater size required on site that is:

(1) located within the same master plan area as the proposed development; and

(2) indicated on the approved sketch plan.]

[59-C-15.75]59-C-15.74. Residential amenity space.

(a) Any building containing 20 or more dwelling units must provide amenity space for its residents as follows:

Required Residential Amenity Space	
Type of Amenity Space	Area of Amenity Space
Indoor space in a multi-purpose room, fitness room, or other common community room(s), at least one of which must contain a kitchen and bathroom.	<u>A minimum of 20 square feet per market-rate dwelling unit up to 5,000 square feet.</u>
Passive or active outdoor recreational space.	<u>A minimum of 20 square feet per market-rate dwelling unit, of which at least 400 square feet must adjoin or be directly accessible from the indoor amenity space, up to 5,000 square feet.</u>

609

610 (b) [The] Additional amenity space is not required for Moderately Priced
611 Dwelling Units (MPDUs) or Workforce Housing Units (WFHUs) on a site
612 within a metro station policy area or where the Planning Board finds [that
613 there is] adequate recreation facilities and open space area available within
614 [a] ½ mile [radius] of the subject site. If such a finding cannot be made,
615 amenity space must be provided as if all the dwelling units were market-rate
616 units.

617 (c) [The amenity space requirement may be reduced by ½ for Workforce
618 Housing Units (WFHUs) located within a metro station policy area or if the
619 minimum public open space requirement is satisfied on site.

620 (d)] The provision of residential amenity space may be counted towards meeting
621 the required recreation calculations under the M-NCPPC Recreation
622 Guidelines, as amended.

623 **59-C-15.8. Special regulations for the optional method of development – CR**
624 **zones applied to properties before October 1, 2011.**

625 **[59-C-15.81. Incentive Density Provisions.]**

626 This section establishes incentives for optional method projects on property zoned
627 CR before October 1, 2011 to provide public benefits in return for increases in

density and height above the standard method maximums[, consistent with the applicable master or sector plan,] up to the maximum permitted by the zone.

59-C-15.81. Incentive Density Categories.

[(a)] Public benefits must be provided that enhance or contribute to the objectives of the ~~[[CRT and]]~~ CR [zone] zones in some or all of the following categories:

- [(1)](a) [Master-planned major] Major public facilities;
- [(2)](b) Transit proximity [for residents, workers, and patrons];
- [(3)](c) Connectivity between uses [and], activities, and mobility options;
- [(4)](d) Diversity of uses and activities;
- [(5)](e) Quality of building and site design; ~~[[and]]~~
- [(6)](f) Protection and enhancement of the natural environment[; and
- (7) Advanced dedication of right-of-way];and
- (g) Advanced dedication of right-of-way.

[Sections 59-C-15.82 through 59-C-15.88 indicate] Section 59-C-15.85 indicates the individual [types of] public benefits that may be accepted in each of these categories.

59-C-15.82. Public benefits required.

Any optional method development must provide public benefits from at least 4 of the 6 categories listed in Section 59-C-15.81 and [[:

- (a) Development in the CRT zones must provide public benefits worth a minimum total of 50 points; and
- (b) Development in the CR zones]] must provide BLTs required under Section 59-C-15.856(a) for at least 5 [[points and provide additional public benefits; the sum of the public benefit points must equal at least 100]] percent of its incentive density.

59-C-15.83. General incentive density considerations.

[(b)] In approving any incentive density based on the provision of public benefits, the Planning Board must not grant incentive density for any attribute required by law and must consider:

[(1)](a) The [policy] ~~[[recommendations and]]~~ policy objectives [and priorities] and priorities of the applicable master or sector plan;

[(2)](b) [Any applicable design guidelines and any adopted public benefit standards and guidelines] The CR Zone Incentive Density Implementation Guidelines and any design guidelines adopted for the applicable master plan area;

[(3)](c) The size and configuration of the tract;

[(4)](d) The relationship of the site to adjacent properties;

[(5)](e) The presence or lack of similar public benefits nearby; and

[(6)](f) Enhancements beyond the elements listed in the individual public benefit descriptions or criteria that increase public access to or enjoyment of the benefit.

Examples: Pedestrian activation along a through-block connection, greater vegetated roof or tree canopy area than required, tower step-backs at a lower height or deeper into the site than the minimum necessary to qualify for the benefit, or provision of neighborhood services for more ~~[[smaller]]~~ smaller businesses than required.

[(c)] Any incentive density increase approved by the Planning Board for an optional method of development application must satisfy Subsection 59-C-15.87(a).]

59-C-15.84. CR zones incentive density implementation guidelines.

[(d)] The Planning Board must adopt, publish, and maintain guidelines that detail the standards and requirements for public benefits [that may be provided for incentive density]. The guidelines must:

[(1)](a) be consistent with the [recommendations and] objectives of [the applicable master or sector plan and the purpose of the CR zones] [[this Division]] the applicable master or sector plan and the purpose of the CR zones;

[(2)](b) be in addition to any standards, requirements, or rules of incentive density calculation included in this Division, but may not [supersede] conflict with those provisions; and

[(3)] allow any single feature of a project a density incentive from only 1 public benefit;

(4)](c) only [address the] allow incentive density for those public benefits listed in [Sections 59-C-15.82 through 59-C-15.88 and must not add a public benefit category; and

(5) include the criteria to determine when an early dedication of right-of-way qualifies for incentive density, and the amount of the incentive density permitted] Section 59-C-15.85.

59-C-15.85. Individual public benefit descriptions and criteria for CR zones.

[59-C-15.82]59-C-15.851. [Incentives for master-planned major] Major public facilities.

Major public facilities [such as schools, libraries, recreation centers, urban parks, and county service centers] provide public services at convenient locations and where increased density creates a greater need for civic uses and greater demands on public infrastructure [, centers for community meetings, and civic events].

(a) Major public facilities include, but are not limited to, such facilities as schools, libraries, recreation centers, parks, county service centers, public transportation or utility upgrades, or other resources delineated in an applicable master or sector plan.

[(b) If a major public facility is not recommended in the applicable master or sector plan, the Planning Board must find that the facility or improvement provides the community with a resource that is at least as beneficial as other major facilities recommended in the applicable master or sector plan. Additionally, any infrastructure upgrade may only receive incentive density for improvements beyond those required by any applicable adequate public facilities requirement to complete the proposed development.]]

[(c)](b) Because of their significance in place-making, the Planning Board may approve incentive density of up to [[40 points in the CRT zones and]] 70 [percent] [[points in the CR zones]] percent for (1) the conveyance of a site or floor area for, [and/or] (2) construction of, and/or (3) making a payment for a major public facility that is [designated on a master plan or sector plan and is] accepted for use and/or operation by [the] an appropriate public agency, community association, or nonprofit organization.

[59-C-15.83]59-C-15.852. [Incentives for transit] Transit Proximity.

[In order to encourage] Development near transit facilities encourages greater use of transit, [control] controls sprawl, and [reduce] reduces vehicle miles traveled, congestion, and carbon emissions[, the Planning Board may approve incentive density for transit proximity under this section. The percentage of incentive density awarded to a project for transit proximity is], and is eligible for incentive density. The Planning Board may approve incentive density for transit proximity under this section. The percentage of incentive density awarded to a project for

730 transit proximity is [[. Transit proximity points are granted for proximity to
 731 existing or planned transit stops based on transit service level and CRT and CR
 732 zones.]] as follows:

<u>Transit Proximity</u>	<u>Level 1</u>	<u>Level 2</u>
Adjacent or confronting	50%	30%
Within ¼ mile	40%	25%
Between ¼ and ½ mile	30%	20%
Between ½ and 1 mile	20%	15%]

733

<u>Transit Proximity</u>	<u>Level 1</u>	<u>Level 2</u>
<u>Adjacent or confronting</u>	<u>50%</u>	<u>30%</u>
<u>Within ¼ mile</u>	<u>40%</u>	<u>25%</u>
<u>Between ¼ and ½ mile</u>	<u>30%</u>	<u>20%</u>
<u>Between ½ and 1 mile</u>	<u>20%</u>	<u>15%</u>

734

735

<u>[[Proximity</u>	<u>Adjacent or confronting</u>		<u>Within ¼ mile</u>		<u>Between ¼ and ½ mile</u>		<u>Between ½ and 1 mile</u>	
<u>Transit Service Level</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>
<u>CRT</u>	<u>25</u>	<u>15</u>	<u>20</u>	<u>12.5</u>	<u>15</u>	<u>10</u>	<u>10</u>	<u>7.5</u>
<u>CR</u>	<u>50</u>	<u>30</u>	<u>40</u>	<u>25</u>	<u>30</u>	<u>20</u>	<u>20</u>	<u>15]]</u>

736

737 (a) A project is adjacent to or confronting a transit station or stop if it shares a
 738 property line[,] or easement line, or is separated only by a right-of-way from
 739 an existing or planned transit station or stop, and 100 percent of the gross
 740 tract area [submitted] in a single sketch plan application is within ¼ mile of
 741 the transit portal.

742 (b) For split proximity-range projects:

743 (1) [For all other projects to qualify for incentive density availability at
 744 the other distances,] If at least 75 percent of the gross tract area in a
 745 single sketch plan application [must be within the range for which the

incentive is proposed.] is within the closer of two proximity ranges,
the entire project may take the points for the closer range;

- (2) [The incentive density for projects] If less than 75 percent of the
gross tract area in [1 distance range] a single sketch plan is within the
closer of 2 proximity ranges, the points must be calculated as the
 weighted average of the percentage of area in each range.

[59-C-15.84]59-C-15.853. [Incentives for connectivity] Connectivity and
mobility.

[In order to enhance] Development that enhances connectivity between uses and
 amenities; [and increase] increases mobility options; [encourage] encourages non-
 automotive travel [for short and multi-purpose trips as well as for commuting];
 [facilitate] facilitates social [and commercial] interaction; [provide] provides
 opportunities for healthier living; and [stimulate] stimulates local businesses[, the
 Planning Board may approve incentive density of up to 30% for a project that
 provides at least 2 of the following public benefits:] is eligible for incentive
density. The Planning Board may approve incentive density of up to 30% for a
project that provides at least 2 of the following public benefits:

- (a) **Neighborhood Services:** [Safe] [[At least 10 points for safe]] Safe and
 direct pedestrian access to at least 10 different retail services on site or
 within ¼ mile, of which at least 4 have a [maximum] retail bay floor area of
no greater than 5,000 square feet.
- (b) **Minimum Parking:** [Provision of the minimum required] [[Up to 10 points
for providing less than the maximum allowed number of]] Provision of the
minimum required parking [for projects of one acre of gross tract area or
 more] spaces, if a maximum is applicable under Section 59-C-15.631.

- (c) **Through-Block Connections:** [Safe] [[Up to 20 points for safe]] Safe and attractive pedestrian connections between streets.
- (d) **Public Parking:** [Provision of] [[Up to 25 points for providing]] Provision of up to the maximum number of parking spaces allowed in the zone as public parking.
- (e) **Transit Access Improvement:** [Ensuring] [[Up to 20 points for ensuring]] Ensuring that access to transit facilities meets County standards for handicapped accessibility.
- (f) **Trip Mitigation:** [A] [[At least 15 points for entering into a]] A binding [and verifiable] Traffic Mitigation Agreement to reduce the number of weekday morning and evening peak hour trips attributable to the site in excess of any other regulatory requirement; the agreement must result in a non-auto driver mode share of at least 50% for trips attributable to the site.
- [[g) Streetscape: Up to 20 points for construction of off-site streetscape excluding any streetscape improvements required by this Division.
- (h) **Advance Dedication:** Up to 30 points for dedicating or providing a reservation for dedication for master-planned rights-of-way in advance of a preliminary or site plan application.
- (i) **Way-Finding:** At least 5 points for design and implementation of a way-finding system orienting pedestrians and cyclists to major open spaces, cultural facilities, and transit opportunities.]]
- [59-C-15.85]59-C-15.854. [Incentives for diversity] Diversity of uses and activities.**
- [In order to increase] Development that increases the variety and mixture of land uses, types of housing, economic [diversity] variety, and community activities; [contribute] contributes to development of [a] more efficient and sustainable

[community] communities; [reduce] reduces the necessity for automobile use; and
 [facilitate] facilitates healthier lifestyles and greater social interaction[, the
 Planning Board may approve incentive density of up to 30% for a project that
 provides affordable housing or a public facility, as described below, or at least 2 of
 the other following public benefits:] is eligible for incentive density. The
Planning Board may approve incentive density of up to 40% for a project that
provides affordable housing or a public facility, as described below, or at least 2 of
the other following public benefits:

(a) **Affordable Housing:** ~~[(1)]~~ All residential development must comply
 with the requirements of Chapter 25A for the provision of Moderately
 Priced Dwelling Units (MPDUs) [and may provide Workforce Housing
 Units (WFHUs) under Chapter 25B.

(1) MPDU Incentive Density: Provision of MPDUs above the minimum
 required is calculated on the total number of dwelling units as
 required by Chapter 25A, and the percent of incentive density
 increase is based on the proposed FAR for the entire project~~]]], except~~
that achieving bonus density under Section 25A-5(c)(3), as amended
from time to time, entitles an applicant to incentive density points
under this Division equal to the bonus density percentage]] and may
provide Workforce Housing Units (WFHUs) under Chapter 25B.

(1) MPDU Incentive Density: Provision of MPDUs above the minimum
number of units required by Chapter 25A, and the percent of
incentive density increase is based on the proposed FAR for the entire
project.

Example: Provision of 14.5% MPDUs is awarded [an incentive density of
 20 % (see 25A-5(c)(3)). In the case of a CR 4.5 zone that proposes 4.5

FAR, that equals 0.20×4.0 (the incentive density), which is 0.8 FAR] [[20 points; provision of 13.0% MPDUs is awarded 5 points]] an incentive density of 20% (see 25A-5(c)(3)). In the case of a CR 4.5 zone that proposes 4.5 FAR, that equals 0.20×4.0 (the incentive density), which is 0.8 FAR.

(2) [WFHU Incentive Density: Provision of] [[Up to 30 points for providing Workforce Housing Units (WFHUs) at a rate of]] [is calculated at the following rate:] [[2 times the percentage of total units, excluding MPDUs]] [provided as WFHUs]
WFHU Incentive Density: Provision of WFHUs is calculated at the following rate: 2 times the percentage of total units provided as WFHUs.

Example: Provision of 5% WFHUs is awarded [incentive density of] incentive density of 10[%]% [[points]]; provision of 12% WFHUs is awarded [incentive density of] incentive density of 24[%]% [[points]].

- (b) **Adaptive Buildings:** [Provision of buildings with] [[At least 10 points for constructing]] Provision of commercial or [[mixed use]] mixed-use buildings with minimum floor-to-floor heights of at least 15 feet on any floor that meets grade and 12 feet on all other floors. Internal structural systems must be able to accommodate various types of use with only minor modifications.
- (c) **Care Centers:** [Child] [[Up to 20 points for constructing a child]] Child or adult day care [facilities] [[facility with spaces for at least 15 users]] facilities.

- 848 (d) **Small Business [Retention] Opportunities:** [Provision of] [[Up to 20
 849 points for providing]] Provision of on-site space for small, neighborhood-
 850 oriented businesses.
- 851 (e) **Dwelling Unit Mix:** [Provision of] [[At least 5 points for integrating a mix
 852 of residential unit types with]] Provision of at least 7.5% efficiency units,
 853 8% 1-bedroom units, 8% 2-bedroom units, and 5% 3-or-more bedroom
 854 units.
- 855 (f) **Enhanced Accessibility for the Disabled:** [Provision of] [[Up to 20 points
 856 for constructing]] Provision of dwelling units that satisfy American National
 857 Standards Institute A117.1 Residential Type A standards or [units that
 858 satisfy] an equivalent County standard.
- 859 [[g) Live/Work: At least 10 points for developments of up to 2.0 FAR total
 860 density that provide at least the greater of 3 units or 10% of the total unit
 861 count as live/work units.]]
- 862 **[59-C-15.86]59-C-15.855. [Incentives for quality] Quality building and site**
 863 **design.**
- 864 High quality design is especially important in urban, integrated-use settings to
 865 ensure that buildings and uses are visually compatible with each other and
 866 adjacent communities and to provide a harmonious pattern of development. Due to
 867 [the] increased density [of] in these settings, buildings tend to [have high
 868 visibility. High] be highly visible; [[and]] high quality design [may help to] helps
 869 attract residents, patrons, and businesses to [locate in] these [settings] areas.
- 870 Location, height, massing, façade treatments, and ornamentation of buildings
 871 affect sense of place, orientation, and the perception of comfort and convenience.
 872 The quality of the built environment affects light, shadow, wind, and noise, as well
 873 as the functional and economic value of property. [In order to promote high

quality design, the Planning Board may approve incentive density of up to 30% to a project that provides at least 2 of the following public benefits:] In order to promote high quality design, the Planning Board may approve incentive density of up to 30% to a project that provides at least 2 of the following public benefits:

(a) **Historic Resource Protection:** [Preservation] [[Up to 20 points for the preservation and/or]] Preservation, enhancement of, or payment towards preservation [[and/]]or enhancement of a historic resource [indicated on] or a contributing element within a historic district designated in the Master Plan for Historic Preservation [in conformance with a plan approved by the Historic Preservation Commission. A fee-in-lieu for a specific preservation project may be paid to the Historic Preservation Division as specified in the Guidelines for Public Benefits].

(b) **Structured Parking:** [Parking provided] [[Up to 20 points for placing parking]] Parking provided within [a structure or below-grade] above- or below-grade structures.

(c) **Tower [Setback] Step-Back:** [Setback of building] [[At least 5 points for stepping back a building's upper floors]] Setback of a tower by a minimum of 6 feet [beyond] behind the first floor façade [at a maximum height of]. The step-back must begin at a height no greater than 72 feet.

(d) **Public Art:** [Provision of] [[Up to 15 points for installing]] Provision of public art [must be] reviewed for comment by, or paying a fee accepted by, the [Public Arts Trust Steering Committee. A fee-in-lieu may be paid to the Trust as specified in the Guidelines for Public Benefits] Arts and [[Humanity]] Humanities Council.

(e) **Public Open Space:** [Provision of] [[Up to 20 points for providing,]]Provision of or making a payment for, open space in addition to

the minimum public use space required by [the zone. Public open space must be easily accessible to the public during business hours and/or at least from sunrise to sunset and must contain amenities such as seating, plantings, trash receptacles, kiosks, and water features] this Division.

[(f) **Streetscape:** Construction of off-site streetscape in addition to the requirements of this division].

(f) **Streetscape:** Construction of off-site streetscape in addition to the requirements of this division.

[(g)]~~[(f)]~~[(g) **Exceptional Design:** [Building design that provides innovative solutions in response to the immediate context; creates a sense of place and serves as a landmark; enhances the public realm in a distinct and original manner; introduces new materials, forms, or building methods; uses design solutions to make compact infill development living, working, and shopping environments more pleasurable and desirable; and integrates low-impact development methods into the overall design of the site and building.] ~~[[Up to 10 points for]]~~ Providing a building or site design whose visual and functional impacts enhance the character of a setting and the purposes delineated in this Section.

[[~~(g)~~ **Architectural Elevations:** Up to 20 points for providing elevations of architectural façades and agreeing to be bound by particular elements of design, such as minimum amount of transparency, maximum separation between doors, awning provisions, sign restrictions, or lighting parameters that affect the perception of mass, pedestrian comfort, or enhance neighborhood compatibility.]]

~~[59-C-15.87]~~59-C-15.856. [Incentives for] **Protection and enhancement of the natural environment.**

[In order to combat sprawl and] Protection and enhancement of natural systems and decreases in energy consumption help mitigate or reverse environmental [problems] impacts, such as heat island effects from the built environment, inadequate carbon-sequestration, habitat and agricultural land loss, and air and water pollution caused by reliance on the automobile[, the Planning Board may approve a density increase up to 30% for the public benefits in this Subsection:].
The Planning Board may approve a density increase up to 30% for the public benefits in this Subsection:

(a) **Building Lot Termination(BLT):** [CR zones require] [[Up to 30 points for]] CR zones require the purchase of BLT easements or payment to the Agricultural Land Preservation Fund (ALPF) [for at least 5% but no more than 30% of the incentive density under the following conditions] [[. The first 5 points are mandatory for all developments in the CR zones; up to 25 additional points are allowed as an option]] for at least 5% but no more than 30% of the incentive density under the following conditions.

(1) In the CR zones, an applicant must purchase BLT easements, or make payments to the ALPF, in an amount equal to 5% of the incentive density floor area under the following parameters:

(A) One BLT must be purchased or equivalent payment made for every 20,000 square feet of gross floor area to qualify for the first 5% incentive density floor area; [[and]]

(B) Any private BLT easement must be purchased in whole units;
or

(C) BLT payments must be made to the ALPF, based on the amount established by Executive Regulations under Chapter 2B; if a fraction of a BLT easement is needed, a payment based

on the gross square footage of incentive density must be made
for at least the fraction of the BLT easement.

- (2) [BLT payments must be made to the Agricultural Land Preservation Fund, based on the amount established by Executive Regulations under Chapter 2B; if a fraction of a BLT easement is needed, a payment based on the gross square footage of incentive density must be made to the Agricultural Land Preservation Fund for at least the fraction of the BLT easement.] [[Up to 25 points for the]] The purchase of BLTs[[,]] or equivalent payments to the ALPF may be made for any incentive density above 5%. Each BLT easement purchase or payment is equal to 30,000 square feet of gross floor area, or such proportionate square footage represented by a fractional BLT purchase or payment. This is converted into points by dividing the incentive density floor area covered by the purchase or payment by the total square feet of the incentive density area.
- (3) In the CRT zones, BLT payments are optional; each BLT easement purchase or payment is equal to 30,000 square feet of gross floor area, or such proportionate square footage represented by a fractional BLT purchase or payment.[(A) For the first 5% of incentive density, each BLT easement purchase or payment allows 20,000 gross square feet of incentive density or a proportion thereof, allowed by a payment for a fraction of a BLT.
- (B) For the incentive density above 5%, each BLT easement purchase or payment allows 30,000 gross square feet of incentive density or a proportion thereof, allowed by a payment for a fraction of a BLT.]

Example: If a 50,000 square-foot [(sf) CR3.0] CR-3.0 site is fully developed, the incentive density available to be earned equals 125,000[(sf)] square feet (150,000[(sf)] square feet - 25,000[(sf)] square feet = 125,000[(sf)] square feet). The 5% BLT requirement for 125,000[(sf)] square feet equals 6,250[(sf)] square feet, which equals 0.32 BLT (6,250[(sf)] square feet / 20,000[(sf)] square feet = 0.32). If the applicant seeks an additional 10 [(points)] percent of incentive density through the purchase of BLTs, 10% of the incentive density is calculated, which in this case is 12,500[(sf)] square feet (125,000[(sf)] square feet x 0.10 = 12,500[(sf)] square feet). Because 1 BLT, above the required 5%, is equivalent to 30,000[(sf)] square feet, the 12,500[(sf)] square feet requires a payment for an additional 0.42 BLTs (12,500[(sf)] square feet / 30,000[(sf)] square feet = 0.42). Together, the required and incentive BLTs equal 0.74 BLTs for 15 [(points)] percent of incentive density in the Environment category.

- (b) **Energy Conservation and Generation:** [Provision of energy-efficiency that exceeds] [[At least 10 points for constructing buildings that exceed]] Provision of energy-efficiency that exceeds the energy-efficiency standards for the building type by 17.5% for new buildings or 10% for existing buildings [, or provision of]]. At least 15 points for providing]], or the provision of renewable energy generation facilities on-site or within ½ mile of the site for a minimum of 2.5% of the projected energy requirement for the development.

- (c) **[Green] Vegetated Wall:** [Installation] [[At least 5 points for the installation]] Installation and maintenance of a vegetated wall that covers at

least 30% of any blank wall or parking garage façade that is at least 300 square feet in area and is visible from a public street or open space.

(d) **Tree Canopy:** [Coverage] [[At least 10 points for tree]] Tree canopy coverage at 15 years of growth of at least 25% of the on-site open space.

(e) **Vegetated Area:** [Installation] [[At least 5 points for installation]] Installation of plantings in a minimum of 12 inches of soil, covering at least 5,000 square feet [of previously impervious surfaces]. This does not include vegetated roofs.

(f) **Vegetated Roof:** [Provision] [[At least 10 points for installation]] Provision of a vegetated roof with a soil depth of at least 4 inches covering at least 33% of a building's roof, excluding space for mechanical equipment.

[(g) **Cool Roof:** At least 5 points for constructing any roof area that is not covered by a vegetated roof with a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12.

(h) **Recycling Facility Plan:** At least 5 points for providing a recycling facility plan to be approved as part of a site plan for buildings that must comply with Montgomery County Executive Regulation 15-04AM or Montgomery County Executive Regulation 18-04.

(i) **Habitat Preservation and Restoration:** Up to 20 points for protection, restoration, or enhancement of natural habitats, onsite or within the same local watershed, which are in addition to requirements of the Forest Conservation Law or other county laws.]]

[59-C-15.88. Advanced dedication of right-of-way.

When sketch plans or site plans are approved, the Planning Board may allow an incentive density not to exceed 30% for a prior dedication of rights-of-way for

roadways, sidewalks, or bikeways recommended in the applicable master or sector plan, if the County or the State is responsible for constructing the facility on the right-of-way.]

(g) Advanced dedication of right-of-way: When sketch plans or site plans are approved, the Planning Board may allow an incentive density not to exceed 30% for a prior dedication of rights-of-way for roadways, sidewalks, or bikeways recommended in the applicable master or sector plan, if the County or the State is responsible for constructing the facility on the right-of-way.

59-C-15.9. Special regulations for the optional method of development for properties zoned CRT and CR after October 1, 2011.

This section establishes incentives for optional method projects on properties zoned CR or CRT after October 1, 2011 to provide public benefits in return for increases in density and height above the standard method maximums up to the maximum permitted by the zone.

59-C-15.91. Incentive Density Categories.

Public benefits must be provided that enhance or contribute to the objectives of the CRT and CR zones in some or all of the following categories:

- (a) Major public facilities;
- (b) Transit proximity;
- (c) Transportation Related Benefits;
- (d) Public Benefits;
- (e) Place Making; and
- (f) Neighborhood Business Support.

Section 59-C-15.95 indicates the individual public benefits that may be accepted in each of these categories.

59-C-15.92. Public benefits required.

Any optional method development must provide public benefits from at least 3 of the 6 categories listed in Section 59-C-15.91. Unless otherwise indicated, the minimum and maximum number of public benefit points in each category is the same for the CRT and CR zones.

- (a) Development in the CRT zones must provide public benefits worth a minimum total of 50 points; and
- (b) Development in the CR zones must provide BLTs required under Section 59-C-15.956(e) for at least 5 points and provide additional public benefits; the sum of the public benefit points must equal at least 100 points.

59-C-15.93. General incentive density considerations.

In approving any incentive density based on the provision of public benefits, the Planning Board must not grant incentive density for any attribute required by law and must consider:

- (a) the recommendations and objectives of the applicable master or sector plan;
- (b) the Incentive Density Implementation Guidelines and any design guidelines adopted for the applicable master plan area;
- (c) the size and configuration of the tract;
- (d) the relationship of the site to adjacent properties;
- (e) the presence or lack of similar public benefits nearby; and
- (f) enhancements beyond the elements listed in the individual public benefit descriptions or criteria that increase public access to or enjoyment of the benefit.

59-C-15.94. CRT and CR zones incentive density implementation guidelines.

The Planning Board must adopt, publish, and maintain guidelines that detail the standards and requirements for public benefit points. The guidelines must:

(a) be consistent with the objectives of this Division;

(b) be in addition to any standards, requirements, or rules of incentive density calculation included in this Division, but may not conflict with those provisions; and

(c) only allow incentive density for those public benefits listed in Section 59-C-15.95.

59-C-15.95. Individual public benefit descriptions and criteria for CRT and CR zones.

59-C-15.951. Major public facilities.

Major public facilities provide public services at convenient locations and where increased density creates a greater need for civic uses and greater demands on public infrastructure.

(a) Major public facilities include, but are not limited to, such facilities as schools, libraries, recreation centers, parks, county service centers, public transportation or utility upgrades, or other resources delineated in an applicable master or sector plan.

(b) If a major public facility is not recommended in the applicable master or sector plan, the Planning Board must find that the facility or improvement provides the community with a resource that is at least as beneficial as other major facilities recommended in the applicable master or sector plan.

Additionally, any infrastructure upgrade may only receive incentive density for improvements beyond those required by any applicable adequate public facilities requirement to complete the proposed development.

(c) Because of their significance in place-making, the Planning Board may approve incentive density of up to 70 points in CR zones and 40 points in CRT zones for (1) the conveyance of a site or floor area for, (2) construction of, or (3) making a payment for a major public facility that is accepted for use or operation by an appropriate public agency, community association, or nonprofit organization.

59-C-15.952. Transportation related benefits.

(a) The maximum number of public benefit points from minimizing parking, transit access improvements and a trip mitigation agreement is 55 points in CR zones and 35 points in CRT zones.

(b) Transit proximity points are granted for proximity to existing or planned transit stops based on transit service levels as follows:

<u>Proximity</u>	<u>Adjacent or confronting</u>		<u>Within ¼ mile</u>		<u>Between ¼ and ½ mile</u>		<u>Between ½ and 1 mile</u>	
<u>Transit Service Level</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>
<u>CR</u>	<u>50</u>	<u>30</u>	<u>40</u>	<u>25</u>	<u>30</u>	<u>20</u>	<u>20</u>	<u>15</u>
<u>CRT</u>	<u>25</u>	<u>15</u>	<u>20</u>	<u>12.5</u>	<u>15</u>	<u>10</u>	<u>10</u>	<u>7.5</u>

(1) A project is adjacent to or confronting a transit station or stop if it shares a property line or easement line, or is separated only by a right-of-way from an existing or planned transit station or stop, and 100 percent of the gross tract area in a single sketch plan application is within ¼ mile of the transit portal.

(2) For split proximity-range projects:

(A) If at least 75 percent of the gross tract area in a single sketch plan application is within the closer of two proximity ranges, the entire project may take the points for the closer range;

(B) If less than 75 percent of the gross tract area in a single sketch plan is within the closer of 2 proximity ranges, the points must be calculated as the weighted average of the percentage of area in each range.

(c) **Minimum Parking:** As limited by §59-C-15.952(a), up to 40 points in the CR zones and 25 points in the CRT zones for providing less than the maximum allowed number of parking spaces, if the reduced parking results in a non-auto driver mode share of at least 50% for trips attributable to the site in the CR zones and 35% in the CRT zones.

(d) **Transit Access Improvement:** As limited by §59-C-15.952(a), up to 10 points for ensuring that access to transit facilities exceeds the requirements in a Master Plan and Design Guidelines. The number of points must be related to:

(1) the square footage of the improvement relative to the floor area of incentive density; or

(2) the construction cost of the improvement relative to the construction cost of the incentive density.

(e) **Traffic Mitigation Agreement:** As limited by §59-C-15.952(a), up to 10 points for a binding agreement to reduce the number of weekday morning and evening peak hour trips attributable to the site in excess of any other regulatory requirement; the agreement must result in a non-auto driver mode share of at least 50% for trips attributable to the site.

59-C-15.953. Public Accommodations.

(a) The maximum number of public benefit points from this subsection is 40 points in the CR zones and 20 points in the CRT zone.

- (b) **Public Parking:** Up to 20 points for providing up to the maximum number of parking spaces allowed in the zone as public parking.
- (c) **Structured Parking:** Up to 20 points for placing parking within above- or below-grade structures.
- (d) **Streetscape:** Up to 10 points for construction of off-site streetscape, excluding any streetscape improvements required by this Division.
- (e) **Care Centers:** Up to 15 points for constructing a child or adult day care facility with spaces for at least 15 users. The number of points must be related to:
 - (1) the square footage of the improvement relative to the floor area of incentive density; or
 - (2) the construction cost of the improvement relative to the construction cost of the incentive density.

59-C-15.954. Place Making.

- (a) The maximum number of public benefit points from this subsection is 25 points.
- (b) **Exceptional Design:** Up to 10 points for building or site design whose visual and functional impacts enhance the character of a setting and the purposes delineated in this Section. Of the 10 points, at least 5 points for stepping back a building's upper floors by a minimum of 6 feet behind the first floor façade. The step-back must begin at a height no greater than 72 feet.
- (c) **Public Open Space:** Up to 15 points for providing or making a payment for open space; the space provided or paid for must be at least 50 percent more than the minimum public use space required by this Division.

- (d) **Historic Resource Protection:** Up to 15 points for the preservation and/or enhancement of or payment towards preservation and/or enhancement of a historic resource or a contributing element within a historic district designated in the Master Plan for Historic Preservation.
- (e) **Public Art:** Up to 10 points for installing public art reviewed for comment by, or paying a fee accepted by, the Arts and Humanities Council.

59-C-15.955. Neighborhood Business Support.

- (a) **Small Business Opportunities:** Up to 10 points for providing on-site retail space to neighborhood oriented businesses at reduced rents for a minimum of 10 years.
- (b) **Neighborhood Services:** Up to 10 points for the provision of retail bay floor area of no greater than 5,000 square feet if less than 10 different retail services exist within ¼ mile of the site.

59-C-15.956. Housing Diversity.

- (a) **The maximum number of public benefit points from housing diversity attributes is 60.**
- (b) **Affordable Housing:**
- (1) **All residential development must comply with the requirements of Chapter 25A for the provision of Moderately Priced Dwelling Units (MPDUs).**
- (2) **MPDU Incentive Density: Provision of MPDUs above the minimum number of units required by Chapter 25A.**
- (A) **MPDU units above the minimum number of units required, but not more than 15 percent of all units, entitles the applicant to 12 incentive density points for each 1 percent increase in**

MPDUs. Any fraction of 1 percent increase in MPDUs entitles the applicant to an equal fraction of 12 points;

(B) Above 15 percent of MPDUs, each 1 percent of additional MPDUs entitles the applicant to an additional 2 benefit points; any fraction of 1 percent increase in MPDUs entitles the applicant to an equal fraction of 2 points;

(C) The maximum number of public benefit points for providing affordable housing is 40 points.

Example: Provision of 14.5% MPDUs is awarded 24 points; provision of 13.0% MPDUs is awarded 6 points.

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

(d) **Enhanced Accessibility for the Disabled:** Up to 20 points for constructing dwelling units that satisfy American National Standards Institute A117.1 Residential Type A standards or an equivalent County standard.

(e) **Building Lot Termination(BLT):** Up to 30 points for the purchase of BLT easements or payment to the Agricultural Land Preservation Fund (ALPF). The first 5 points are mandatory for all developments in the CR zones; up to 25 additional points are allowed as an option.

(1) In the CR zones, an applicant must purchase BLT easements, or make payments to the ALPF, in an amount equal to 5% of the incentive density floor area under the following parameters:

(A) One BLT must be purchased or equivalent payment made for every 20,000 square feet of gross floor area to qualify for the first 5% incentive density floor area;

(B) Any private BLT easement must be purchased in whole units;

or

(C) BLT payments must be made to the ALPF, based on the amount established by Executive Regulations under Chapter 2B; if a fraction of a BLT easement is needed, a payment based on the gross square footage of incentive density must be made for at least the fraction of the BLT easement.

(2) In CR zones, up to 25 points for the purchase of BLTs, or equivalent payments to the ALPF for any incentive density above 5%. Each BLT easement purchase or payment is equal to 30,000 square feet of gross floor area, or such proportionate square footage represented by a fractional BLT purchase or payment. This is converted into points by dividing the incentive density floor area covered by the purchase or payment by the total square feet of the incentive density area.

(3) In CRT zones, BLT payments are optional; each BLT easement purchase or payment is equal to 30,000 square feet of gross floor area, or such proportionate square footage represented by a fractional BLT purchase or payment.

Example: If a 50,000 square-foot CR-3.0 site is fully developed, the incentive density available to be earned equals 125,000 square feet (150,000 square feet - 25,000 square feet = 125,000 square feet). The 5% BLT requirement for 125,000 square feet equals 6,250 square feet, which equals 0.32 BLT (6,250 square feet / 20,000 square feet = 0.32). If the applicant seeks an additional 10 points through the purchase of BLTs, 10% of the incentive density is calculated, which in this case is 12,500 square feet (125,000 square feet x 0.10 = 12,500 square feet). Because 1 BLT, above

the required 5%, is equivalent to 30,000 square feet, the 12,500 square feet requires a payment for an additional 0.42 BLTs (12,500 square feet / 30,000 square feet = 0.42). Together, the required and incentive BLTs equal 0.74 BLTs for 15 points in the Environment category.

59-C-15.957. Façades (CRT zones only).

In CRT zones, up to 10 points for providing elevations of architectural façades and agreeing to be bound by particular elements of design, such as minimum amount of transparency, maximum separation between doors, awning provisions, sign restrictions, or lighting parameters that affect the perception of mass, pedestrian comfort, or enhance neighborhood compatibility.

[[59-C-15.9]] 59-C-15.10. Existing Approvals.

(a) One or more lawfully existing buildings [or], structures [and the], or uses [therein which] [[,]]that predate the [applicable sectional map amendment] application of the CR zone to the [[site]][,] land 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 such development does not require a site plan. [Enlargements] Expansions 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 permitted non-residential or residential use(s) up to the density limits for the land use established by the CRT, CRN, or CR zone.

(b) A project that received an approved development plan under Division 59-D-1 or schematic development plan under Division 59-H-2 before the

[enactment] application of the CR zones to the [[site]] land may proceed under the binding elements of the development plan and will thereafter be treated as a lawfully existing building, and may be renovated or reconstructed under Subsection (a) above. Such development plans or schematic development plans may be amended as allowed under Division 59-D-1 or 59-H-2 under the provisions of the previous zone; however, any incremental increase in the total floor area beyond that allowed by Subsection (a) above or any incremental increase in building height greater than 15 feet requires, with respect to the incremental increase only, full compliance with the provisions of this Division. Any failure to fully comply with the binding elements of the development plan will require full compliance with the provisions of this Division.

(c) At the option of the owner, any portion of a project subject to an approved development plan or schematic development plan described in Subsection (b) above may be developed under this Division. The remainder of that project continues to be subject to the approved development plan or schematic development plan, under Subsections (a) and (b).

(d) A project which has had a preliminary or site plan approved before the [[applicable sectional map amendment]] application of the CR zone to the property may be built or altered at any time, subject to either the full provisions of the previous zone or this [division] Division, at the option of the owner. If built under the previous approval, it will then be treated as a [lawfully existing building] conforming building, structure, or use and may be renovated, continued, repaired, or reconstructed under Subsection (a) above. If built with an incremental increase over the previous approval, only that incremental increase must comply with this Division.

(e) A project that has had a special exception approved before application of the CR zone to the site may continue as a lawfully existing use as long as it fully complies with the terms and conditions of its approval. Any failure to fully comply with the terms and conditions of the special exception approval will require full compliance with the provisions of this Division. If a special exception holder chooses to operate under this Division instead of under the special exception, written notice must be provided to the Board of Appeals that the special exception has been abandoned.

* * *

Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Summary of the Committees' recommendations on ZTA 11-01

The Committee requested that staff provide additional text to the objectives provision of the ZTA (lines 109-125). The purpose of the addition would be to offer greater protection to single-family detached lots adjoining any of the CR zones from undue building height and bulk.

The Committee agreed to recommend the following changes to ZTA 11-01:

- 1) Density averaging – change so that averaging must be indicated on optional method sketch plans in the CR and CRT zones and may be indicated in site plans for standard method development;
- 2) Sketch plan amendment – agreed with the Planning Board's proposed changes (in its May 13 letter to the Council) to the sketch plan amendment process (3-0);
- 3) Timing between sketch plans and preliminary plans – change to allow a preliminary plan to be submitted at the same time or after a sketch plan application is submitted but not yet approved (3-0);
- 4) Site plan trigger – clarify that the 10,000 square feet of development trigger for site plan is a cumulative number from the date that a CR zone is applied (3-0);
- 5) Site plan conformance to master plans – change lines 340 to 344 of ZTA 11-01 to read as follows:
 Development that requires a site plan must be substantially consistent with the applicable master or sector plan and any design guidelines approved by the Planning Board that implement the applicable plan (3-0);
 However, based on the Committee's review of the Takoma/Langley Sector Plan, staff will examine amending the requirement that development substantially conform to Planning Board adopted design guidelines by retaining the current requirement that development "address" the design guidelines;
- 6) Automobile parking requirements – revise the parking requirements table as recommended by the Planning Board in its May 13 letter to the Council (3-0);
- 7) Bicycle parking – reduce the bicycle parking requirement to .35 spaces per dwelling unit for multifamily dwelling units;
- 8) Land use table major categories – Amend the land use table to have major residential and non-residential categories (3-0).
- 9) Public benefit points – only award benefit points for attributes that are beyond those required by law (3-0).

The Committee discussed and made recommendations on the following land uses in the CRN zones. The following table lists PHED Committee amended land uses in the order that the use appears in ZTA 11-01.

<u>Land use</u>	<u>Limited / Permitted / Special Exception</u>	<u>Committee vote</u>
<u>Ambulance or Rescue Squads, Private</u>	PROHIBIT	2-1 Councilmember Floreen would allow the use as a Limited use
<u>Auto sales, indoor</u>	PROHIBIT	2-1 Councilmember Floreen would allow the use as a Limited use
<u>Clinics</u>	Permitted	2-1 Councilmember Elrich would allow the use as a special exception
<u>Hotels / motels</u>	PROHIBIT	3-0
<u>Dry Cleaner / Laundry Under 3,000 square feet GFA</u>	<u>Permitted in the CRT and CR zones; not in the CRN zones</u>	3-0
<u>Recreation Facilities, Participatory</u>	Special Exception	2-1 Councilmember Floreen would allow the use as a Limited use
<u>Veterinary Hospital (no boarding)</u>	Special Exception	2-1 Councilmember Floreen would allow the use as permitted
<u>Charitable / philanthropic</u>	Permitted	2-1 Councilmember Elrich would allow the

<u>Land use</u>	<u>Limited / Permitted / Special Exception</u>	<u>Committee vote</u>
		use as a limited use
<u>Cultural Institutions</u>	Split by size; permit small uses; PROHIBIT large uses	3-0
<u>Manufacturing, artisan</u>	Permitted – but amend definition to avoid nuisances	3-0

The Committee (2-1 Councilmember Floreen opposed except for the revisions to the MPDU benefit) recommended the public benefit list and points as proposed by Councilmember Elrich. Public benefits not on the list are recommended for deletion; those deleted public benefits included through-block connections, advanced dedication of Master Plan right-of-way, wayfinding, adaptive building, live/work units, energy conservation, energy generation, vegetated wall, tree canopy, vegetated area, vegetated roof, cool roof, recycling facility plan, and habitat preservation/restoration.

Public Benefit	Points for CRT Zones	Points for CR Zones
<i>Major Public Facility</i> ¹	40 maximum	70 maximum
<i>Transportation Related Benefits</i> ^{1,2}	35 maximum (for the next 3 benefits)	55 maximum (for the next 3 benefits)
Minimize parking auto mode share not >50%	25 points	40 point maximum
Transit Access improvement in addition to requirements in a master plan or design guideline	10 maximum (based on cost or square footage)	10 maximum (based on cost or square footage)
Trip mitigation if in addition to min. parking that reduces auto mode share	10 maximum (mode share must be <35%)	10 maximum (mode share must be < 50%)
<i>Public Benefits</i>		
Public Parking	20 maximum	20 maximum
Structured Parking	20 maximum	20 maximum
Off-site streetscaping	10 maximum	10 maximum
Child and Adult Care	15 Maximum (related to the square footage of the facility)	15 Maximum (related to the square footage of the facility)
<i>Place Making</i>		
Exceptional Design	10 Maximum	10 Maximum
Public Open Space – up to 15 (Provides a minimum of 50% more open space than required)	15 Maximum	15 Maximum
Historic Protection (based on cost or square footage)	15 Maximum	15 Maximum
Public Art (review by the Arts Council, and local review CABs, or CBD Advisory Board)	10 Maximum	10 Maximum
<i>Local business development and support</i>		
Small business Opportunity (Community Benefits Agreement to reduce rents for local small business)	10 Maximum	10 Maximum
Neighborhood Retail (where > 10 small retail uses are within a ½ mile – retail	10 Maximum	10 Maximum

Public Benefit	Points for CRT Zones	Points for CR Zones
space provided must average 5,000 square feet or less and size must be retained for 25 years)		
<i>Housing Diversity</i>		
MPDUs ³	40 Maximum	40 Maximum
Dwelling Unit mix (minimum percent of 3 and 4 bedroom units)	5 Maximum	5 Maximum
Enhanced Handicapped Accessibility	10 Maximum	10 Maximum
BLT Purchase		5 Minimum 30 Maximum
Architectural Elevations	10 Maximum	

¹ A major public facility that receives 50 or more points in the CR zones or 30 or more points in the CRT zones may get the balance from any two other categories.

² Transportation or Housing diversity projects that get the maximum number of points may get the balance from any two other categories.

- ³
- a) for the first 2.5% of MPDUs above the minimum 12.5% of MPDUs, allow 30 benefit points (12 benefit points for every 1% increase);
 - b) for every additional 1% of MPDUs thereafter, allow an additional 2 benefit points, up to a maximum total public benefit for affordable housing of 40 points;
 - c) delete workforce housing as a public benefit category.

A majority of the Committee (2-1 Councilmember Elrich opposed) recommended that Transit Proximity be included on the list of public benefits with reduced points required for developments that satisfied the transit proximity requirements.

The Committee majority would not apply the new benefit list and point values to White Flint and Shady Grove but would apply other clarifying provisions of ZTA 11-01 to those areas.

The Committee agreed with editorial changes.

Staff was asked to work with Councilmember Elrich to draft text to limit the applicability of CR zones when the zones are not recommended by master or sector plans.

The Committee discussed, but did NOT recommend, changes to the following provision from ZTA 11-01 as introduced:

- 1) adding a development standard to limit dwelling units per acre;
- 2) adding a new CRHistoric zoning series;
- 3) requiring a mix of land uses for a developer to be able to build anything;
- 4) changes to the triggers for site plan approval, other than making sure that the 10,000 square foot trigger is cumulative (3-0);
- 5) a requirement for a sketch plan in the CRN zone (2-1 Councilmember Elrich opposed);
- 6) changing the level of master plan conformance for sketch plans;
- 7) including "vehicle inventory storage" as a permitted use (3-0);
- 8) including "dry cleaning, pick-up" within the definition of general retail (3-0);

- 9) limiting the definition of "seasonal outdoor sales" (3-0);
- 10) prohibiting counting on-street parking towards meeting parking requirements (3-0);
- 11) deleting the provision to allow the Planning Board to waive parking requirements (3-0);
- 12) requiring specific setbacks from residential zones and drive-throughs (3-0);
- 13) requiring more public use space (2-1 Councilmember Elrich opposed).



City of Takoma Park, Maryland

Memorandum

TO: Councilmember Nancy Floreen, Chair
Planning, Housing & Economic Development Committee (PHED)

FROM: Bruce Williams, Mayor

CC: County Council President Valerie Ervin
Takoma Park City Council
Jeff Zyontz, Legislative Attorney

DATE: July 15, 2011

RE: ZTA 11-01, Commercial/Residential (CR) Zones

Thank you for this opportunity to provide further comment on the ongoing CR zoning text amendment. We appreciate the PHED Committee's interest in and desire to craft language which supports the City of Takoma Park's interest in protecting and furthering the commercial viability of our many smaller and often locally owned businesses and the diverse character of our commercial areas. The following is a brief overview of suggestions we ask be considered as the Committee continues its review.

Public Benefits

The PHED Committee is considering a proposal to reduce the listing of public benefits that would be used to further the community's redevelopment goals as stated in the Master and Sector Plans. In the event the listing is reduced, the City strongly recommends the PHED Committee consider incorporating the following text or its equivalent alternative in the amendment to facilitate the redevelopment of smaller properties. (Line numbers correspond to the June 9, 2011 PHED Committee memo):

- 174 **59-C-15.4. Methods of development and approval procedures.**
175 [Two methods of development are available under the CR zones] The CRN zones
176 allow development only under the standard method. The CRT and CR zones
177 allow development under the standard method and may allow development under
178 the optional method with the exception of CRT zoned properties which are exempted
from optional method if the lot to be developed meets the following conditions:
(a) is less than one acre in size;
(b) is not one of two or more adjacent parcels owned in full or partially by a common
entity or owner representative.

Off Street Parking Requirements

The City supports the establishment of maximum on-site parking requirements, not the minimum standards currently included in the text. It has been our experience that, even with Chapter 59-E's shared-use benefits, reductions for proximity to Metro and location in the lowest parking requirement area, businesses and

property owners are often forced to request parking waivers during either site plan review or from the Director of Permitting Services to obtain a use-and-occupancy permit. While waivers are often granted based on a variety of factors - the availability of on-street parking, the use of adjacent lots, and the walkability of the area - it is an added step which places an additional burden on the small business owner in terms of time, money and uncertainty. From an economic development perspective, the establishment of maximum parking limitations is more appropriate.

Small Business Opportunities

We recommend that additional benefit points be provided in this category, requiring that the lesser of five commercial spaces or 20% of the overall square footage of any retail center be set aside for occupancy by small commercial or retail establishments and that this requirement remain in effect for the life of the center. We support the inclusion of the following statement or its equivalent in either the zoning ordinance design standards, within the Master Plan, or the Takoma/Langley Crossroads Urban Design Guidelines:

“Large format retail stores with long stretches of unrelieved wall space along streets are not compatible with a pedestrian oriented environment and should include micro retail spaces wrapping the walls facing the street , the distribution of retail activity across two or more stories or the placement of the main sales floor on a story other than the ground level.”

The City would be willing to explore the viability of establishing a benefit category requiring a property owner to enter into an agreement to provide defined leasing opportunities for independent, non-formula retail tenants. We are concerned however about the administrative burden this may create and uncertain as to whom and how such an agreement would be enforced.

Streetscapes

The ZTA currently before the PHED would eliminate the streetscape requirements currently set forth in the CR Zone. Streetscape requirements are also not included in the current draft of the Design Guidelines prepared for the Takoma Langley Sector Plan. While the Planning Department has stated that a separate document will be prepared establishing minimum streetscape requirements for the entire County, we are concerned about the lack of a streetscape product shown in any adopted work plan and the amount of time that may be needed to develop streetscape standards for the entire County.

We encourage incorporation of streetscape requirements in either the current ZTA or the Sector Plan.

Interim Development

Finally, we strongly encourage the PHED Committee to retain the language currently included in the Takoma Park/East Sliver Spring Commercial Revitalization Overlay Zone (CROZ), specifically 59-C-15.9 Existing Approvals. We support establishing site plan requirements for projects over 10,000 sf, 10% of sf., and 1 FAR. The City also supports the inclusion of language in the Sector Plan that reiterates the County Site Plan regulations that allow for a portion of a site (the affected area, not the entire site) to be considered through the site plan process for interim development.

Thank you for your consideration of our comments.

Mayor Peter C. Fosselman

**Council Member Mackie Barch
Council Member Mary Donatelli**



**Council Member Sean P. McMullen
Council Member Lydia Sullivan**

July 13, 2011

County Council Member Nancy Floreen, Chair
Planning, Housing & Economic Development Committee
100 Maryland Avenue
Rockville, MD 20850

Re: Zoning Text Amendment for the CR Zone

Dear Council Member Floreen,

The Town of Kensington has been closely following the discussions regarding the proposed Zoning Text Amendment for the CR Zone. While our Town Council has not taken a formal position on this ZTA, we are very concerned about any material changes to the zone that would negatively impact the economic feasibility of revitalization in Kensington.

If you recall, the proposed adaptations to CR Zone, creating the CRT and CRN categories, are largely a result of work with various stakeholders; residents, property owners, Planning Board Staff, County and Municipal Council Members, and many others. Kensington, like other small municipalities, suffers from a lack of investment by the development community. In order to attract opportunities, development must be more economically attractive than other areas in Montgomery County (i.e. Bethesda, Silver Spring, White Flint). Since we are limited by height and FAR, economic inducement must come in other modes.

The endorsement from our citizens to move the 2011 Kensington Sector Plan forward was reconfirmed with our recent town election. Our town has the oldest Master Plan in Montgomery County and it has been a long road to its adoption. We are intent on making sure we have a proposal that works for the entire community.

The current changes will severely handicap Kensington's, as well as Takoma Park's and Wheaton's, ability to revitalize. I'm respectfully request you take into account variable amendments to the CR Zone that accommodate the County's small towns and properties. Thank you for your time and consideration.

Sincerely,

Peter Fosselman

Cc: Hon. Valerie Ervin Hon. Marc Elrich Hon. George Leventhal
Kensington Town Council Kensington Revitalization Committee

3711 Mitchell Street Kensington, MD 20895 (301) 949-2424 www.TOK.md.gov



10400 Detrick Avenue
Kensington, Maryland 20895-2484
(240) 773-9000

September 2, 2011

The Honorable Nancy Floreen, Chair
Planning, Housing and Economic Development Committee
Montgomery County Council
Sixth Floor
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Floreen:

We have been following the PHED Committee's discussion about ZTA 11-01 on the CR zones, and we appreciate your staff's keeping us informed about ongoing developments. What follows are our comments about the current draft of the ZTA, specifically about the public benefit options for bonus density in the optional method.

The comments focus on two areas:

- making the increased MPDU option more attractive in competition with other public benefits by providing a buyout mechanism; and
- creating a sunset for the applicability of the public benefits list in 15.8 to CR developments, including those in the White Flint and Shady Grove areas.

The PHED Committee has heard concern from many quarters about the need to increase the production of affordable units in the new housing developed via the CR zone. HOC shares that concern and testified that the public benefits structure failed to make the affordable housing option attractive enough to offset its expense. We were concerned that developers would choose other, less expensive and more inherent public benefits to gain the necessary points.

HOC suggested an amendment to the ZTA to increase substantially the bonus density points for extra MPDUs, with a maximum of 40 points for MPDUs provided above the required 12.5%. We were gratified that the PHED Committee acknowledged the need to make additional MPDUs a more attractive option and agreed to increase the number of points.

We note that in the most recent version of the list of public benefits (August 4), the bonus points for MPDUs provided above the required 12.5% is raised slightly, and the maximum share of MPDUs is raised. For 15% MPDUs the bonus goes from 25 points in the current CR zone to 30 points in the ZTA. The maximum in the ZTA rises to 40 points for 20% MPDUs.

We recognize that the increase in the number of points is an improvement. At the same time, we continue to be concerned that developers will be reluctant to take advantage of the MPDU avenue to bonus points with so many less expensive and/or more attractive routes available, even in the shortened list.

We suggest a provision that permits developers to pay a fee in lieu of the bonus MPDUs, not the required 12.5%. The law addressing MPDUs (Chapter 25A) authorizes an alternative payment for MPDUs within the 12.5% requirement, but not within the framework of the CR zone. Chapter 25A must be amended for use with the CR zone. We look forward to participating in this task.

The fee would be used by DHCA to provide MPDU-type units in an area proximate to the transit station area. HOC's purpose in continuing to press for more MPDUs in areas where the CR zones have been applied is because these areas will be very attractive and, we suspect, will soon become unaffordable to low and moderate income families. Whether the developer provides the bonus MPDUs as part of the development or pays a fee in lieu of them, if the buyout fee is reasonable and if DHCA uses those funds in the transit area for affordable units, then the county has accomplished the goal.

The only CR experience to which we can point does not give us confidence that affordable housing will be selected as one of the public benefits. The lists of benefits in the sketch plans for recent White Flint development proposals – Mid-Pike Plaza and North Bethesda Market II – are very similar. They include an array of lower cost public benefits, and do not include any of the higher cost and value items.

A buyout option for bonus MPDUs does not require changes to the list of public benefits contained in Section 15.9. HOC urges its adoption because we believe that it would enhance the attractiveness of that option to developers, and because we want to maximize the potential for affordable housing in the desirable communities that the CR zones will create.

On the second point, the August 4 version of the ZTA indicates that section 15.8 would apply to CR zoned property and section 15.9 would apply to CR² zoned properties. We understand that this construction is an attempt to address the PHED Committee's expressed commitment to developers in the White Flint and Shady Grove Sector Plan areas that their developments will be exempt from changes to the CR zone. HOC makes two points here, one a technical point and one a policy point.

The technical point is that properties in the Shady Grove area have not yet been rezoned to the CR zone. If the Council ultimately decides to permanently exempt those properties as well, then the construction needs to be modified.

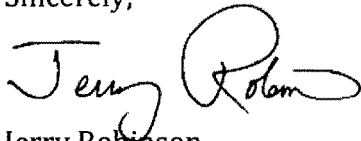
On what we consider to be an important policy point, HOC fails to understand why properties in the White Flint and Shady Grove Sector Plan areas deserve a permanent exemption from the changes to the CR zone in ZTA 11-01. We develop property. We understand why stable requirements are essential to the rational development of property. However, we would suggest a sunset of three years for the public benefits list currently in the CR zone (Section 15.8). Three years gives developers in both White Flint and Shady Grove ample notice that the rules will change. Providing the maximum amount of affordable housing in those two highly desirable transit areas is such a significant policy goal that we hope you are persuaded that it warrants a sunset on current law.

The Honorable Nancy Floreen
September 2, 2011
Page 3 of 3

HOC is most interested in the fate of the affordable housing public benefit. It is clear that this benefit is still more costly than many other choices. It provides a major public benefit but not much benefit to the developer, unlike other benefits such as good architecture, design and landscaping.

We look forward to continuing our participation in the PHED Committee and full Council work on ZTA 11-01, and we appreciate the receptivity you have already extended to HOC. Our contact person for this issue is Tedi Osias, Director of Legislative and Public Affairs. She can be reached at tedi.osias@hocmc.org or 240.773.9059.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Robinson". The signature is fluid and cursive, with the first name "Jerry" and last name "Robinson" clearly distinguishable.

Jerry Robinson
Acting Executive Director

cc: The Honorable George Leventhal
The Honorable Marc Elrich
Jeff Zyontz, Montgomery County Council
Francoise Carrier, Chair, Montgomery County Planning Board
Rollin Stanley, Director, Montgomery County Planning Department