

MEMORANDUM

June 19, 2006

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ^{JK} Council Analyst
SUBJECT: ZTA 06-11, Wheaton Overlay Zone - Revisions

Background

On April 3, 2006, Councilmembers Praisner and Perez introduced ZTA 06-11 to revise the Retail Preservation Overlay Zone for the Wheaton Central Business District.¹

The Council held a public hearing on this ZTA on June 13, 2006. Testimony from that hearing is attached starting on © 28.

The overlay zone was intended to “retain the existing scale of development and mix of retail service uses within the Wheaton Central Business District.”² This was accomplished by prohibiting all optional method development, requiring all development to obtain site plan approval and requiring windows and apertures covering at least 50% of the street level exterior walls. The overlay zone has been in place for the past 16 years.

The overlay zone was written to implement the goals of the Wheaton Central Business District and Vicinity Sector Plan.³ Written before the opening of the Metrorail station, the sector plan recommends a review ten years after its adoption. To some extent, this ZTA is part of the review recommended by the plan. The Wheaton Urban District Advisory Committee and the Wheaton Redevelopment Advisory Committee have been re-evaluating the overlay zone since 2003.⁴ The Wheaton Redevelopment Advisory Committee endorsed a smart growth, “town center vision” that requires optional method densities for the vision’s implementation. The

¹ Hereafter this zone is referred to as the overlay zone.

² Montgomery County Zoning Ordinance 59-C-18.101 (a)

³ Hereafter this plan is referred to as the sector plan.

⁴ This Committee was formerly named the Wheaton Redevelopment Steering Committee.

requirement for site plan approval for every small addition was also noted as an impediment to redevelopment.⁵

Concepts in ZTA 06-11

- Standard method projects
 - Exempts projects that are less than 20,000 square feet of gross floor area and less than 42 feet in height from site plan approval.
 - Density may be increased and land coverage may be increased, if 30% of street level floor space is provided for small retailers.

Streetscaping is required on all site plan approvals plans

- Optional method projects (prohibition removed)
 - Permitted if 45% of the street level floor area is devoted to small retail spaces and 50% of the public use space is “green area” .
 - Sites located south of Ennals Avenue, north of Price Avenue and east of Fern Street would be limited to 100 feet in height. The remainder of the overlay zone area is limited to 125 feet in height.
 - Bonus density permitted for projects providing 60% or more of street level floor area for small retail space.
 - Public use space may be provided off site or substituted by streetscaping, if 1,800 square feet or less of public use space is required.
 - Optional method approval may be accomplished within the subdivision process, if a subdivision is required.

Planning Board Recommendation

The Planning Board recommends approval of ZTA 06-11 with modifications. The Board believes that ZTA 06-11 can be viewed as implementing the goals and objectives of the sector plan. “The proposed text amendment encourages the retention of small stores and the provision of new housing which are both in accord with the sector plan and other County policies.”⁶ The Planning Board believes that the goals of the sector plan require an emphasis on design. To that end, they recommend that standard method projects above 5,000 square feet of new or additional gross floor area should be subject to site plan approval.

The Planning Board agrees with allowing optional method of development if the development provides small retail space. The Planning Board also recommends a single limit on

⁵ “Purpose and Scope of Proposed Amendment”, March 20, 2005 © 28-31

⁶ Memo to the County Council from the Planning Board, June 7, 2006 © 14

height for the entire overlay zone area. The Planning Board believes that bonus density for optional method projects is an idea that should be addressed in the upcoming sector plan amendment.

More detailed aspects of the Planning Board's recommendations are noted below.

Staff Comments

As introduced, the ZTA allows major redevelopment in the Wheaton CBD. Some administrative approvals are also eliminated.

This ZTA is a comprehensive change to almost all of the standards and procedures in the overlay zone. In order to facilitate the Committee's deliberations, Council staff has broken down the elements of the ZTA into a number of issues for the Committee to address. The following 14 issues correspond to sections in the text of the ZTA.

1. **Should a new sector plan come before this ZTA?**

This issue was raised in public testimony. The sector plan is scheduled to start in FY07. It is likely to be completed within 3 to 5 years.

The vision for the Wheaton Central Business District is to be an economic center, a transportation center, a place for people, a place to live and a place where we work together.⁷ The overlay zone area is referred to in the sector plan as the "Marketplace". For the Marketplace, "retail preservation is a central theme" of the sector plan.⁸ The plan "...encourages the renovation of existing buildings".⁹ The sector plan's emphasis on **building retention** runs counter to the proposed ZTA. However, the emphasis of business retention and mixed-use development in the ZTA can be found in the sector plan.

There is a basis to conclude that ZTA is within the scope of the sector plan. A zoning review was specifically recommended in the plan:

"The **zoning** in this Plan ought to be subject to review within the same time period as other elements of the Plan, namely a period of ten years or when events dictate."¹⁰

The Planning Board placed great weight on this recommended zoning review. The Planning Board staff represented the test of sector plan consistency with the ZTA as a sliding scale: the more aggressive the change, the stronger the recommendation would be to do a sector plan amendment before approving a ZTA.

⁷ Wheaton Central Business District and vicinity, Approved and adopted Sector Plan, 1990, Page 21-22

⁸ Ibid, Page 29

⁹ Ibid, Page 35

¹⁰ Ibid, Page 45, emphasis added

Mayor Anthony Williams is quoted as saying, "Planning without action is a dream. Action without planning is a nightmare."

The sector plan's emphasis is to retain existing buildings. The ZTA seeks redevelopment. In the context of Mayor Williams' quote, the ZTA emphasizes action. Action however, was anticipated in the sector plan by the call for a review of "ZONING" after 10 years.

The following factors argue in favor of proceeding with the ZTA:

- 1) the recommended zoning review after 10 years;
- 2) the Planning Board position finding the ZTA in accord with the 1990 Sector Plan;
- 3) the impending sector plan update; and
- 4) the constraints within the ZTA.

Proceeding with the ZTA without first reviewing and changing the sector plan, in the absence of any of these factors, would be imprudent. Even with these factors, some would still find that proceeding without a sector plan amendment is imprudent. The tipping point for Council staff is the possibility of undertaking a new sector plan in FY07. (This would require changing a change to the Planning Board's workprogram.)

Council staff recommends proceeding with ZTA 06-11 provided that the sector plan amendment process is initiated early in FY07 and brought back to the Council as soon as possible thereafter.

2. Should the overlay zone permit optional method of development?

The ZTA provides the opportunity for density to occur, not the assurance that it will occur. The area outside of the overlay zone has been permitted to use optional method density since 1990. No project has taken advantage of this opportunity. The increased height of optional method projects (more than four stories) requires a high economic return. High-rise construction is more expensive than "stick" construction. It is unknown whether the market in Wheaton will now support optional method densities.

The existing overlay zone prohibits all optional method of development projects. The ZTA removes that prohibition. This aspect of the ZTA represents a significant change in allowable density. The optional method of development allows a doubling of density from the standard method of development. These projects must provide public use space and obtain site plan approval. The overlay zone has additional conditions for approval presented below.

Optional method densities create an incentive for the future assemblage of property. The optional method requires the assemblage of 18,000 square feet of property. Parcel ownership in the Wheaton CBD is highly fragmented. There are only a dozen or so parcels greater than 18,000 square feet.

The Planning Board and Planning Board staff testified in favor of permitting the optional method of development. They suggest additional requirements for approval beyond the 45% of

the street level floor area for small business, a mix of uses, providing a street facade and no surface parking in front of the building. The vast majority of testimony was also in favor of this opportunity. Speakers who thought that the sector plan review should be completed before approving a ZTA testified against allowing any optional method projects.

Council staff supports removing the prohibition on the optional method of development and the conditions recommended by the Planning Board. The recommendation to permit optional method projects necessitates the removal of the requirement in 59-C-18.105 (b) that Planning Board approvals be consistent with the Wheaton CBD and Vicinity Sector Plan. This section is recommended for removal in the ZTA as submitted.

Council staff notes that the increase in permissible density is not drafted to require the use of TDRs. This issue was not raised in public testimony.

3. What should be the limits on building height in optional method projects?

CBD-2 and CBD-3 zoning is under the overlay zone. Unrestricted, both of these zones permit a height of 143 feet. In the CBD-3 zone, under certain circumstances, buildings can go to a height of 200 feet. The ZTA proposes the following:

The maximum height for any CBD-2 or CBD-3 zoned optional method of development project located south of Ennals Avenue, south of Price Avenue and west of Fern Street is 125 feet. The maximum building height for any CBD-2 or CBD-3 zoned optional method of development project located north of Ennals Avenue, north of Price Avenue and east of Fern Street is 100 feet.

The area proposed for 125 feet in height is closer to the Metrorail Station than the area recommended for 100 feet in height. The Planning Board recommended a height limit of 125 feet in height everywhere in the overlay zone. The Planning Board staff noted that height was an issue of compatibility that could be addressed in project plan and site plan approvals. There was testimony in favor of the split heights as proposed in the ZTA.

The Wheaton Redevelopment Program Director has provided a rationale for having two different height limits: proximity to Metrorail. The overlay zone, however, is a single zone. The geographic area recommended for different treatment is not recognized by the underlying zoning. For the sake of conformity within the zone, Council staff favors a single height limitation. That limit can be 100 feet, 125 feet or any other number. In this regard, the Planning Board recommendation is more flexible. However, a lower height would be more in line with the 1990 sector plan.

Council staff supports a single height limit for optional method projects. Depending upon future Council action, the Council may wish to allow additional height for workforce housing.

4. Should optional method projects be required to have 45% of their street level floor area for small retail business?

A provision in the ZTA reads as follow:

Any optional method of development project must provide at least 45 percent of the street level retail space for use by small businesses with less than 3,000 gross square feet of floor space and restaurants with less than 5,000 square feet of gross floor space. The space must be restricted to such small business use for a period of ten years after the issuance of the initial use and occupancy permit. The ten-year time period is binding upon future owners and successors in title and must be stated as a condition of any site plan approved by the Planning Board.

Part of the reason for providing small spaces is to provide for existing retailers in Wheaton. More than half of the existing retail businesses in Wheaton CBD use 3,000 square feet or less.¹¹ The problem of defining small business was described in testimony. The Planning Board believes that it is not necessary to use the term small business in this section of the Ordinance. There was testimony supporting the Planning Board's opinion.

The essence of this ZTA is to provide for space for small "bankable" businesses. It does not control the rent of these small retail spaces. The requirement for small business is in place for ten years with no guarantee concerning occupancy.

Council staff recommends approval of the requirement to provide small retail spaces and removing the phrase "small business". As a separate matter, the Council may wish to consider if direct access to the street should be required for these spaces.

5. Should optional method of development projects get "bonus" density for having 60% or more of their street level space for small business?

The ZTA requires all optional method projects in the overlay zone to have 45% of their street level for small retail spaces. Some projects may be induced to create more small retail spaces. The bonus is intended to give a density incentive equal to the amount of additional retail space beyond the 45% minimum for optional method projects (60% minus 45% equals 15% of the street level space). The following provision of the ZTA provides for such a bonus:

The maximum FAR allowed in the underlying zone may be increased by an amount equal to 15 percent of the street level space if a total of 60 percent of the street level space is devoted to small business use as described in subsection (B) above.

The Planning Board recommends against providing an additional bonus density for optional method projects. As a practical matter, height limits will likely result in projects failing to achieve their maximum density allowed under the optional method of development, even without a bonus. This type of bonus at the least should be something to consider in a new sector plan but not adopted in advance of that planning effort.

¹¹ Memo from Joseph Davis, May 26, 2006, ©35

Council staff recommends against bonus density for optional method of development projects.

6. Should one-half of the public use space be green area?

Optional method projects are required to provide public use space. Public use space is defined in the Zoning Ordinance as "...space devoted to such uses as space for public enjoyment consisting of such things as, but not limited to green areas, gardens, malls, plazas, walks, pathways, promenades, arcades, lawns, fountains, decorative plantings, passive or active recreation areas...". The Zoning Ordinance also defines green space. The definition of "green area" includes sidewalks, walkways, swimming pools and passive and active recreation areas. The ZTA recommends the following:

At least one-half of the public use space required under 59-C-6.233 must be green area and include landscape features that will serve to enhance the amenity of the development.

The Planning Board objected to this provision. They preferred a case-by-case evaluation. Planning Board staff is concerned that green area is not necessarily green. It includes a variety of hard surface areas.

Council staff recommends excluding sidewalks, walkways, swimming pools and other hard surfaces from the "green area" in this provision of the ZTA.

7. Should an optional method project that requires less than 1,800 square feet of public use space be allowed to provide that space off-site?

The following provision is in the ZTA, but in Council staff's opinion would never apply:

The Planning Board may allow any public use space requirement under Sec. 59-C-6.233 that is less than 1,800 square feet to be provided off-site within the Wheaton CBD as either public use space or streetscape on a one-for-one square foot basis.

The minimum lot size for an optional method project is 18,000 square feet. The minimum public use space, is generally 20% or 3,600 square feet. Projects with MPDUs can have less public use space but those projects can already provide public use space off-site. The MDPU flexibility is a change that came after the inception of the ZTA.

Council staff recommends deleting this provision of the ZTA.

8. Should a standard method of development project that provides 30% of street level retail for small sized businesses be allowed bonus density?

Standard method of development projects are not required to provide any space reserved for small retailers. However, if they do provide such space, the ZTA as drafted would propose to exclude the small spaces from their floor area ratio (FAR) calculation:

For any standard method of development project that provides at least 30 percent of the street level retail floor space for use by businesses with less than 3,000 gross square feet of floor space and restaurants with less than 5,000 square feet of gross floor space, 30 percent of the street level floor space must not be included in the maximum FAR calculation allowed under the base zone. Space provided for small business use must be maintained for small business use for a period of ten years after the issuance of the initial use and occupancy permit. The ten year time period is binding upon future owners and successors in title and must be stated as a condition in any site plan approved by the Planning Board.

The Planning Board would recommend counting the small retail space as FAR, but also recommends allowing the bonus density. There would not be any difference in the FAR permitted from the ZTA. Counting the FAR but providing a bonus is more in line with established procedures.

Council staff recommends permitting bonus density instead of excluding some floor area from the FAR calculation.

9. Who is responsible for compliance with the ten-year restriction in a standard method project that does not require site plan?

It is clear that the Planning Board would enforce site plan conditions. It should be made clear if DPS is responsible, when site plan approval is not required. If DPS cannot undertake this responsibility, the bonus should only be available to projects that receive site plan approval.

10. Should the maximum building coverage be increased for standard method of development projects that provide 30% small retail space?

The building coverage for a standard method of development project is limited to 75% of the site. This provision of the ZTA would allow more coverage in exchange for small retail space comprising 30% of street level space:

The maximum building coverage under Section 59-C-6.232, may be increased from 75 percent to 85 percent for any standard method of development project that provides street level retail space for use by businesses with less than 3,000 gross square feet of floor space and restaurants with less than 5,000 square feet of gross floor space, in the amounts required in subsection (1) above.

Standard method projects that may use this provision do not always need site plan approval. The increased building foot print runs counter to the goal of increasing green space. The Planning Board recommended against increasing building coverage. Some existing buildings exceed the 75% coverage limit. Those buildings can be given special consideration.

Council staff recommends against this provision of the ZTA. The Council should consider grandfathering existing structures from the coverage limitation of the overlay zone for the purpose of adding floor area to an existing building.

11. Should a standard method project that requires site plan be permitted to put its public use space off-site when the public use space required is less than 1,800 square feet?

Standard method projects are required to provide 10% public use space. The ZTA would allow small public use space requirements to be provided off-site:

As part of the approval of a site plan for a standard method of development project, the Planning Board may allow any public use space requirement under Sec. 59-C-6.233 that is less than 1,800 square feet to be provided off-site within the Wheaton Central Business District as either public use space or streetscape on a one-for-one square foot basis.

All projects less than 18,000 square feet in land would have a public use space requirement of 1,800 square feet or less. Projects that provide MPDUs can have that requirement reduced in half. Land that is 18,000 square feet or greater can use the optional method of development. Those projects that have assembled more than 18,000 square feet of ground would be the only projects that could not use this provision.

Council staff recommends permitting this flexibility for standard method of development projects using site plan.

12. Should clinics, private educational institutions, health clubs and other uses be added to the list of allowable street level uses?

There was no public testimony on additional street level uses. A structure that contains these uses would still be subject to the requirement that the street level exterior wall must be 50% windows and apertures. Shy clinic users are saved by the fact that 50% of the exterior walls do not have to have windows.

Council staff has no objection to the additional uses.

13) Should standard method of development projects with less than 20,000 square feet of gross floor area and less than 42 feet in height be exempt from site plan approval?

The overlay zone now requires site plan approval for any development. The ZTA excludes some developments from the site plan approval requirement:

- (a) Standard Method of Development: If required, [A] a site plan for [any] development in the Wheaton Retail Preservation Overlay Zone must be

approved under [the provisions of] Division 59-D-3. Development subject to site plan approval [includes] is limited to the following:

[(a)] (1) construction of new buildings that include more than 20,000 square feet of floor area or exceed 42 feet in height; and

[(b)] (2) additions and other exterior improvements to existing buildings that cumulatively increase the total amount of [development] floor area on a site to more than 20,000 square feet or increase the building height to more than 42 feet[;]. [and]

[(c)] addition of off-street parking spaces or revisions to parking facilities that require the approval of a new parking facilities plan under Section 59-E-4.1.]

Most parcels within the overlay zone are less than 7,100 square feet. In the absence of assemblage, the ZTA as proposed would permit 75% of all the properties in the Wheaton CBD to fully redevelop to standard method densities without site plan approval.¹² If more land is assembled or some development uses height greater than 42 feet, less than 75% of the property could fully develop without site plan approval. All properties could make an addition of 20,000 feet if they did not exceed 42 feet in height. (The Wheaton Redevelopment Office will provide pictures to help the Council visualize gross floor area.)

There are design guidelines in the sector plan:

A human scale of the environment can be developed through the architecture of the buildings and the design of streets and public spaces. The development scale of the Marketplace should be preserved. New development should be compatible in scale and massing.¹³

When there is no site plan approval, there is no one reviewing compatibility in scale and massing. The sector plan recommends continued vigilance of design issues. There is universal agreement among those who testified that at some minor scale of development, the site plan process is overly burdensome. The only question is where the line should be drawn.

The vast majority of testimony supported a site plan exemption for projects less than 20,000 square feet. The Planning Board staff recommended an upper bound of 10,000 square feet before a site plan is required. The Planning Board recommended 5,000 square feet. Under the Planning Board staff recommendation, some 35% of the parcels in the Wheaton CBD could redevelop to the fullest extent of their standard method capacity without site plan approval.¹⁴ Under the Planning Board's recommendation, that would be 7% of all properties.¹⁵

As a matter of practice, the Planning Board requires streetscaping in the process of site plan approval. The ZTA codifies this practice for the overlay zone area. One consequence of fewer site plans is an increased public obligation for streetscaping.

¹² This includes all CBD2 parcels less than 10,000 square feet and all CBD3 parcels less than 6,700 square feet.

¹³ Ibid, Page 36

¹⁴ This includes all CDB2 parcels less than 5,000 square feet and all CBD3 parcels less than 3,400 square feet.

¹⁵ This includes all CDB2 parcels less than 2,500 square feet and all CBD3 parcels less than 1,700 square feet.

Council staff supports the Planning Board staff recommendation of excluding from site plan review, new structures or additions of 10,000 square feet at one location. (“At one location” should be defined exactly like the MPDU definition.)

14. Should optional method projects be approved in the subdivision process?

The development process generally requires three major approvals by the Planning Board: 1) optional method of development approval, 2) preliminary plan of subdivision approval, and 3) site plan approval. Some but not all of the findings that are made at the optional method approval are also made at the preliminary plan approval. The ZTA as introduced suggests the following:

Optional Method of Development:

- (1) For projects that are subject to subdivision or resubdivision under Chapter 50, a Division 59-D-2 Project Plan is not required. In order to approve the preliminary plan of subdivision, the Planning Board must find that the proposed subdivision will include public facilities, amenities and design features that will create an environment capable of supporting the greater densities and intensities permitted by the limited optional method of development allowed in this Overlay Zone.
- (2) For projects that are not subject to subdivision or resubdivision, under the provisions of Chapter 50, a project plan must be submitted and approved in accordance with the procedures of Division 59-D-2.

For any optional method of development proposal in the Wheaton Retail Preservation Overlay Zone, a Division 59-D-3 Site Plan must be submitted and approved by the Planning Board, in accordance with the provisions of Division 59-D-3.

The Planning Board recommended approval of this provision provided the findings required at project plan are made at preliminary plan approval.

Council staff agrees with the Planning Board’s recommendation.

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Zoning Text Amendment No: 06-11
Concerning: Amendment to the Wheaton
Retail Preservation Overlay Zone
Draft No. & Date: 2 – 03/29/06
Introduced: April 4, 2006
Public Hearing: June 13, 2006; 1:30 p.m.
Adopted:
Effective:
Ordinance No:

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

By: Councilmembers Perez and Praisner

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

- promoting higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development;
- revitalizing and retaining the existing street level retail area in the Wheaton Central Business District as a major marketplace;
- amending the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and
- generally amending the Wheaton Retail Preservation Overlay zone.

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

DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.10	“Retail Preservation Overlay Zone for the Wheaton Central Business District”
Section 59-C-18.101	“Purpose”
Section 59-C-18.102	“Regulations”
Section 59-C-18.103	“Procedures for application and approval”
Section 59-C-18.104	“Site plan contents and exemptions”
Section 59-C-18.105	“Planning Board approval”

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:

1 **Sec. 1. DIVISION 59-C-18 is amended as follows:**

2 **DIVISION 59-C-18. OVERLAY ZONE**

3 * * *

4 **59-C-18.10. Retail preservation overlay zone for the Wheaton Central**
5 **Business District.**

6 **59-C-18.101. Purpose.**

7 It is the purpose of this overlay zone to:

- 8 (a) Retain a [the existing scale of development and] mix of retail and service
9 uses within the Wheaton Central Business District.
- 10 (b) [Regulate development to preserve] Provide opportunities to retain a variety
11 of small businesses, retail uses and services in the Wheaton Central
12 Business District and to encourage new businesses to meet the needs of
13 workers, shoppers, visitors and residents.
- 14 (c) Encourage building designs [to make new buildings] compatible with the
15 existing [buildings] character of street level uses found within and adjacent
16 to the overlay zone.
- 17 (d) Provide flexible standards to implement public objectives such as retention
18 of the small business character that exists in downtown Wheaton.
- 19 (e) Encourage higher-density, mixed-use, transit oriented development located
20 in close proximity to the Wheaton Transit Station, with an emphasis on
21 housing, office uses, commercial services, and arts and entertainment
22 establishments.

23 (f) Encourage both standard method of development and optional method of
24 development projects to include small, street level businesses to help retain
25 a small business identity.

26 **59-C-18.102. Regulations.**

27 (a) **[Restriction on use of o] Optional method of development.** [In the
28 Wheaton Retail Preservation Overlay Zone, the optional method of
29 development is prohibited.] The optional method of development
30 procedure may be used if authorized in the underlying zone. Use of the
31 optional method of development procedure is intended to promote higher
32 density mixed-use development in close proximity to the Wheaton Metro
33 Station and to revitalize and retain the existing retail area in Wheaton as a
34 major marketplace.

35 **(1) Optional Method of Development Standards.**

36 (A) The maximum height for any CBD-2 or CBD-3 zoned optional
37 method of development project located south of Ennals
38 Avenue, south of Price Avenue and west of Fern Street is 125
39 feet. The maximum building height for any CBD-2 or CBD-3
40 zoned optional method of development project located north of
41 Ennals Avenue, north of Price Avenue and east of Fern Street is
42 100 feet.

43 (B) Any optional method of development project must provide at
44 least 45 percent of the street level retail space for use by small
45 businesses with less than 3,000 gross square feet of floor space
46 and restaurants with less than 5,000 square feet of gross floor
47 space. The space must be restricted to such small business use

48 for a period of ten years after the issuance of the initial use and
49 occupancy permit. The ten year time period is binding upon
50 future owners and successors in title and must be stated as a
51 condition of any site plan approved by the Planning Board.

52 (C) The maximum FAR allowed in the underlying zone may be
53 increased by an amount equal to 15 percent of the street level
54 space if a total of 60 percent of the street level space is devoted
55 to small business use as described in subsection (B) above.

56 (D) At least one-half of the public use space required under 59-C-
57 6.233 must be green area and include landscape features that
58 will serve to enhance the amenity of the development.

59 (E) The Planning Board may allow any public use space
60 requirement under Sec. 59-C-6.233 that is less than 1,800
61 square feet to be provided off-site within the Wheaton CBD as
62 either public use space or streetscape on a one-for-one square
63 foot basis.

64 (b) **Standard Method of Development**

65 (1) For any standard method of development project that provides at least
66 30 percent of the street level retail floor space for use by businesses
67 with less than 3,000 gross square feet of floor space and restaurants
68 with less than 5,000 square feet of gross floor space, 30 percent of the
69 street level floor space must not be included in the maximum FAR
70 calculation allowed under the base zone. Space provided for small
71 business use must be maintained for small business use for a period of
72 ten years after the issuance of the initial use and occupancy permit.

73 The ten year time period is binding upon future owners and successors
74 in title and must be stated as a condition in any site plan approved by
75 the Planning Board.

76 (2) The maximum building coverage under Section 59-C-6.232, may be
77 increased from 75 percent to 85 percent for any standard method of
78 development project that provides street level retail space for use by
79 businesses with less than 3,000 gross square feet of floor space and
80 restaurants with less than 5,000 square feet of gross floor space, in the
81 amounts required in subsection (1) above.

82 (3) As part of the approval of a site plan for a standard method of
83 development project, the Planning Board may allow any public use
84 space requirement under Sec. 59-C-6.233 that is less than 1,800 square
85 feet to be provided off-site within the Wheaton Central Business
86 District as either public use space or streetscape on a one-for-one
87 square foot basis.

88 [(b)](c) **Land uses.** All permitted [or] and special exception uses allowed under the
89 standard method of development and the optional method of development
90 [in] of the underlying CBD Zone, are allowed in the Wheaton CBD overlay
91 zone, except that:

92 (1) [In new buildings over one story in height built after July 16, 1990,
93 the street level leasable space must be used for:] In any building
94 constructed after July 16, 1990, the street level leasable space must be
95 used only for the following purposes:

96 (A) hotel

97 (B) any of the commercial uses [in subsection] allowed under
98 59-C-6.22(d);

99 ((B) C) the following service uses [in subsection] allowed under
100 59-C-6.22(e):

101 appliance repair shop[s];

102 banking and financial institution[s];

103 barber and beauty shop[s];

104 child day care facility;

105 clinic

106 dry cleaning and laundry pickup station[s];

107 duplicati[on]ng service[s];

108 educational institution, private

109 health club

110 photographic studio[s];

111 self-service laundromat;

112 shoe repair shop[s];

113 tailoring or dressmaking shop[s]; or

114 ((C) D)[the following] all cultural, entertainment and recreational uses
115 [from subsection] allowed under 59-C-6.22(f) as well as art galleries
116 which are permitted as specialty shops under 59-C-6.22(d).[:]

117 [billiard parlors;
118 bowling alleys;
119 commercial recreational or entertainment establishments;
120 indoor theater;
121 libraries and museums.]

122 (2) In any new buildings [built] constructed after July 16, 1990, all street
123 level [retail] uses must be directly accessible from a sidewalk, plaza, or
124 other public space.

125 [(3) Windows and apertures cover occupy at least 50 percent of the street-
126 level exterior wall area that fronts on sidewalks, plazas, or other public
127 open spaces.]

128 **59-C-18.103. Procedure for application and approval.**

129 (a) Standard Method of Development: If required, [A] a site plan for [any]
130 development in the Wheaton Retail Preservation Overlay Zone must be
131 approved under [the provisions of] Division 59-D-3. Development subject
132 to site plan approval [includes] is limited to the following:

133 [(a)] (1) construction of new buildings that include more than 20,000 square feet
134 of floor area or exceed 42 feet in height; and

135 [(b)] (2) additions and other exterior improvements to existing buildings that
136 cumulatively increase the total amount of [development] floor area on a
137 site to more than 20,000 square feet or increase the building height to
138 more than 42 feet[;]. [and]

139 [(c) addition of off-street parking spaces or revisions to parking facilities
140 that require the approval of a new parking facilities plan under Section
141 59-E-4.1.]

142 (b) **Optional Method of Development:**

143 (1) For projects that are subject to subdivision or resubdivision under
144 Chapter 50, a Division 59-D-2 Project Plan is not required. In order
145 to approve the preliminary plan of subdivision, the Planning Board
146 must find that the proposed subdivision will include public facilities,
147 amenities and design features that will create an environment capable
148 of supporting the greater densities and intensities permitted by the
149 limited optional method of development allowed in this Overlay Zone.

150 (2) For projects that are not subject to subdivision or resubdivision, under
151 the provisions of Chapter 50, a project plan must be submitted and
152 approved in accordance with the procedures of Division 59-D-2.

153 For any optional method of development proposal in the Wheaton Retail
154 Preservation Overlay Zone, a Division 59-D-3 Site Plan must be submitted and
155 approved by the Planning Board, in accordance with the provisions of Division 59-
156 D-3.

157 **59-C-18.104. Site plan contents and exemptions.**

158 (a) Sections 59-D-3.22 and 59-D-3.23 do not apply in the Wheaton CBD
159 overlay zone for standard method of development projects that require site
160 plan approval.

161 (b) A site plan for a standard method of development project in the Wheaton
162 CBD overlay zone must include:

- 163 (1) the location, height, ground coverage, and use of all structures;
- 164 (2) for each residential building, the number and type of dwelling units,
165 classified by the number of bedrooms, and the total floor area, if any,
166 to be used for commercial purposes;
- 167 (3) the floor areas of all nonresidential buildings and the proposed use of
168 each;
- 169 (4) the location of recreational and green areas and other open spaces;
- 170 (5) calculations of building coverage, density, green area, number of
171 parking spaces, and areas of land use;
- 172 (6) the location and dimensions of all roads, streets and driveways,
173 parking facilities, loading areas, points of access to surrounding streets,
174 and pedestrian walks;
- 175 (7) a landscaping plan (or final forest conservation plan, if required under
176 Chapter 22A), showing all man-made features and the location, height
177 or caliper, and species of all plant materials;
- 178 (8) an exterior lighting plan, including all parking areas, driveways and
179 pedestrian ways, alleys, building security lights, and the height,
180 number, and type of fixtures with a diagram showing their light
181 distribution characteristics; and
- 182 (9) a development program with the sequence in which all structures, open
183 spaces, vehicular and pedestrian circulation systems, landscaping, and
184 recreational facilities are to be developed. The applicant must
185 designate the point in the development program sequence when the

186 applicant will ask the Planning Board to inspect[ion] for compliance
187 with the approved site plan.

188 (10) a streetscape plan prepared in accordance with the Wheaton Central
189 Business District Streetscape Standards adopted by Executive
190 Regulation. The required streetscape must be provided before the
191 issuance of the final use and occupancy permit by the Department of
192 Permitting Services.

193 **59-C-18.105. [Planning Board] [a]Approval Requirements for All**
194 **Projects In the Wheaton Retail Preservation Overlay Zone.**

195 [(a)] [The Board must find that] [a]At least 50 percent of the street level
196 exterior wall area, fronting on sidewalks, plazas, or other public open
197 spaces, [has] must contain windows and apertures [before approving a
198 site plan for the Wheaton CBD overlay zone].

199 [(b)] The procedures for Planning Board approval under Section 59-D-3.4
200 are modified for this overlay zone to require the following findings:

201 (1) the site plan does not conflict with the recommendations in the
202 Wheaton CBD Sector Plan;

203 (2) the site plan meets all of the requirements of this overlay zone as
204 well as the applicable requirements of the underlying zone; and

205 (3) each structure and use is compatible with other uses and other
206 site plans and with existing and proposed adjacent
207 development.]

208 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
209 date of Council adoption.

210

211 This is a correct copy of Council action.

212

213

214

215

216 _____
Linda M. Lauer, Clerk of the Council



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

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 7, 2006

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board on Zoning Ordinance Text Amendment No. 06-11

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No. 06-11, at its regular meeting on June 1, 2006. By a vote of 3-0, with 2 abstentions, the Board recommends approval of the zoning text amendment with amendments to promote higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development; to revitalize and retain the existing street level retail area in the Wheaton Central Business District as a major marketplace; and to amend the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone.

A primary purpose of the Overlay Zone at the time of the Sector Plan approval was to protect the Wheaton Marketplace area from large-scale redevelopment that could transform downtown Wheaton into a large-scale urban center with primary emphasis on office development. It is important to note that the Wheaton CBD Sector Plan and the Retail Preservation Overlay Zone were enacted in anticipation of, and before, the opening of the Wheaton Metro Station.

The 1990 Sector Plan recognized that the Overlay Zone could have a major effect on the redevelopment of Wheaton and the Plan text recommended that the Zone should be reevaluated within a ten-year timeframe to assess the effects on the

downtown and to reflect on the effects of Metro accessibility. The Board believes that the subject reassessment of the Overlay Zone is in accord with the recommendations of the 1990 Sector Plan. While the sector plan amendment process may be initiated in FY 07, the three to four year sector plan approval period would effectively mean that a reevaluation of the Overlay Zone provisions would not be complete for at least three years. The proposed text amendment is designed to address redevelopment potential for the next three to five years and it recognizes that longer-term vision should be addressed through the comprehensive amendment to the Sector Plan and resulting sectional map amendment. The proposed text amendment encourages the retention of small stores and the provision of new housing which are both in accord with the intent of the Sector Plan and other County policies. The Board majority believes that the text amendment as recommended by technical staff and as further modified by the Board, does not revise the goals and objectives of the Sector Plan but instead, better implements the stated goals.

Specifically, for the reasons noted in the attached staff report, the Planning Board recommends:

- Allow optional method of development throughout the overlay zone, regardless of the geographic area, but still retain the variety of small stores and retail in the Marketplace by requiring that all new optional method developments in the overlay zone provide: mixed-use with retail on the first floor; at least 45 percent of the ground floor retail space for small stores and restaurants; street facades with the elimination of surface parking in front of buildings; and allow the maximum building height up to 125 feet throughout the overlay for optional method of development;
- Allow new building construction, renovations and additions up to 5,000 square feet of gross floor area to be exempt from the site plan requirements of the overlay zone;
- For the standard method of development, provide a one to one ratio of bonus density (up to 30% of the street level retail floor area) for the provision of at least 30% street level retail space for businesses of a certain size;
- For optional method developments, do not allow the maximum FAR permitted in the underlying zone to be increased if certain amount (60% in the proposed ZTA) of the street level space is devoted to small businesses;
- Do not allow projects in the overlay zone to increase maximum building coverage to 85% for the purpose of providing a certain percentage of street level retail for small businesses unless a waiver is granted by the Planning Board;
- For optional method projects, the Planning Board may not allow the required public use space of less than 1,800 sf to be provided off-site within the Wheaton CBD as either public use space or streetscape;

- Require optional method of development projects that are subject to the subdivision requirements to meet the project plan findings of Section 59-D-2.42 at the time of preliminary plan approval; and
- Do not support the proposal to require at least one-half of the public use space required under 59-C-6.233 as green area.

The Planning Board further expressed concern with use of the term "small business" since it is not a defined term in the Zoning Ordinance and since the term varies based on the industry it is associated with. Instead, the Board recommends that only the size/space requirements for retail and restaurant uses be used to describe the small stores associated with this text amendment.

CERTIFICATION

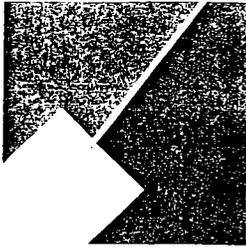
This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Bryant, seconded by Chairman Berlage, with Commissioner Bryant, Vice-Chair Perdue and Chairman Berlage voting in favor of the motion, and with Commissioners Wellington and Robinson abstaining, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 1, 2006.



Derick Berlage
Chairman

DB:gr

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item # 6
06/01/06

DATE: May 19, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review *RK*
John Carter, Chief, Community-Based Planning
Carlton Gilbert, Zoning Supervisor *CG*

FROM: Khalid Afzal, Team Leader, Community-Based Planning *KA*
Greg Russ, Zoning Coordinator *GR*

REVIEW TYPE: Zoning Text Amendment

PURPOSE: To amend the Zoning Ordinance to promote higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development; to revitalize and retain the existing street level retail area in the Wheaton Central Business District as a major marketplace; to amend the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and to generally amend the Wheaton Retail Preservation Overlay zone

TEXT AMENDMENT: No. 06-11

REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance

INTRODUCED BY: Councilmembers Perez and Praisner

INTRODUCED DATE: April 4, 2006

PLANNING BOARD REVIEW: June 1, 2006

PUBLIC HEARING: June 13, 2006; 1:30pm

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To amend the Zoning Ordinance to promote higher density mixed-use development in close proximity to the Wheaton Metro Station through limited

application of the optional method of development; to revitalize and retain the existing street level retail area in the Wheaton Central Business District as a major marketplace; to amend the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and to generally amend the Wheaton Retail Preservation Overlay zone

BACKGROUND

The Wheaton Retail Preservation Overlay Zone (Overlay Zone) was the first overlay zone enacted in Montgomery County. It was approved by the District Council in 1990 and was intended to preserve existing businesses in the Wheaton Central Business District (CBD). The Overlay Zone requires site plan approval for any new buildings and for additions to existing buildings, regardless of size, under the standard method of development. The Overlay Zone precludes the optional method of development and therefore, restricts future redevelopment to the maximum densities and building heights allowed under the standard method.

A primary purpose of the Overlay Zone was to protect the Wheaton Marketplace area from large-scale redevelopment that could transform downtown Wheaton into a large-scale urban center with primary emphasis on office development. More specifically, people were afraid that redevelopment in Wheaton could be similar to what was then occurring in downtown Bethesda, as that CBD was emerging in the late 1980's. It is important to note that the Wheaton CBD Sector Plan and the Retail Preservation Overlay Zone were enacted in anticipation of, and before, the opening of the Wheaton Metro Station. Unfortunately, many of the Overlay Zone's provisions have become disincentives to the types of development that the community now desires.

The 1990 Wheaton CBD Sector Plan: The 1990 Sector Plan recognized that the Overlay Zone could have a major effect on the redevelopment of Wheaton and the Plan text recommended that the Zone should be reevaluated within a ten-year timeframe to assess the effects on the downtown and to reflect on the effects of Metro accessibility. The subject reassessment of the Overlay Zone is in accord with the recommendations of the 1990 Sector Plan. While the sector plan amendment process may be initiated in FY 07, the three to four year sector plan approval period would effectively mean that a reevaluation of the Overlay Zone provisions would not be complete for at least three years. The proposed text amendment is designed to address redevelopment potential for the next three to five years and it recognizes that longer term vision should be addressed through the comprehensive amendment to the Sector Plan and resulting sectional map amendment. The proposed text amendment encourages the retention of small stores and the provision of new housing which are both in accord with the intent of the Sector Plan and other County policies.

According to the sponsors, it is important to the Wheaton Redevelopment effort to amend the Overlay Zone now because a number of the restrictive elements contained in the existing law are hurting existing businesses that are otherwise in a position to expand and improve their business operations.

Proposed Amendments

The changes proposed to the Overlay Zone are described as follows:

- Amend the purpose section of the Overlay Zone to encourage higher density, mixed-use development in close proximity to Metro including housing, available to a variety of income groups; office uses; retail and commercial services; and arts and entertainment uses. The purpose clause amendments also include the importance of creating opportunities to retain small stores as part of the redevelopment process.
- Site plan approval by the Planning Board should not be required for all standard method projects. Wheaton and a small portion of the Silver Spring CBD are the only CBD zoned areas that now require site plan approval for all new standard method buildings and additions. Projects that consist of 20,000 gross square feet or less of new or total building floor space in buildings of less than 42 feet in height should be exempt from site plan review.
- The current prohibition on the use of the optional method of development should be eliminated and optional method projects in the overlay zone should be required to provide at least 45 percent of the street level floor space in new or expanded buildings for small businesses. In addition, at least one-half of the required public use space should be in the form of green area to benefit the surrounding community.
- The proposed height limits of the overlay zone should accommodate higher densities near Metro and a somewhat lower scale of development away from the metro that reinforces the policy emphasis of retaining the "marketplace" as a major component of downtown Wheaton. Building heights should be capped at 125 feet (about 11 stories) for sites located south of Ennals Avenue, south of Price Avenue and west of Fern Street. Sites located north of Ennals Avenue, north of Price Avenue and east of Fern Street are located farther from Metro and should be limited to a maximum building height of 100 feet (about 9 stories).
- For small projects that would generate less than 1,800 square feet of public use space, the Planning Board would be authorized to allow the required public-use space to be located off-site, within the CBD, or be provided as on-site or off-site streetscape. Streetscape must be provided on a one-for-one square foot basis.

- Project plan approval under the procedures of Division 59-D-2 should not be required for optional method of development projects in the Overlay Zone that are subject to the subdivision requirements of Chapter 50 of the County Code. The findings normally required for project plan approval can be made as part of the approval of a subdivision plan or as part of the required site plan. This is important to help streamline the approval process for optional method projects without sacrificing project quality.
- For standard method of development projects that propose to set aside up to 30 percent of their street level space to small businesses, up to 30 percent (1:1 ratio) of the street level floor space will not be counted as part of the project FAR and the maximum building coverage limitation can be increased from 75 percent of net lot area to 85 percent of net lot area.
- All projects subject to site plan approval procedures should be required to provide the appropriate Wheaton streetscape, as part of the approval process.

The "Staff Analysis" section below addresses the proposed amendments listed above.

STAFF ANALYSIS

MAJOR ISSUES

1. ALLOW OPTIONAL METHOD IN THE OVERLAY ZONE

Proposed ZTA:

Allow optional method of development in the overlay zone and add a height limit of 125 feet for properties south of Ennals and Price avenues and west of Fern Street (the southern part of the overlay zone), and 100 feet in the remaining northern and eastern portion of the overlay zone (northern part of the overlay zone) (59-C-18.102).

Staff Recommendation:

Modify the proposed ZTA as follows:

1. Allow optional method of development throughout the overlay zone, regardless of the geographic area, but still retain the variety of small stores and retail in the Marketplace by requiring that all new optional method developments in the overlay zone provide:
 - a. mixed-use with retail on the first floor;
 - b. At least 45 percent of the ground floor retail space to be provided for small stores and restaurants to retain the existing variety of small stores in the area;

- c. Provide street facades (buildings fronting and built up to the sidewalk or a public use space); and
 - d. Eliminate surface parking in front of buildings.
2. Do not limit the height of buildings to 100 or 125 feet in the CBD-2 or CBD-3 Zone based on certain geographic parameters, as proposed in the ZTA. Maximum building height should be limited to 125 feet throughout the overlay for optional method of development.

Background and Analysis

The overlay zone currently prohibits optional method of development, which means that the higher density development with increased building height is not an option in the overlay zone. It effectively limits the maximum building height to 60 feet (5 to 6 stories) in the underlying CBD-2 Zone and 72 feet (6 to 7 stories) in the underlying CBD-3 Zone.

The main focus of the Wheaton Sector Plan was to revitalize Wheaton while retaining the existing scale and the mix of retail businesses in the Market Place at the time of the Wheaton Sector Plan preparation in 1990. The Market Place was defined as "a triangular area formed by the intersecting geometry of Georgia Avenue, University Boulevard and Veirs Mill Road" (page 41). The emphasis was on the retention and upgrade of the existing structures, not demolition and redevelopment of existing buildings in the Market Place. (Page 50: "The Plan does not encourage or recommend the redevelopment of the Market Place").

The Sector Plan recommended the creation of an overlay zone to achieve the goal of preserving the "existing businesses and structures in the Wheaton Market Place" (page 43). The Sector Plan further stated that the overlay zone "would be applied to specific areas of central business districts where it is determined that more restrictive development controls are needed to retain existing retail use and service."

Since the Wheaton overlay zone was the first of its kind in the County, its impact on the new development was untested. The Sector Plan therefore provided for a periodic review of the zoning in the sector plan area. On page 45 of the plan, third paragraph, the plan states:

"The zoning in this Plan ought to be subject to review within the same time period as the other elements of the Plan, namely a period of ten years or when events dictate. Such a review would have several advantages, chief among them the opportunity to measure actual experience with the Retail Preservation Overlay Zone after the opening of Metro, and the relationship of the overlay's development controls to the scale and bulk of new buildings and modernizations, and the actual retention of existing retail

uses and services. A periodic review should also evaluate the progress of new development in regard to the Sector Plan's development program and mix of uses. Areas could be removed or added to the overlay district prior to the 10-year re-evaluation of the Sector Plan by amending section of the Plan, as experience dictates."

The proposed overlay zone amendment is consistent with the intent of the Sector Plan to review, and modify if necessary, the zoning controls in the overlay zone. This amendment will serve as an interim step before the Sector Plan is revised in three to four years. Since not much has happened in the overlay zone since its adoption in 1990, and no major development/s is expected to happen in the Market place in the near future, primarily due to lack of large assembled properties, staff is recommending to keep the proposed amendment limited in scope and simple in concept and implementation. Staff believes that it is appropriate to relax the restriction of optional method in the overlay zone, and that it should be allowed throughout the overlay zone regardless the distance from the Metro since all of the Overlay Zone area is in close proximity to Metro. Carving the Overlay Zone into 100 feet and 125 feet creates unnecessary complication without any significant urban design and compatibility benefits.

Staff therefore recommends against establishing geographic street boundaries that limit the maximum building height to 100 feet in some areas, or 125 feet in other areas where optional method could be allowed in the overlay zone. The maximum building height for the optional method of development in the underlying CBD-2 zone is 143 feet, and up to 200 feet in the CBD-3 Zone. A very small portion of the overlay zone has CBD-3 as the underlying zone; a large majority of it, including the Market Place and the area north of University Boulevard, is CBD-2. Staff recommends that a maximum height of 125 feet be established for optional method development throughout the overlay. This figure accommodates the maximum height suggested for mixed-use development located closer to the metro station as proposed in the text amendment. Since the Planning Board would address the issues of compatibility and neighborhood impact through a site plan review for any development under the optional method of development, a geographic delineation of the area for two different building heights is not needed.

Staff believes that the design of a potential development in the Wheaton Overlay Zone, and what street level quality and amenities it would contribute to the area is simpler and more effective than the maximum building height criteria, especially when it is hard to predict where the new development in the near future will occur. Staff therefore recommends that optional method development in the Overlay Zone should be permitted only if the project provides certain public amenities and design benefits, as outlined above, that are more in keeping with the objectives of the Sector Plan.

2. SITE PLAN EXEMPTION FOR SMALL ADDITIONS

Proposed ZTA:

Projects that involve 20,000 square feet or less of new building floor space (or that cumulatively increase the total amount of floor area on a site to no more than 20,000 square feet) or include no greater than 42 feet in height should be exempt from site plan review (59-C-18.103).

Staff Recommendation:

Allow new building construction, renovations and additions cumulatively up to 10,000 square feet of gross floor area to be exempt from the site plan requirements of the overlay zone if the proposal meets all other requirements of the underlying zone and the Wheaton Overlay Zone.

Background and Analysis

The average structure size in the Wheaton Retail Preservation Overlay zone is approximately 4,053 square feet of gross floor area. To allow an increase in floor area cumulatively up to 20,000 square feet (approximately 5 times the average structure size) without providing site plan review appears excessive and inconsistent with the intent of the Sector. Site Plan review is a useful tool to make sure that the new developments have appropriate urban design elements (street facades, appropriate location and design of public use space, parking areas and driveway locations, etc.). Allowing new developments or additions with total floor area of up to 20,000 sf would exempt a significant majority of developments from the site plan review requirements. Staff believes that 20,000 sf is excessive since the impetus of this specific amendment is to help, and encourage, small additions and renovations where the costs of the site plan review process for the property owners outweigh the public benefits of the site plan review process. The proposed staff recommendation to limit the cumulative gross floor area to 10,000 square feet without site plan review would permit (on average) existing structures to over double in floor area before a site plan is required.

3. NOT COUNTING ADDITIONAL FLOOR AREA AS FAR

Proposed ZTA:

For any standard method of development project that provides at least 30 percent of the street level retail floor space for use by businesses with less than 3,000 gross square feet (sf) of floor space and restaurants with less than 5,000 sf of gross floor space, 30 percent of the street level floor space must not be included in the maximum FAR calculation allowed under the base zone (59-C-18.102 (b)(1)).

Staff Recommendation:

Do not allow discounting of the permitted FAR. Instead, make it a bonus provision. Reword the language to provide a one to one ratio of bonus density (up to 30% of the street level retail floor area) for the provision of at least 30% street level retail space for businesses of a certain size (as described above)

Analysis

Not counting floor area is similar to allowing bonus floor area but without documentation of such. Staff recommends that the language in the text amendment be amended to reflect the proposed bonus FAR for the provision of at least 30% of the street level retail space for businesses of less than 3,000 sf of floor area and restaurants with less than 5,000 sf of gross floor area.

4. BONUS FLOOR AREA IN EXCHANGE FOR SMALL BUSINESS SPACE

Proposed ZTA:

For optional method developments in the overlay zone, allow the maximum FAR permitted in the underlying zone to be increased by 15% if 60% of the street level space is devoted to small businesses with less than 3,000 gross sf of floor space and restaurants with less than 5,000 sf of gross floor space (59-C-18.102 (a)(1)(c)).

Staff Recommendation:

For optional method developments in the overlay zone, do not allow the maximum FAR permitted in the underlying zone to be increased by 15% (or any other ratio) if certain amount (60% in the proposed ZTA) of the street level space is devoted to small businesses (see 59-C-18.102 (a)(1)(c)).

Analysis

This amendment is really not needed or effective in helping small businesses since no development in the recent Wheaton CBD history has achieved anywhere near the maximum FAR permitted for optional method in the underlying zone, and none is expected to do so in the near future before the update of the Wheaton Sector Plan. In fact, recent developments outside the overlay zone have opted for standard method densities and process even when staff encouraged the applicants to achieve higher densities through the optional method of development. If the project does not reach the maximum permitted FAR anyway, it is not

likely to opt for additional floor area, and therefore is not going to provide space for small businesses in return. Office market outlook for Wheaton in the near future does not seem to suggest that things are going to be any different between now and the planned update of the Wheaton Sector Plan. This kind of change in the current zoning controls can be deferred until the update of the sector plan without any negative impact on the plans for revitalization of the Wheaton CBD.

It should be noted that the proposed ZTA already requires that any optional method of development project provide at least 45 percent of the street level retail space for use by small businesses with less than 3,000 gross square feet of floor space and restaurants with less than 5,000 square feet of gross floor space. Staff believes that it will be more effective to require optional method developments to provide 45 percent of the street level retail space and that an additional bonus mechanism is not needed here.

5. INCREASE MAXIMUM BUILDING COVERAGE FROM 75% TO 85%

Proposed ZTA:

For standard method projects, increase the maximum building coverage from 75% (as required by the underlying CBD-2 or CBD-3 Zones) to 85% if the project provides at least 30 percent of the street level retail floor space for use by businesses with less than 3,000 gross sf of floor space and restaurants with less than 5,000 gross sf of floor space (59-C-18.102 (b)(2)).

Staff Recommendations:

Do not allow projects in the overlay zones to increase maximum building coverage to 85% from the maximum 75% allowed in underlying CBD-2 and CBD-3 zones.

Analysis:

Staff is concerned that allowing additional building coverage will negatively impact the provision of public use space at the ground level. Staff recommends that for those mixed-use developments that include Moderately-priced Dwelling Units (MPDUs), the developer utilize the existing provisions for reducing public use space from 10% to five percent.

6. OFF-SITE PUBLIC USE SPACE

Proposed ZTA:

For optional method projects, the Planning Board may allow the required public use space of less than 1,800 sf to be provided off-site within the Wheaton CBD as either public use space or streetscape on a one-for-one square-foot basis. (59-C-18.102 (a)(1)(E).

Staff Recommendations:

Do not permit this change since the Zoning Ordinance already permits public use space to be transferred to accommodate MPDUs on-site.

Analysis:

As stated above, the Zoning Ordinance already provides a mechanism for transferring public use space within the same CBD for projects providing MPDUs on-site. Since staff's recommendation is to allow the optional method of development only when mixed-use projects are requested, the proposed text change would be unnecessary. The additional proposal to allow public use space to be transferred to streetscape would be confusing since the streetscape requirements are utilized in the public right-of-way and are already a requirement for development.

7. Delete Project Plan Requirement

Proposed ZTA:

Project plan approval under the procedures of Division 59-D-2 should not be required for optional method of development projects in the Overlay Zone that are subject to the subdivision requirements of Chapter 50 of the County Code. (59-C-18.103 (b)(1)

Staff Recommendations:

Require optional method of development projects that are subject to the subdivision requirements to meet the project plan findings of Section 59-D-2.42 at the time of preliminary plan approval.

Analysis:

The findings normally required for project plan approval can be made as part of the approval of a subdivision plan. This is important to help streamline the approval process for optional method projects without sacrificing project quality. Staff recommends that the ZTA reference conformance to the project plan findings of Section 59-D-2.42 at the time of preliminary plan approval. This recommendation would ensure consistent application of project plan requirements while also streamlining

the process for those optional method developments that must also obtain subdivision approval.

8. At least half of the Public Use Space to be Green Area

Proposed ZTA:

At least one-half of the public use space required under 59-C-6.233 must be green area and include landscape features that will serve to enhance the amenity of the development. (59-C-18.102 (a)(1)(D))

Staff Recommendations:

Do not support the proposal

Analysis:

The public use space requirements along with certain public facilities and amenities are typically determined on a case-by-case basis at the time of project plan/preliminary plan/site plan approvals. Staff recommends that this process continue. If the question of providing more green space on-site is an issue, then this can be addressed during the site plan review process.

OTHER ISSUES

Use of the Term "Small Business"

The term "small business" is not a defined term in the Zoning Ordinance. In addition, the Department of Economic Development provides various definitions for the term based on different industries (wholesale, manufacturing, service, etc.). Staff recommends that the term not be used. Instead, staff recommends that only the size/space requirements for retail and restaurant uses remain (example: "street level retail floor space for use by businesses with less than 3,000 gross square feet of floor space and restaurants with less than 5,000 square feet of gross floor space...")

Streetscape Plan for Optional Method Developments

Staff recommends that optional method projects prohibit on-site surface parking in the front of buildings and instead, locate buildings fronting and built up to the sidewalk or a public use space in order to provide for streetscape and adequate sidewalk space for pedestrians. The Planning Board would be authorized to waive this provision. The proposed requirement would assist in providing development consistent with the more urban landscape of the Wheaton CBD.

RECOMMENDATION

Based on the analysis as discussed above, staff recommends that ZTA 06-11 be approved with modifications as described in the staff report. The subject proposal as amended provides for a reasonable level of standard method expansion for existing businesses while continuing to require site plan review for projects above a certain level. Although optional method is now being introduced to the zone, it is done so with standards generally below those of the base optional method requirements and only so to permit mixed-use projects that include street level retail with 45% of such required for businesses with smaller space requirements.

The amendment now proposed is designed to address redevelopment potential for the next three to five years and recognizes that longer term vision should be addressed through the comprehensive amendment to the Sector Plan and resulting sectional map amendment. The proposed text amendment encourages the retention of small retail and restaurants and the provision of new housing which are both in accord with the intent of the Sector Plan.

GR

Attachments

1. Proposed Text Amendment No. 06-11 (as introduced)
2. Map of Wheaton Retail Preservation Overlay
3. Letter in Support from Wheaton Redevelopment Advisory Committee
4. Table of Properties Located in Wheaton Retail Preservation Overlay

Wheaton Retail Preservation Overlay Zone
Purpose and Scope of Proposed Amendment
March 20, 2005

Purpose of the Wheaton Retail Preservation Overlay Zone: The Wheaton Retail Preservation Overlay Zone (Overlay Zone) was the first overlay zone enacted in Montgomery County. It was approved by the District Council in 1990 and was intended to retain the existing scale of development in order to preserve existing businesses in the Wheaton Central Business District (CBD). The Overlay Zone requires site plan approval for any new buildings and for additions to existing buildings, regardless of size, under the standard method of development. The Overlay Zone precludes the optional method of development and restricts future redevelopment to the maximum densities and building heights allowed under the standard method.

A primary purpose of the Overlay Zone was to protect the Wheaton CBD from large-scale redevelopment that could transform downtown Wheaton into a large-scale urban center with primary emphasis on office development. More specifically, people were afraid that redevelopment in Wheaton could be similar to what was then occurring in downtown Bethesda, as that CBD was emerging in the late 1980's. It is important to note that the Wheaton CBD Sector Plan and the Retail Preservation Overlay Zone were enacted before the opening of the Wheaton Metro Station. Unfortunately, many of the Overlay Zone's provisions have become disincentives to the types of development that the community now desires.

The 1990 Wheaton CBD Sector Plan: The 1990 Sector Plan recognized that the Overlay Zone could have a major effect on the redevelopment of Wheaton and the Plan text recommended that the Zone should be reevaluated within a ten-year timeframe to assess the effects on the downtown and to reflect on the effects of Metro accessibility. This reassessment of the Overlay Zone is in accord with the recommendations of the 1990 Sector Plan. While the sector plan amendment process may be initiated in FY 07, the two to three year sector plan approval period would effectively mean that a comprehensive reevaluation of the Overlay Zone provisions would not be complete for at least three years. The amendment now proposed is designed to address redevelopment potential for the next three to five years and recognizes that longer term vision should be addressed through the comprehensive amendment to the Sector Plan and resulting sectional map amendment. The proposed text amendment encourages the retention of small businesses and the provision of new housing which are both in accord with the intent of the Sector Plan.

It is critically important to the Wheaton Redevelopment effort to amend the Overlay Zone now because a number of the restrictive elements contained in the existing law are hurting existing businesses that are otherwise in a position to expand and improve their business operations. For example, one existing restaurant would like to add a second

floor dining area and roof top dining. While remaining a standard method of development project, it would be subject to site plan review and approval by the Planning Board. The costs and time to the business owner required to navigate the complex site plan review procedures, with no assurance of approval, result in a disincentive to the business owner. Another problem is the shortage of housing within downtown Wheaton. The recent construction of over 300 new housing units, the first new housing in the downtown in over 30 years, demonstrates a market for housing in the downtown. The CBD zones optional method of development should be allowed to enable more housing to be developed as part of mixed-use urban projects in close proximity to the Metro Station. This will help to revitalize Wheaton and help to address our growing housing shortage, especially for more housing that can appeal to a broader segment of the community, such as workforce housing.

Community Support for the Proposed Amendment: In the summer of 1999, the County partnered with the National Trust for Historic Preservation's Main Street Center to assess opportunities for revitalizing downtown Wheaton. The Center worked with staff to create a team of urban planners and designers to lead focus group meetings consisting of residents, merchants, and members of the real estate community. The Team worked closely with the Wheaton Redevelopment Steering Committee in developing a consensus strategy for the project. The Main Street team met with community representatives in six three-hour focus group sessions seeking to find a consensus on what people want to see in downtown Wheaton. Staff also surveyed and interviewed merchants, commercial property owners and developers to ask them their views about the future downtown.

The next step in the Main Street process involved a two-day charette in which the team designed four different development scenarios that reflected the consensus points derived from the focus groups, interviews and surveys. The scenarios represented four redevelopment themes and when presented to an audience of civic association leaders, the themes were widely accepted as representing good redevelopment opportunities. The scenarios included Wheaton as a revitalized district (a fixer-upper); Wheaton as an entertainment district; Wheaton as a residential village; and, Wheaton as an office center. In accepting all four scenarios, the consensus was that any one or combination of scenarios could be acceptable.

The Main Street effort did not recommend changing either the Sector Plan or the Wheaton Retail Preservation Overlay Zone, but it did draw attention to zoning limitations and led to discussions of the need to consider amending the Sector Plan and some of the provisions of the Overlay Zone. In 2003, an ad hoc committee was formed by the Director of the Mid-County Services Center to evaluate the recommendations of the 1990 Wheaton CBD Sector Plan to determine the relevance of the recommendations today and whether there is a need to update the Sector Plan to address current planning and development issues. This committee was composed of selected members of both the Wheaton Urban District Advisory Committee and the Wheaton Redevelopment Steering Committee. In the spring of 2004, the Committee concluded that the Sector Plan amendment process should be initiated as soon as possible to address long term vision for the downtown and that an amendment to the Wheaton Retail Preservation Overlay Zone

should be considered now to address zoning constraints that restrict current redevelopment opportunities.

The Wheaton Redevelopment Steering Committee recently endorsed a “town center vision” that embraces principles of new urbanism, transit oriented development and smart growth. The Committee supports allowing the optional method of development to encourage higher density, mixed-use development near the transit station. The Committee believes that it is important to retain the small business character of the street level, but that it is time to encourage new residential, office, business and cultural uses that will help revitalize downtown Wheaton.

The major problems identified with the current Overlay Zone include the requirement for site plan approval for any new buildings or additions proposed under the standard method of development. With the exception of a small part of the Silver Spring CBD, Wheaton is the only central business district in Montgomery County that requires site plan approval for standard method projects. The Overlay Zone prohibits use of the higher density optional method of development as a way to retain existing small businesses. This limitation effectively precludes redevelopment because there is little economic incentive to assemble lots to enable economically viable, mixed-use projects to move forward. The small and fragmented ownerships that exist in downtown Wheaton is and has been an impediment to effective redevelopment efforts. The optional method of development can provide sufficient development incentive to overcome this problem.

Scope of Amendment: The draft text amendment has been prepared by the Director of the Wheaton Redevelopment Program, in close coordination with the Director of the Mid-County Services Center, and in consultation with staff from other County departments and agencies, including the Maryland-National Capital Park and Planning Commission. The proposal has also been reviewed by the Wheaton Urban District Advisory Committee, the Wheaton Redevelopment Advisory Committee, the Maryland-National Capital Building Industries Association, and a number of community associations, developers and private attorneys. The draft text amendment proposes several important changes to the existing Overlay Zone to address current issues and needs. These changes are necessary to encourage and better accommodate appropriate redevelopment projects that can help revitalize the downtown area. The changes will assist both the public and private sectors to take advantage of current market conditions that can help to make Wheaton a more viable urban center in Montgomery County. The changes will also improve Wheaton’s overall marketability by streamlining approval procedures and helping to place Wheaton CBD on more equal footing with the other CBD’s in terms of the CBD zoning requirements.

The changes proposed to the Overlay Zone are described as follows:

- Amend the purpose section of the Zone to encourage higher density, mixed-use development in close proximity to Metro including housing, available to a variety of income groups; office uses; retail and commercial services; and arts and entertainment uses. The purpose should also indicate the importance

of creating opportunities to retain small businesses as part of the redevelopment process.

- Site plan approval by the Planning Board should not be required for all standard method projects. Wheaton and a small portion of the Silver Spring CBD are the only CBD zoned areas that now require site plan approval for all new standard method buildings and additions. Projects that involve 20,000 square feet or less of new building floor space and buildings less than 42 feet in height should be exempt from site plan review.
- The current prohibition on the use of the optional method of development should be changed to allow higher density development proposals under the optional method, with the provision of increased public use space and amenities. The use of the optional method with more flexible standards should be premised on the provision of at least 45 percent of the street level floor space in new or expanded buildings being available to small businesses. In addition, at least one-half of the required public use space should be in the form of green area to benefit the surrounding community.
- The proposed height limits should accommodate higher densities near Metro and a somewhat lower scale of development away from the town center that reinforces the policy emphasis of retaining the “marketplace” as a major component of downtown Wheaton. Building heights should be capped at 125 feet (about 11 stories) for sites located south of Ennals Avenue, south of Price Avenue and west of Fern Street. Sites located north of Ennals Avenue, north of Price Avenue and east of Fern Street are located farther from Metro and should be limited to a maximum building height of 100 feet (about 9 stories).
- For small projects that would generate less than 1,800 square feet of public use space, the Planning Board should be authorized to allow the required public-use space to be located off-site, within the CBD, or be provided as on-site or off-site streetscape. Streetscape must be provided on a one-for-one square foot basis.
- Project plan approval under the procedures of Division 59-D-2 should not be required for optional method of development projects in the Overlay Zone that are subject to the subdivision requirements of Chapter 50 of the County Code. The findings normally required for project plan approval can be made as part of the approval of a subdivision plan or as part of the required site plan. This is important to help streamline the approval process for optional method projects without sacrificing project quality.
- For standard method of development projects that propose to set aside up to 30 percent of their street level space to small businesses, up to 30 percent (1:1 ratio) of the street level floor space will not be counted as part of the project FAR and the maximum building coverage limitation can be increased from 75 percent of net lot area to 85 percent of net lot area.
- All projects subject to site plan approval procedures should be required to provide the appropriate Wheaton streetscape, as part of the approval process.

These changes to the current Overlay Zone are necessary to enable Montgomery County to be successful in the revitalization of downtown Wheaton. New development must be

able to achieve densities that warrant the significant investment required to purchase and redevelop urban properties. The procedures should encourage higher density, mixed-use, transit oriented development near the Wheaton Metro Transit Station. More residential development will help to strengthen and reinforce the retail market in Wheaton which remains a major public objective of the 1990 Sector Plan. The proposed standards are intended to create a regulatory environment, with appropriate incentives, that will encourage redevelopment projects that will want to retain small businesses as part of the project pro-forma. Necessary safeguards are proposed to assure that the size of projects and the review procedures are appropriate for downtown Wheaton and for the purposes of the Overlay Zone.

Testimony for Zoning Text Amendment 06-11
An Amendment to the Wheaton Retail Preservation Overlay Zone
Joseph R. Davis, Director
Wheaton Redevelopment Program
June 13, 2006

Good afternoon Council President and members of the County Council. I am Joe Davis, Director of the Wheaton Redevelopment Program. I am here today to speak in favor of enactment of Zoning Text Amendment 06-11 which is a proposal to amend the Wheaton Retail Preservation Overlay Zone. The Text Amendment was prepared by my office in close coordination with Natalie Cantor, Director of the Mid-County Services Center; the Wheaton Redevelopment Advisory Committee; and, the Wheaton Urban District Advisory Committee. These advisory committees are charged with advising the County government on matters pertaining to downtown Wheaton.

This legislation is the result of a multi-year effort to involve the Wheaton community in developing a vision for the downtown area. The goals and objectives of the 1990 Sector Plan to preserve the small business, street level character of downtown Wheaton remains important public policy. However, the zoning tool used to achieve it is now viewed as an impediment to downtown redevelopment efforts. In short, the current Overlay Zone is too restrictive and has fostered urban stagnation and deterioration that threatens the vitality of the community.

In fact, The County Council and Planning Board were concerned about long term effects of the Overlay Zone and included language in the Sector Plan text recommending that within ten years of Plan enactment, the provisions of the Overlay Zone should be reevaluated to assess its effects on the downtown after the opening of the Metro Transit Station. The Sector Plan is now 16 years old.

To date the community's visioning efforts have included a number of steps. The first was an assessment of the downtown begun in 1999 in partnership with the National Trust for Historic Preservation's Main Street Center. This effort focused on opportunities for revitalizing downtown Wheaton. After extensive public discussion, community surveys, and a two-day charette, four different development scenarios were identified reflecting

community consensus points. In accepting all four scenarios, the consensus was that any one or combination of scenarios would be acceptable.

The Main Street effort drew attention to the zoning limitations and led to discussion of the need to consider changes. In 2003, Natalie Cantor formed an ad hoc committee to evaluate the Sector Plan recommendations and to determine if there was a need to update the plan recommendations. In the spring of 2004, the Committee concluded that the Sector Plan amendment process should be initiated as soon as possible to address long term vision for the downtown and that an amendment to the Wheaton Retail Preservation Overlay Zone should be prepared to address the zoning constraints that restrict short term redevelopment opportunities.

Last year, the Wheaton Redevelopment Advisory Committee endorsed a "town center vision" that embraces principles of new urbanism, transit oriented development and smart growth. The Committee recognized that many of the features of the "vision" cannot be implemented under current zoning restrictions. The subject text amendment was prepared to respond to the issues that the various studies had identified. On March 1st of this year, a Town Meeting was held in Wheaton to discuss the zoning changes that were being recommended. Over 80 people attended this meeting and most speakers were in favor of changes to the Overlay Zone.

The subject text amendment proposes several important changes to the Overlay Zone which can be summarized as follows:

1. Do not require site plan approval for small, standard method of development projects that include less than 20,000 square feet of total floor area and are less than 42 feet in height.
2. Encourage "smart growth" development by allowing the optional method of development with special standards appropriate for downtown Wheaton.
3. Retain street level floor space for small shops that characterize the downtown.
4. Provide for more streamlined review processes for redevelopment projects appropriate for an urban area.

We look forward to enactment of the subject text amendment so that we can move forward with the redevelopment effort that is so important for Wheaton's future.

May 26, 2006

MEMORANDUM

TO: Jeff Zyontz, Senior Legislative Analyst
Office of the County Council

FROM: Joe Davis, Director
Wheaton Redevelopment Program

SUBJECT: Justification for the Maximum Size Standards Proposed in the Text
Amendment for the Wheaton Retail Preservation Overlay Zone ZTA
06-11

As follow-up to our meeting of May 12, 2006 and the meeting with Park & Planning staff on May 22nd, I am providing you with more detailed explanation for several of the key standards recommended in ZTA 06-11. The Text Amendment is a proposal to modify the existing Wheaton Retail Preservation Overlay Zone to accomplish the following objectives:

1. For standard method of development projects, limit site plan approval to larger-scale development projects
2. Allow the higher density, optional method of development provided that green space is provided and street level space is set aside for smaller businesses
3. Streamline the optional method of development approval process to require a project plan only in situations where subdivision approval is not required
4. Update the purpose section of the Overlay Zone to reflect smart growth principles and to encourage a more concentrated form of mixed-use development in close proximity to the Wheaton Transit Station.

The text amendment is an attempt to modify the Overlay Zone requirements to better accommodate needed redevelopment of the downtown without sacrificing the original intent of the Overlay Zone to retain small businesses that exist at the street level throughout the downtown. The standards proposed in the text amendment have been carefully considered in light of the need to protect the small business character and to allow reasonable opportunities for new projects to enhance the urban character of downtown Wheaton.

The Overlay Zone has been in place for sixteen years and in that time there have been only four new projects developed within its boundaries. This is very disheartening in light of the fact that the Metro Transit Station has been open for over fifteen years. With new development occurring around the Overlay Zone area rather than within it, the effect is that the downtown is the "hole in the middle of the doughnut" where development is not occurring. This incongruous situation must be corrected if Wheaton's redevelopment is to be successful.

In answer to your questions concerning justification for some of the proposals and standards contained in the legislation, I offer the following:

Small Businesses with less than 3,000 square feet of floor space:

The 3,000 square foot standard for a small sized business space represents the maximum size that should be allowed for the required "small business" set aside for the optional method and the voluntary set aside for the standard method. Existing street level businesses in the Overlay Zone range in size from a low of about 600 square feet up to over 10,000 square feet for the Washington Music Sales operation. Most of the existing storefront businesses are less than 3,000 square feet in size and the attached summary of the Triangle Park Shopping Center located on the north side of Ennalls Avenue, between Veirs Mill Road and Grandview Avenue, provides a fairly typical example of the size of street level stores in downtown Wheaton.

Looking at the summary for Triangle Park Shopping Center, there are 12 businesses (37% of the total street level floor area) that are less than 2,000 square feet in size. Five of the businesses (35% of the total floor area) are between 2,000 square feet and 3,000 square feet in size and only two businesses are greater than 3,000 square feet (28% of the total floor area).

As you can see in the summary, there is a range of store sizes with only two stores larger than 3,000 square feet and some smaller stores occupying more than one retail storefront. This is typical of stores in the downtown. The 3,000 square foot limit for defining a "small business" seems reasonable since it captures most of the businesses found in the downtown. In addition, the Westfield Mall has established a 3,000 square foot minimum size for stores to locate in the mall. The proposed standard in the text amendment accommodates stores that are too small to locate in the Mall.

We did look at other ways of defining a small business. For example, the United States Small Business Administration defines small businesses taking into account several common size standards for different types of industries. For retail and service industries, the predominant use in Wheaton, the accepted standard for a small business is \$6 million in annual revenues for most retail and service industries. This standard would allow businesses much larger than is typical for downtown Wheaton and would require financial data on an annual basis to demonstrate compliance. This would not be a good zoning standard.

I understand your point that by setting the zoning standard to reflect 3,000 square feet as a maximum size for an individual street level storefront and 5,000 square feet for an individual street level restaurant eliminates the concern about having to define a “small business”. In other words, the intent would be to control a maximum size of a street level use without having to define the nature of the use. We should investigate this approach further.

Voluntary Street Level Small Business Space Set-Aside for Standard Method of Development Projects:

At our meetings, we also discussed the significance of allowing a voluntary set-aside of small retail space for standard method projects. I believe that there is a benefit to having this provision in the Overlay Zone. First, there is a one –for-one density bonus for doing this and there is also the ability to increase the maximum building coverage from 75% to 85 %. This could be beneficial for existing buildings that want to expand but are non-conforming because the existing building exceeds the normal 75% building coverage limit. I believe that the Royal Mile Pub currently exceeds the building coverage limit. This provision could enable them to satisfy the building coverage limitation. The property is approximately 2,200 square feet in size and the building covers approximately 1,800 square feet. The voluntary small space set-aside would enable the building to become a conforming use, thus eligible for expansion and modernization. **This is an important option for our business community.**

20,000 Square Foot Minimum Floor Space as a Site Plan Trigger:

In the text amendment, standard method of development projects that include 20,000 square feet or less of total floor area and are less than 42 feet in height would be exempt from site plan review. The 20,000 square foot figure represents a site ranging in size from say 7,000 square feet up to 12,000 square feet. While there are not many lots in downtown Wheaton that are this large, it is not unreasonable to assume a two to four lot assemblage that could be this large. Under the above scenario, a two story building on the larger assemblage would result in a building approximately 20,000 square feet in size if the building coverage is increased to a maximum of 85% if 30 % of the street level space is set aside for the small retail space limit of 3,000 square feet per store front. Without the small retail space set aside, the normal building coverage limit of 75% would apply, thus reducing the square footage to 18,000 square feet.

For a 7,000 square foot lot, a three story building with up to 17,850 square feet could be allowed, again assuming an 85% building coverage limit for the lot based on the voluntary small business space set-aside. With the normal 75% building coverage limit, the total square footage would be about 15,750 square feet. There are older buildings in the downtown that are of similar size that did not have to go through site plan review when they were built. For example, the Bank of America building on the northwest corner of Grandview Avenue and University Boulevard is three stories in height and includes about 17,000 square feet of floor area.

A three story office building is located at 2416 Blue Ridge Avenue, across from the BB&T building. This building contains about 16,000 square feet of floor space. Another comparable building, and one that is a very close approximation to the proposed maximum standard in the text amendment, is the Miles Office Building located at 2401 Blue Ridge Avenue. This building, built in the early 1980's, contains 19,952 square feet of floor area on 4 levels. The building is 44 feet in height. Under the text amendment, site plan approval would be required because the building exceeds 42 feet in height. The Miles Building has an approved site plan because it is classified in the C-O Zone which requires site plan approval for buildings over three stories or 42 feet in height.

cc: Natalie Cantor
Paul Folkers
Claire Iseli
Dan Parr
Lisa Rother
Greg Russ

Thank you for holding this hearing today. I offer special thanks to Council members Perez and Praisner for attending the last town hall meeting in Wheaton. I wish you all could have been there to hear that this proposal enjoys overwhelming support in the community.

My wife and I are new residents of Wheaton. We bought our home there 2 ½ years ago. I've become involved by volunteering on the Wheaton Redevelopment Advisory Committee. Today I'm testifying as an individual that strongly supports this amendment. This legislation enables redevelopment, protects small businesses, and encourages green space in Wheaton.

You can imagine my surprise when I learned that outdated zoning laws and procedures are a major barrier to improving the downtown. Rules should not stifle progress, harm small businesses, and deprive citizens of a vibrant place to live and work. This legislation is about three things:

- The future of a community,
- Fairness, and
- Your legacies as leaders

My first point is that Wheaton is at a tipping point. New homes and investments surrounding – but excluding – the downtown suggest the community is trending in the right direction. Regrettably, the center of the community is languishing. It lacks the infrastructure and amenities to support a vibrant, modern pedestrian friendly neighborhood of shops and residences.

You have the opportunity to tip Wheaton in the direction of progress or to condemn it to a future of slow but persistent decay. Failure of this council to act decisively will tip it in the wrong direction. Ask whether you want a vibrant, attractive, community or more of the same old, run-down buildings in a struggling business district unable to attract investment.

This brings me to my second point. Treat Wheaton fairly. Change the zoning so that we are treated equitably compared to other communities. It is my understanding that building height limitations and onerous review requirements favor the other business districts. Wheaton can't win. The additional cost and time it takes to get similar projects completed makes Wheaton uncompetitive. The proof is the lack of investment in the Wheaton CBD during the last twenty years.

This legislation is a great deal for the County Government and taxpayers. This is almost a no-cost urban renewal project. You don't have to condemn acres of land to start this process. You simply have to update the rules.

Finally, this is about leadership. We need you to look over the horizon and enable progress. All the community wants is the opportunity to prosper.

Change happens – it is inevitable. There are some people who oppose this amendment. Why? Perhaps it is nostalgia, or a mistaken belief that doing nothing will keep the future from arriving. The facts are that the county is different now than it was twenty years ago. There are new people, new opportunities, new preferences, and a strong desire to breathe life into tired, old Wheaton.

As a taxpayer, I'm concerned by the recommendations made last week by the planning board. They are recommending authority to impose an expensive and cumbersome review process on smaller projects. The changes they suggest do not make economic sense and are out of line with what the community wants.

In conclusion, you have the opportunity to tip Wheaton in the direction of progress. Define your legacy. Pass this legislation that has wide community support. Exercise the leadership required to enable Wheaton's renaissance. Look to the future. Have the courage to treat my community fairly. I have faith that you can do this during the term of this Council.

Thank- you.

Testimony of Filippo Leo
Chair, Wheaton Urban District Advisory Committee
Text Amendment 06-11
An Amendment to the Wheaton Retail Preservation Overlay Zone
June 13, 2006

Good afternoon, Council President and members of the County Council. I am Filippo Leo, Chair of the Wheaton Urban District Advisory Committee. I am providing testimony on behalf of the Committee in support of enactment of Text Amendment 06-11. This legislation is a proposal to amend the Wheaton Retail Preservation Overlay Zone.

The Wheaton Retail Preservation Overlay Zone was developed in 1990 as part of the last comprehensive update of the Wheaton CBD Sector Plan. The Overlay Zone currently restricts new development and redevelopment in two ways. First, development is limited to the standard method of development only; the higher density optional method of development is not allowed. Second, any new development under the lower density standard method of development must receive site plan approval. This process costs a lot of money, it takes a lot of time, and it discourages smaller projects from moving forward. In short, it hurts business.

The Wheaton Urban District Advisory Committee supports excluding projects involving less than 20,000 square feet of floor space and less than 42 feet of building height from the site plan approval requirement. We also support allowing the higher density optional method of development provided that a significant percentage of street level space is set aside for small business use. We support the height limits proposed in the text amendment with the requirement that one-half of the required public use space be maintained as green space. These requirements are important for Wheaton.

In 16 years, Wheaton has experienced only 4 projects that have gone through the site plan approval process. The Wheaton Urban District Advisory Committee is very concerned that the existing requirements of the Overlay Zone are too restrictive and have hurt redevelopment opportunities in downtown Wheaton.

We believe that it is Wheaton's turn to experience revitalization, just as Bethesda, Silver Spring, and Rockville have experienced in recent years. However, while allowing more urban development to occur, we believe it is crucial to retain small businesses in Wheaton. We support an economic development program that will help small businesses adjust to changing economic conditions that will likely accompany redevelopment. We encourage the business community to work with the County to improve business operations so that businesses can adjust to the coming changes. In addition to presenting the opinions of the Wheaton Urban District Advisory Committee, I would like to offer my views as a business owner in downtown Wheaton. I look forward to the positive changes that can occur here. While I want to make sure that Wheaton has the same opportunities as other town centers in the County to grow and prosper, I also want Wheaton to retain its street level small business character.

The Wheaton Urban District Advisory Committee strongly supports enactment of this text amendment, which we believe is important for Wheaton's future. Thank you.

**Testimony of
L. Blaine Charak
Mid-County Citizens Advisory Board
June 13, 2006**

Good afternoon Council President Leventhal and Councilmembers. My name is L. Blaine Charak. For the record my address is 2424 Reddie Drive, Wheaton, Maryland 20902. I am a Member of the Mid-County Citizens Advisory Board (MCCAB) and I testify before you today on behalf of the Board.

The MCCAB supports Zoning Text Amendment 06-11, Amendment to the Wheaton Retail Preservation Overlay Zone, as legislation which will have substantial benefits to the residents and business owners in the Zone, and to County residents who want to shop and dine close to home.

The ZTA reflects "Smart Growth" principles, promoting transit-oriented development and higher density nearest to the Wheaton Metro station. In addition, provisions for small business retention will help preserve the diverse small and family-owned businesses the public has enjoyed over the years.

The ZTA places Wheaton on an equal footing; no more, no less, with areas such as Bethesda and Silver Spring, by exempting smaller scale, standard development projects from the requirements for site plan approval. The current provisions of the Overlay Zone creates an added burden to business owners in Wheaton who may want to renovate their properties, but are precluded by the cost of the process.

The MCCAB urges the Council's approval of this ZTA including the 20,000 square foot threshold for standard method site plan review..

Testimony of Mathew Schmidt
Vice-Chair, Wheaton Redevelopment Advisory Committee
Text Amendment 06-11
An Amendment to the Wheaton Retail Preservation Overlay Zone
June 13, 2006

Good afternoon Council President and members of the County Council. My name is Matt Schmidt and I am the Vice-Chair for the Wheaton Redevelopment Advisory Committee. I am providing testimony on behalf of the Committee in support of enactment of Text amendment 06-11. This legislation is a proposal to amend the Wheaton Retail Preservation Overlay Zone.

Our committee has extensively reviewed this proposed legislation. In particular, we have examined how this proposal promotes the goals of the Wheaton Redevelopment program and its potential effect on the Wheaton Central Business District. We believe that this legislation accomplishes three objectives that represent an important step forward in the redevelopment of Wheaton.

First, it allows for increased height and density in the urban core by utilizing the Optional Method of Development. Under the existing Wheaton Retail Preservation Overlay Zone, the higher density Optional Method of development is prohibited. As a result, new development, particularly housing projects, which would add additional customers and economic traffic downtown, have been limited. Instead of developing within the central core, many new developments have been built on the periphery—exactly the opposite of Montgomery County's Smart Growth strategy. By allowing both methods of development, we believe it will provide developer's additional incentive to focus their efforts within the Central Business District.

Second, the proposed legislation ensures that the Site Plan Review process is appropriate for the size and scale of development projects. Currently, all projects must undergo the same Site Plan Review process. This has proven to be a huge disincentive for our small business owners who would like to renovate or enlarge. Instead of spending their time and money on growing their businesses, they must undergo a review process that is both lengthy and

costly. The committee believes that relieving developers and small business owners of the site plan burden is important, and supports excluding projects that involve less than 20,000 square feet of floor spaces and less than 42 feet of building height from the Site Plan approval requirement. It is important to note that any assemblage of lots to build new or add onto existing buildings will most likely trigger the subdivision process. There is no need for two plan reviews given the performance standards and other requirements of the Overlay Zone.

Lastly, this legislation retains street-level space for small retail and service businesses. Small businesses are the heart and soul of Wheaton. They are what makes our downtown so unique, and are one of the reasons why residents and businesses locate here. Helping to preserve our small businesses will be a multi faceted efforts. Ensuring that small businesses have street level space-set asides is an important piece of that effort. Therefore, the committee fully supports the 45 percent mandatory set-asides under the Optional Method and the 30 percent incentive set-asides under the Standard Method.

In conclusion, the committee believes that Wheaton must change in order survive and grow. This legislation allows Wheaton to do that while still protecting its unique character. The Wheaton Redevelopment Advisory Committee strongly supports enactment of this text amendment as a critical step toward Wheaton's future development. Thank you.

Wheaton & Kensington

Chamber of Commerce

the
voice
for
YOUR business!

2401 Blueridge Avenue, Suite 101
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301-949-0080

June 8, 2006

George Leventhal, President
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Dear Mr. Leventhal:

The Wheaton & Kensington Chamber of Commerce is in full support of the proposed amendments to the Wheaton Retail Preservation Overlay Zone. The Chamber has worked closely with the staff of Wheaton Redevelopment Program in the development of the legislation. We support enactment of the proposed text amendment because it will provide relief from site plan approval requirements for some standard method projects; it allows for a higher density optional method of development; and it streamlines the approval process for optional method of development by only requiring a project plan when a subdivision plan is not required.

One of our concerns throughout this process has been to preserve and encourage the success of small businesses in Wheaton as redevelopment is occurring. We believe that the one for one bonus of providing 15% of street level floor space for small businesses, under the standard method of development, is one positive way that the proposed amendments meet this objective. The 45% set aside requirement for small businesses under the optional method of development is also an important standard for small businesses in Wheaton.

We understand that the Montgomery County Planning Board has recommended some changes including dropping the threshold for site plan review from 20,000 to 5,000 sq. ft. We are opposed to that change. We believe this would be a major set back to the successful redevelopment of Wheaton.

We think that the enactment of the proposed amendments will continue the economic revitalization that has already started in Wheaton and urge your support.

Sincerely,



Tim Wiens
President, Wheaton and Kensington Chamber of Commerce

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Maryland National Capital Building Industry Association
 Testimony on Zoning Text Amendment No. 06-11
 Before the Montgomery County Council
 June 13, 2006

Good afternoon President Leventhal and members of the Council. My name is Raquel Montenegro and I am testifying on behalf of the Maryland-National Capital Building Industry Association (MNCBIA). The MNCBIA is a regional organization of more than 730 companies representing the interests of more than 18,000 individuals in the building and development industry.

I am speaking in strong support of Zoning Text Amendment No. 06-11.

This legislation is not just a text amendment. ZTA 06-11 is an economic development, urban revitalization and fiscally responsible action. It is designed to stimulate and streamline an otherwise cumbersome and daunting process. This ZTA proposes to achieve revitalization without the need for major influx of County money. Instead, the ZTA encourages and then facilitates private interests to spend their own money to rehabilitate, revitalize, and beautify the buildings and the streetscape in Wheaton. This occurs without any loss in control or quality of design. This legislation also sends a psychological message to those looking to invest in Wheaton, and perhaps the County generally, that there is some hope to speed-up and simplify the development review process.

To mention a few of the highlights:

1. Use of the Optional Method of Development. (Section 59-C-18.102(a)). The Optional Method has been the vehicle for creative design in other CBDs, by providing incentives and opportunities. Wheaton deserves no less.
 - a. Use of the full CBD Zone Heights (Section 59-C-18.102(a)(1)(A)). Allows buildings in the CBD-2 and 3 zones to extend to 125 ft. throughout the CBD as recommended by Technical Staff. That is why the CBD zone was mapped for the property.
 - b. Small business /retail. This provision supports use by businesses that are small (less than 3,000 gross square feet or restaurants of less than 5,000 square feet). Don't worry about whether these are called "small businesses" or some other label. The object must be the size of the business not the operator. Provide some type of bonus/incentive for providing small business retail space. Allow the same one-to-one square foot benefit in the optional method as is allowed in the standard method. While the effect seems the same, the idea of "excluding" space from FAR may be more desirable than allowing a bonus/increase. Part of the reason for the "exclusion" is to economically justify lower rents for this space, as it does not have to generate the income levels to support the "FAR" of the building.

BUILDING HOMES, CREATING NEIGHBORHOODS

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Be careful to define the "small business" use as businesses of the proper sizes, without regard to the owner, operator or specific type of tenant, other than restaurant. Be certain that the "restaurant" use includes other types of food service, in addition to sit-down restaurants

- c. Offsite Public Use Space. We support the ability to provide public use space off-site or in some other way, for projects less than 1800 square feet. Encourage the Optional Method, especially to upgrade existing buildings; don't require tearing down part of a building to provide the public use space necessary to upgrade.

2. Standard Method of Development

- a. Street Level Retail. (Section 59-C-18.102(b)).

We support again the elimination from FAR of the 30% of the street level retail space used by small businesses. (The terminology describing "small businesses" should be the same as in subsections (a)(1)(B) and (b)(1) of the Section 59C-18.102.) This allows a direct correlation between the presence of retail use and the economics of the project -- taking the retail out of the economic equation, rather than trying to plug in other space to offset it economically.

In essence, this text amendment proposes to recognize the "public benefit" provided by street retail. This ZTA recognizes the public amenity character of the street retail and tries to accommodate and encourage such use, but without allowing an actual "credit" towards the public use or amenity requirements for optional or standard method. This is a reasonable balance between the "amenities" normally required and the desire to facilitate the street retail.

Taking the retail space out of the economic equation (by taking it out of FAR and by providing an equal amount of market space in return) will enhance the ability of building owners to reach a broader range of potential range of retail tenants because of having a greater ability to adjust the rent structure for those tenants.

- b. Maximum Building Coverage

We support the increase in building coverage based upon the provision of street retail space. Again, this recognizes the beneficial effect that the retail presence has on the streetscape -- a presence that can be expected to be far greater than merely additional ground level space that has no activating elements.

- c. Site Plan Review -- Standard Method.

The cost, timing, and current slavish devotion to the minutiae of the Site Plan Data Table, has a stultifying effect on the willingness to use site plan review. Consequently, this has a chilling effect on most minor rehabilitation and revitalization measures by building owners if site plan review is mandated. Even a simple, uncontested non-controversial site plan can cost multiple tens of thousands of dollars. Further, the law

today applies this site plan process not just to the new area or changes proposed, but to everything that currently exists. This expands the cost and risk far beyond the tolerance level for small improvements.

We strongly support the proposed standards in section 59-C-18.103(a) with regard to the limitation on the requirements for Site Plan Review, as these standards are derived from consensus of stakeholders in the Wheaton area. While there may be other ways to achieve the goal, (such as restrictions up to a certain percentage increase, or restrictions only over a certain size of increase), the proposed break point of 20,000 square feet and 42 feet has been the subject of great discussion and negotiation amongst those with "interest" in Wheaton.

The average building size of 4053 gross square feet is as noted page 7 of the May 19, 2006 Technical Staff Report, is not the relevant number. There is no indication as to how much expansion could physically be accommodated on many of those properties. Therefore, the likelihood of their multiplying five-fold, as the Staff contemplates, is just a chimera. The focus should be on means to encourage all these properties to upgrade, regardless of starting size.

- d. Site Plan Review -- Optional Method (Section 59-C-18.103(b)). Eliminating the need for a Project Plan is an idea that could readily be translated to other central business districts. Any action that eliminates a costly, time-consuming, sequential and often contentious step in the process, can only have a beneficial effect on the cost, and therefore feasibility of revitalization. The minutiae of filings, findings, and "process" is at best daunting and at worst, punitive, to property owners of these sites. The cost of the Project Plan process is not directly proportional to the size of the project. Therefore, the economic burden falls far more heavily on the small project, relatively speaking, than a large one. To encourage use of the option method for small projects in Wheaton, the proposal to eliminate the Project Plan is a good one.

The ZTA is a good step for Wheaton and the development process. We encourage adoption.

Thank you for your time, and your attention to these comments. We look forward to discussing this matter further with you during the worksessions.

Testimony

RESUSCITATE NOT SUFFOCATE WHEATON

My name is Leonard A. Greenberg and our operating company is Greenhill Capital Corporation. I moved from the District in 1955 to 3704 Jeffrey Street, Wheaton, Maryland, and have been a resident of Montgomery County for approximately 52 years.

We started investing in Wheaton real estate 22 years ago, and currently lease to about 75 businesses on CBD land area in excess of 4 acres. On occasion we teamed up with the Charles & Margaret Levin Family Limited Partnership to acquire several properties in downtown Wheaton, and have interests in the Glenmont Arcade and Randolph Crossing. Although there have been modest and superficial changes from time to time, we have built four buildings from scratch over the years, but we could have built more, barring roadblocks and administrative unpredictability.

We provide construction jobs, tax base, and spaces for retail and restaurant businesses to conduct their trade. We pay property and sales taxes, we create numerous spaces that generate County and State revenue. Wheaton has tried to get up on its feet beginning over 17-18 years ago and Park & Planning and Council hold it down. During our investment years, Wheaton has missed the train throughout three development cycles - and it appears it will be left behind again. We all remember when the County thought it was in the best interest to place the retail overlay on Wheaton 16-17 years ago and, mission accomplished, nothing happened to the CBD.

But first let's look at the extortive tactics; primarily streetscaping, a voluntary act which has been inserted into every building permit to begin construction, a cost to be borne by the private developer. However, because of its costs, we abandoned two projects, one of which ultimately got built three years after plans were approved, and that was the Levin-Greenberg building at Veirs Mill Road and Reddie Drive (where we donated public art). Another abandoned project is where the Salvation Army is currently located. Years ago we had a set of building plans ready for permitting, and a requirement again for streetscaping and other nonsense made the project economically infeasible. Where the County could have had a new two-story retail building, it was just easier to sign a

lease with the Salvation Army who came along with a basic no-strings attached deal and paid a significant rent.

The County stated if we wanted to get a permit we had to implement their vision. It was a regulation and a requirement for streetscaping implementation. But no one could find the regulation.

The County boasts and cheerleads with one hand and restrains with the other. The Anchor Inn site that we own could be developed in a variety of ways, but it appears that it will become the new poster child for a failed policy and executive will in the County.

If the Anchor Inn site requires site plan in this new legislation and pavers to be paid for privately, I can assure the Council and the Park and Planning Commission that my 4 grandchildren, with a 5th on the way, will deal with it on their schedule. Wheaton needs to be resuscitated, not suffocated.

The irony in all of this, of course, is there is an outcry about the cost of rents but, because of budgetary concerns and the continuing construction costs, taxes and municipal costs piling up and time delays thereon, rents are what they are, making most development not feasible. OK, yes, there is about a zero vacancy factor in Wheaton now, why not encourage additional supply? What a novel thought!!

What is the fear? New jobs, competition, tax base?

Sure rents rise, but that is the ultimate sign of a healthy and vibrant marketplace. It will not surprise me to watch another cycle come and go. It will surprise me if the County can switch its continued path of destruction and constipation within areas that really need assistance.

Resuscitation not suffocation.

Steven J. Karr, AIA

From: "Steven J. Karr, AIA" <sjkaia@comcast.net>
To: "Phil Andrews" <councilmember.andrews@montgomerycountymd.gov>; "Howard Denis" <councilmember.Denis@montgomerycountymd.gov>; "Steve Silverman" <councilmember.silverman@montgomerycountymd.gov>; "Marilyn Praisner" <councilmember.praisner@montgomerycountymd.gov>; "Tom Perez" <councilmember.perez@montgomerycountymd.gov>; "Michael Subin" <councilmember.subin@montgomerycountymd.gov>; "Nancy Floreen" <councilmember.floreen@montgomerycountymd.gov>; "George Leventhal" <county.council@montgomerycountymd.gov>; "Mike Knapp" <councilmember.knapp@montgomerycountymd.gov>
Cc: "Moshe Briel" <wheatonbusiness@hotmail.com>; "Harold Weinberg" <haroldw@milesrealty.com>; "Holly Olson" <hjo1629@hotmail.com>; "Todd Brown" <tbrown@linowes-law.com>; "Robert Levin" <robert@wpsworld.com>; "Tom Conley" <conleymanagement@aol.com>; "Lenny Greenberg" <satchiedog@aol.com>; "Joe Davis" <joseph.davis@montgomerycountymd.gov>; "Joe Callaway" <joe.callaway@montgomerycountymd.gov>; "Richard Greenberg" <rgreenberg@greenhillcompanies.com>
Sent: Monday, June 12, 2006 9:45 PM
Subject: Testimony of Steven J. Karr, AIA on Zoning Text Amendment No. 6-11

• TESTIMONY: WHY IS WHEATON SO SPECIAL?

June 13, 2006 - Council Hearing: Zoning Text Amendment No. 6-11

My name is Steven J. Karr. I am licensed Architect and president of Steven J. Karr, AIA Inc. with offices located at 210 North Adams Street, Rockville, Maryland.

As some you are well aware, I, for the past 19 years have been providing professional architectural services to various affiliated companies owned by Leonard Greenberg of Greenhill Capital Corporation, for a variety of standard method of development projects throughout the Wheaton CBD and downtown Bethesda. In addition, I have been an outspoken advocate for Wheaton's "first" revitalization efforts throughout the late 1980's and early 1990's as well as for Wheaton's current redevelopment efforts. I recently served on the Wheaton Redevelopment Advisory Committee until March of 2006. To date I have completed 17 projects in greater Wheaton area since 1984 and am currently working with Greenberg to redevelop the site of the former Anchor Inn Restaurant:

- **Georgia Crossing Retail Center** aka "Mercado Verde" Georgia Avenue & University Blvd. West Wheaton, Maryland
- **A Retail Building - Main Street Infill** 11305 Georgia Avenue Wheaton, Maryland
- **Anchor Inn Restaurant - Facade Renovations** 2509 - 2525 University Blvd. West @ Georgia Avenue Wheaton, Maryland
- **Byron Manor - Facade Modernization & Portico Addition** 10800 Georgia Avenue Wheaton, Maryland
- **Charles W. Gilcrest Center for Cultural Diversity** 11319 Elkin Street Wheaton, Maryland
- **Chuck Levin's - ProSound Addition for Instrument Repairs & Rentals** 11165 Veirs Mill Road Wheaton, Maryland
- **Chuck Levin's Washington Music Center Annex** 11149 Veirs Mill Road Wheaton, Maryland
- **Dunkn' Donuts @ Randolph Crossing** 12200 Veirs Mill Road Wheaton, Maryland
- **Gateway Wheaton** Georgia Avenue & University Blvd. West Wheaton, Maryland
- **Harris & Potter Insurance Service Building** 11315 Fern Street Wheaton, Maryland
- **Lands of Living Well - Business Center** 11416 Georgia Avenue Wheaton, Maryland
- **Levin-Greenberg Building** Veirs Mill Road & Grandview Avenue @ Reddie Drive Wheaton, Maryland
- **NRH/Suburban Regional Rehab - Wheaton** Wheaton Plaza North Office Building, Suite 812 Wheaton, Maryland
- **Oncology Care Associates Office Alterations - Wheaton** 2730 University Blvd. West, Suite 400 Wheaton, Maryland
- **Randolph Crossing Shopping Center Phase II Facade Renovations** Randolph Road @ Veirs Mill Road Wheaton, Maryland
- **Rite Aid Store No. 3831** 12222 Veirs Mill Road @ Randolph Crossing Shopping Center Wheaton, Maryland
- **Wheaton Hills Mixed Use Urban Design Study** Georgia Avenue @ University Blvd. West Wheaton, Maryland
- **Wheaton Shopping Center Facade Renovations** Georgia Avenue & University Blvd. West Wheaton, Maryland

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6/12/2006

In addition, I, together with partner Leonard Greenberg, have entered into a purchase agreement with the Wheaton Volunteer Rescue Squad to acquire their property, zoned CBD2. As you can see, I remain, committed to the successful redevelopment of the Wheaton CBD despite the burdens imposed by the Overlay Zone.

I am here today to speak in support of eliminating Site Plan review procedures for any standard method of development project proposed in the Wheaton CBD zones and in support of eliminating any and all restrictions on Optional Method development projects in the Wheaton CBD Zones.

Since its inception in 1990, the restrictions imposed by the obsolete Wheaton Retail Preservation Overlay Zone have done nothing to improve the visual appearance of the Wheaton Central Business District nor to improve the quality of businesses located within the arbitrary borders of the Overlay Zone. In my opinion, the requirements for Site Plan review of any project proposed within the Overlay Zone have hindered redevelopment and business expansion opportunities, serving only to propagate the blighted and run down appearance of the Wheaton CBD.

It should be very obvious to all that there have been no significant commercial developments within the Overlay Zone due, for the most part, to the elimination of the Optional Method of Development under the Overlay Zone and to the cumbersome and cost prohibitive requirements associated with the Site Plan review procedures, especially as these procedures apply to standard method of development projects in the Overlay Zone. Having been involved as the Architect of Record for 3 of the 4 completed standard method projects constructed within the Overlay Zone since 1990, I know first hand how *confusing and expensive* it is for any one to process a project through the Site Plan review process with MNCPPC, not too mention the inherent anguish of a "Let's Make a Deal" approach to development imposed all too often by MNCPPC planning staff.

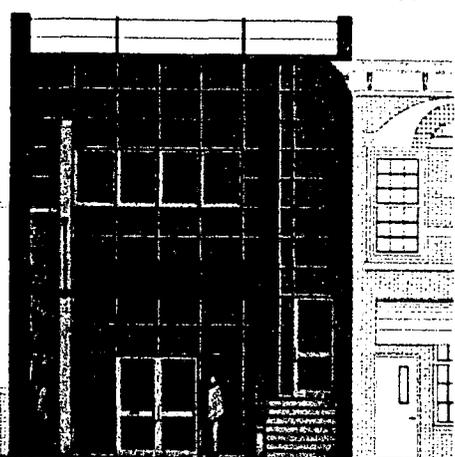
Two of these completed projects were additions to existing Chuck Levin's Washington Music Center facilities. The third project, constructed on the site of the former "Little Tavern" was the only speculative new construction in the Overlay Zone developed by a partnership of Lenny Greenberg and Chuck Levin, may he rest in peace. If not for the perseverance of my clients, Lenny Greenberg and Chuck Levin, and their ability to absorb the exorbitant engineering and legal costs required to execute a standard method project under the requirements of the Overlay Zone, none of these three buildings would have been built. As you can clearly see by visiting Wheaton, nothing else has! In each of these 3 projects deals were "cut" with MNCPPC staff to compromise alleged requirements for streetscaping, the costs for which impose a tremendous hardship on any successful redevelopment endeavor. These streetscaping costs are such a staggering burden that even the Wheaton Urban Maintenance District staff find it a hardship to expand and maintain streetscape improvements; Joe Davis and Joe Calloway can attest to the staggering expenses associated with implementing Wheaton streetscaping components. If the County can not find the money to fund streetscaping improvements how does the County expect a property owner to fund these excessive costs?

What I can not understand is **WHY IS WHEATON SO SPECIAL?** Why is it that I can design standard method projects throughout the Bethesda CBD without any oversight and interference by MNCPPC? Yet if I were to design a project in Wheaton similar to my standard method 11,000 square foot, 4 story



Elm Street Office Building developed by Greenberg and Levin at the corner of Woodmont and Elm in downtown Bethesda or similar to

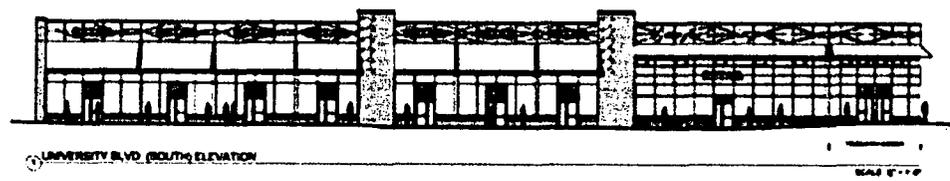
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my standard method 2,500 square foot, 2 story building now under construction on Cordell Avenue in Bethesda for Tom Conley of Conley Management, I and my clients must capitulate to the day to day whims of MNCPPC staff. In Bethesda I can do what is right for the site and what is best for my client. But not in Wheaton! **WHY IS WHEATON SO SPECIAL?**

WHY IS WHEATON SO SPECIAL? Is there so little public trust in design professionals such as myself, that every standard method project designed in Wheaton must be subject to wheeling and dealing with MNCPPC staff? Why must standard method projects located in the Overlay Zone be subject to the unyielding and contradictory conditions imposed by MNCPPC? What benefit is there to the community when every project proposed in the Overlay Zone must succumb to the arbitrary wishes of the planner assigned by MNCPPC? I strongly believe that site plan review of any standard method develop should be eliminated altogether as I can not comprehend why Wheaton is so "special" that standard method development requires the scrutiny of MNCPPC when the same standard method of development results in economically and visually successful buildings in the Bethesda CBD zones.

These frustrations with Site Plan review requirements for a standard method project have again reached the top of the curve with the current project that Greenberg and I are trying to develop on the property of the former Anchor Inn restaurant; the project we now call "Georgia Crossing".



This standard method development currently proposes 2 retail buildings of 16,350 SF and 17,722 SF respectively. With the exception of 2,310 SF of second floor office space proposed a the corner of Georgia and University, these 1 story buildings are designed for at total of 20 tenant units - 100% "small business" retail stores with tenant shells ranging from approximately 1,200 sf to 1,600 sf. No existing businesses would be displaced by this project as the Anchor Inn has been demolished and the rest of the site is an asphalt jungle. Yet, since filing the Preliminary Plan of Subdivision on February 22, 2006 we have and continue to face roadblocks all along the way for what really should be a 500,000 - 600,000 square foot mixed use "town center" under the prohibited Optional Method of Development. Despite having assembled over 102,000 sf of land area on this block including the Wheaton Rescue Squad property, the project is diminished to a standard method project under the Overlay Zone and continues to beg mercy at each step in its site plan "negotiations" with MNCPPC staff under MNCPPC's cost prohibitive and unruly Site Plan Review procedures for a standard method of development project. We seek no public money, we seek no "incentive-based" FAR deductions. We just implore the Council to untie our hands from these arbitrary and diseconomic constraints so that we can do what we do best, create jobs and tax revenue through development. If MNCPPC and the County want standard method of development projects to coincide with streetscaping improvements, pavers, lights etc. these streetscape improvements should be provided by the County at the County's expense just as they are in Bethesda and Silver Spring. **WHY IS WHEATON SO SPECIAL? that the County must pass these costs of public improvements on to the standard method developer, only encumbering what Wheaton really needs: new vibrant commercial facilities geared to small businesses!**

I strongly support, and do so only in the absence of a complete overhauling of the outdated 1990 Wheaton Sector Plan, the proposed text amendment as introduced by Councilmembers Perez and Praisner modified if it must, only

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to permit an **increase** in lot occupancy, height and FAR and to eliminate all restrictions on standard method of development projects. However, if an arbitrary "threshold" of 20,000 square feet must be established to "win over" community opposition then I can only encourage the Council to hold to this number as anything less will result in the status quo.

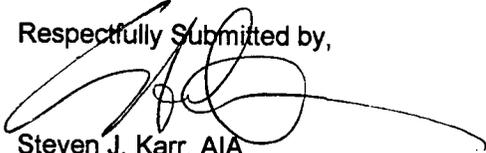
I advocate for the redevelopment of Wheaton to its greatest potential. I advocated against the introduction of the Wheaton Retail Preservation Overlay Zone in 1990 and continue to advocate for its elimination today as this Overlay Zone has only served to strangle downtown Wheaton and contradicts all principles of "Smart Growth".

However, if Council deems Wheaton to be so "special" that MNCPPC site plan review of standard method development is a suitable mechanism to preclude such vibrant development such as found in Bethesda and Silver Spring, then I can only urge the Council to maintain the 20,000 square foot "threshold" under which site plan review would not be required as proposed in the Text Amendment and nothing less.

If you vote to weaken the Text Amendment you will accomplish no more than what has been accomplished in the core of Wheaton for the past 16 years....nothing! I can only hope that Council will have the collective vision to pass this Text Amendment as introduced until such a time that MNCPPC can allocate its limited resources to revisit the outdated Wheaton Sector Plan.

We might not be able to turn the clock back for our proposed redevelopment of the Anchor Inn site, particularly if the proposed ZTA never makes beyond discussion; I can only encourage you to pass this much needed ZTA. If at the end of the day, the consensus is to maintain the status quo, so be it. Of course the easy way out is let Wheaton continue to be characterized by fast food chains and blank walled drug stores (I am referring to some of the proposals on the table at Westfield's), and of course, beer and wine stores, pawn shops and check cashing establishments dispersed throughout its CBD. I can only hope that common sense, together with a vision for Wheaton's economic and physical growth prevails.

Respectfully Submitted by,



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Rockville, Maryland 20850
tel: 301.610.5210
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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

April 21, 2006

Todd D. Brown
301.961.5218
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Hon. George L. Leventhal, President
and Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Zoning Text Amendment No. 06-11 (Wheaton Overlay Zone)

Dear President Leventhal and Members of the County Council:

This office represents Leonard Greenberg in connection with several properties controlled by him in the Wheaton Retail Preservation Overlay Zone ("Overlay Zone"), including the former Anchor Inn property at the intersection of University Boulevard with Georgia Avenue. The purpose of this letter is to support ZTA 06-11 and to suggest limited modifications to the text amendment to help achieve its purposes. Please include this letter in the public hearing record.

Optional Method Development

The text amendment will permit optional method development and eliminate project plan review for those optional method projects that still will be subject to subdivision review. This should reduce up-front costs and may help facilitate redevelopment without compromising public review. However, the proposed limitation on building height under the optional method to 100 and 125 feet may nevertheless act as a significant deterrent to redevelopment on a significant scale. If Wheaton is to compete with other Central Business Districts for private investment, building heights must not be restricted below the heights permitted in the same underlying zones elsewhere in the County. Within the Overlay Zone the proposed building height limitation is even more difficult to understand since most, if not all, properties within the Overlay Zone are located within one-half mile of the Metro Station where densities should be greatest. We encourage the Council to consider additional building height under the optional method.

With respect to the optional method of development and in addition to the foregoing, we suggest the following specific language changes:

1. Line 41: "Ennals Avenue, north of Price Avenue [and] or east of Fern Street is...."

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Hon. George L. Leventhal, President
and Members of the Montgomery County Council
April 21, 2006
Page 2

2. Replace Line 43-47 with: “At least 45 percent of the street level space devoted to retail use within an optional method project must be constructed as individual retail outlets containing less than 3,000 gross square feet of floor space each or as individual restaurants containing less than 5,000 gross square feet of floor space. The street level retail space must not be combined to create larger retail outlets or restaurants for a period of ten years unless approved by the Planning Board in connection with a Division 59-D-3 site plan review....”

We understand the intent of the text amendment is to provide opportunities for retail merchants who need less than 3,000/5,000 square feet of space, but not to mandate specific tenancies, which we would oppose. The above clarification is needed to avoid having to define “small business use” and to eliminate potential regulatory inconsistencies in determining what constitutes a “small business use”. We also note the limitation proposed in the text amendment may unintentionally preclude development of specialty markets or other uses on smaller sites that might be desired by the community. Further, if property owners are required to maintain smaller spaces for tenants as proposed by the text amendment, even if there is no market for such tenants, vacancies may in effect be mandated by regulation for up to 10 years. Providing the Planning Board with authority to approve larger retail/restaurant spaces will provide needed flexibility to address these issues without compromising regulatory oversight or the overall intent of the amendment.

In addition, we suggest the Council consider whether the minimum lot size for optional method development should be reduced below 18,000 square feet as authorized by ZTA 05-08. As we understand the intent of the proposed Overlay Zone text amendment, one of its purposes is to encourage higher density mixed-use development. As in the Woodmont Triangle, property ownership in the Overlay Zone is somewhat fractured and assemblage has not readily occurred, frustrating redevelopment efforts. Reducing the minimum lot size for optional method development may provide a needed catalyst for redevelopment.

Lastly, it would also be important to consider whether density transfer provisions should be included in the Overlay Zone. The ability to transfer excess FAR may provide some property owners with an opportunity to retain existing small-scale retail without sacrificing economic opportunity. In this regard, a density transfer option may help to retain a variety of small businesses, while promoting and encouraging redevelopment, both significant purposes of the amendment.

Hon. George L. Leventhal, President
and Members of the Montgomery County Council

April 21, 2006

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Standard Method Development

Similar language concerning small business use (Lines 43-47 above) is also suggested for Lines 70-72.

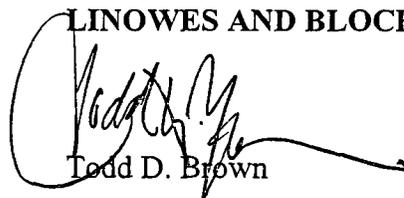
In addition, the current requirement for site plan approval in the Overlay Zone for standard method development has been a major disincentive to redevelopment. We strongly support the text amendment proposal to allow up to 20,000 square feet of new development before site plan review is required. However, the language at Lines 131-136 is somewhat confusing and perhaps contradictory. We suggest the language could be simplified as follows:

“(a) Standard Method of Development: Site plan review is not required under the Standard Method of Development in the Wheaton Retail Preservation Overlay Zone except for development occurring after [effective date] that cumulatively increases the total amount of floor area located on a parcel or lot by more than 20,000 square feet or that increases building height to more than 42 feet.”

Thank you for your consideration.

Very truly yours,

LINOWES AND BLOCHER LLP



Todd D. Brown

cc: Mr. Leonard A. Greenberg

Montgomery County Council

From: Leventhal's Office, Councilmember
Sent: Tuesday, June 13, 2006 2:28 PM
To: Montgomery County Council
Subject: FW: Wheaton Overlay

023497

Patty Vitale
Acting Chief of Staff
to Councilmember Leventhal
240-777-7972

-----Original Message-----

From: jane folsom [mailto:jane.folsom@yahoo.com]
Sent: Monday, June 12, 2006 11:18 PM
To: Praisner's Office, Councilmember
Cc: Leventhal's Office, Councilmember; Wayne Goldstein; donna savage
Subject: Wheaton Overlay

Dear Mrs. Praisner,

I've been a resident of the Kensington-Wheaton area for over 35 years and I am not eager to see it become like Bethesda or Silver Spring. I have just read the article in the Gazette which gives different people's opinions about higher buildings without site approval or rezoning. It seems to me that we still need to take account of traffic issues and crowded schools. A lot of housing -- over 500 units have been added to the Wheaton area in the last few years. However the schools are still crowded. Good Counsel will be moving and housing is going in there. Newport (private) is building elsewhere and the public schools are playing catch-up in the number of classrooms.

A Master Plan or Sector Plan might take these things into consideration but a quick and dirty change in height and size does not. I am asking you and others to send this to Park and Planning for further study. I have seen Joe Davis' drawing of downtown Wheaton but at Taste of Wheaton I had to wonder. What will happen to the Dance Studio, to the Barbarian Book store, to Wheaton Door, to the Vacuum repair shop and other places I use. Wheaton used to have a fabric store. Wheaton used to have a place to repair lawn mowers, but not any more. We don't need the chain stores, or big boxes. We need a place to buy elastic or buttons.

Please do not sell Wheaton out.
Jane Folsom 301 942 6918
2704 Calgary Ave
Kensington, Md. 20895

Even though I have a Kensington address, I can walk the Metro and I could see the fireworks at Wheaton Plaza from my living room window the Fourth of July.

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ZTA 06-11

JZ
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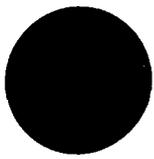
The Brownstones at Wheaton Metro Board of Directors
11006 Amherst Ave
Silver Spring, MD 20902

8 June 06

Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

Re: Amendment 06-11

023446



Dear Council President and members of the County Council:

I am writing on behalf of The Brownstones at the Wheaton Metro, a community of 75 town-homes in Wheaton, Montgomery County, Maryland, regarding Amendment #06-11—An Amendment to the Wheaton Retail Preservation Overlay Zone (WRPOZ).

Though some may argue that residents are not impacted by the WRPOZ, we respectfully disagree. Residents are impacted when small businesses in downtown Wheaton can not expand or even start-up because of onerous and costly regulations. My understanding of the WRPOZ is that it limits new business growth and the improvement of current businesses from which residents stand to benefit.

After all, it is evident that residents in Bethesda, Friendship Heights, and parts of Silver Spring Central Business District have benefited from new business development in standard method projects that did not have to go through secondary site plan review procedures. It appears to us that the site plan approval procedures for standard method projects in Wheaton's core area have discouraged new infill projects.

Let us eliminate the existing requirement for site plan review for standard method of development projects that include less than 20,000 square feet of floor area and are less than 42 feet in height. Such projects would already be expected to go through the quite adequate and comprehensive subdivision process because they likely involve assemblages of lots.

The requirements for small store areas at street level, with reduced maximum building height and green space requirement will work better for Wheaton's desired small business character than full optional method. One review process should be all that is necessary for small urban projects. The site plan approval represents another approval process that discourages rather encourages redevelopment that is needed in our community.

We also support allowing the optional method of development to allow Wheaton to grow with mixed-use development appropriate for an urban area served by regional transit and bus service. We should encourage smart growth development in Wheaton, not preclude it as the *current* WRPOZ does. Why impede the growth of small business and in turn penalize the residents of Wheaton?

You have the opportunity to improve our quality of life in Wheaton by supporting the amendment to the Wheaton Retail Preservation Overlay Zone. We urge you to make the right decision for small businesses and also the residents of Wheaton. Our association is 75 strong and proud!

Sincerely, *L. Amendt*

Linda Amendt, Vice President, The Brownstones Homeowners' Association
Byron Derringer, President
Paul Kim, Secretary
Tin Cao, Treasurer
Carlos Rodriquez, MD, Board member-at-large

for
for
for
for

cc: Joe Davis

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2006 JUN 13 AM 8:01

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MONTGOMERY COUNTY
COUNCIL

Testimony to County Council on ZTA 06-11 to end Wheaton Retail Preservation Overlay Zone - 6/13/06

I'm Wayne Goldstein, president of the Montgomery County Civic Federation and member of its Planning and Land Use Committee, testifying about the bulldozer or sledgehammer ZTA. We call it this because it could easily result the bulldozing of all of downtown retail Wheaton. This ZTA proposes the use of a zoning sledge hammer to solve a problem where a zoning jeweler's hammer should be the tool of choice. While, there are sincere promises to take care of small businesses despite the potential impact of this ZTA, this substantial addition to the collection of small business preservation rhetoric means little if the county only provides a few hundred thousand dollars for awnings and façade improvements to help small businesses. I've heard residents in Silver Spring and Wheaton say they want existing small businesses protected from the economic dislocation caused by public policies meant only to benefit those looking to make millions. All I've seen is lip service and petty cash to help viable small businesses deal with rent increases meant to remove them.

Most importantly, this remarkably comprehensive ZTA is what I would expect to see to help implement the zoning changes approved after a Master Plan or Sector Plan had gone through the years of review by all stakeholders and decisions had been made by the county's land use agencies. Other than consultations with individuals, presentations to groups and a community meeting/gripe session, this proposed far-reaching change has not been properly vetted. The Planning Board understands the impact of this ZTA and has recommended a significant scaling-back of the size of projects that can proceed without a site plan.

The only problem that has been identified is that several small businesses have not gone ahead with minor additions because of the cost of doing site plans. All that should be before you is a ZTA that allows projects of less than 1000 - 2000 square feet to proceed without a site plan. Everything else should wait for the Wheaton Sector Plan, which should be started sooner rather than later if the problem of encouraging redevelopment of select parcels is an issue. The lack of staffing at the Planning Board that prevents this Sector Plan process from beginning sooner should not be used to drastically change this retail area through this ZTA. Please either narrowly rewrite this ZTA to help small business expansion or reject it. We must spend the next two years coming up with meaningful programs to protect existing viable small businesses, such as the creation of a Moderately Priced Retail Unit program or more creative use of incubator programs.

Wayne Goldstein MCCF 3009 Jennings Rd. Kensington, MD 20895 301-942-8079

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Wheaton Forest Civic Association

2014 Glenhaven Place
Silver Spring, MD 20902
301-949-6583

Zoning Text Amendments Relating to the Wheaton Overlay Zone, 06-11

**Testimony of Diane S. Lynne, President
Wheaton Forest Civic Association**

County Council Hearing Room
Stella Werner Building, Rockville, MD

June 13, 2006, 1:45 pm

The Wheaton Forest Civic Association held a meeting on June 7, 2006, during which I updated the participants with the Park and Planning Staff recommendations and the result of the Planning Board Review of the proposed Amendment to the Wheaton Retail Preservation Overlay Zone (ZTA).

The group was very dismayed when I informed them that Park & Planning was suggesting that the maximum building height for optional development in the overlay zone should be 125 feet throughout the zone, rather than a ceiling of 100 feet throughout most of the zone with the 125 foot height relegated to the area closest to the metro. We especially liked the idea of the 2-level height graduation throughout the overlay zone and see the extra 25 feet height throughout the whole overlay zone as too drastic a change without sector plan review. There is precedence within Montgomery County for this type of graduated height restrictions. We can support the originally proposed plan of 125 feet

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closest to the metro for optional development, and 100 feet maximum for optional development in the remaining 2/3rds of the overlay zone, with the geographic boundaries proposed:

The maximum height for any CBD-2 or CBD-3 zoned optional method of development project located south of Ennals Avenue, south of Price Avenue and west of Fern Street is 125 feet. The maximum building height for any CBD-2 or CBD-3 zoned optional method of development project located north of Ennals Avenue, north of Price Avenue and east of Fern Street is 100 feet.

Park and Planning staff recommended allowing new building construction, renovations, and additions cumulatively up to 10,000 sq. ft. be exempt from site plan review. The Planning Board further limited that amount to 5000 sq. ft. We endorse the staff recommendation of 10,000 sq.ft to provide more flexibility at lesser expense to existing businesses in the overlay zone. We want to encourage rooftop restaurants, canopies along sidewalks and other improvements that create a town center ambience. Since 5,000 sq. ft. adequately cover most of the small businesses, 10,000 sq. ft. is a generous addition. We are opposed to exempting any building over 10,000 feet from site plan review. We are concerned that adjoining properties could each add 5,000- 10,000 sq. ft. additions for a combined impact that is well in excess of the site plan review trigger, yet falls within this loophole. Parking and traffic issues are always an important concern within our community and for our community's use of the CBD for their shopping needs.

The proposed ZTA requires one-half of the public use space to be green area - including landscape features that will serve to enhance the amenity of the development. This requirement is a benefit to the community and does not adversely impact flexibility of required public use space. If developers know up front the emphasis on green public use space, they will develop options early on to meet the requirements. Public use space is defined in Article 59-A as Space required by the sector plan ...consisting but not limited to green areas, gardens, ...lawns, fountains, plantings and recreational areas. We wish to stress that the Green Public Use space is separate and distinct from streetscape requirements. Streetscape requirements are already a mandatory development requirement and should not be permitted to substitute for Public Use Space.

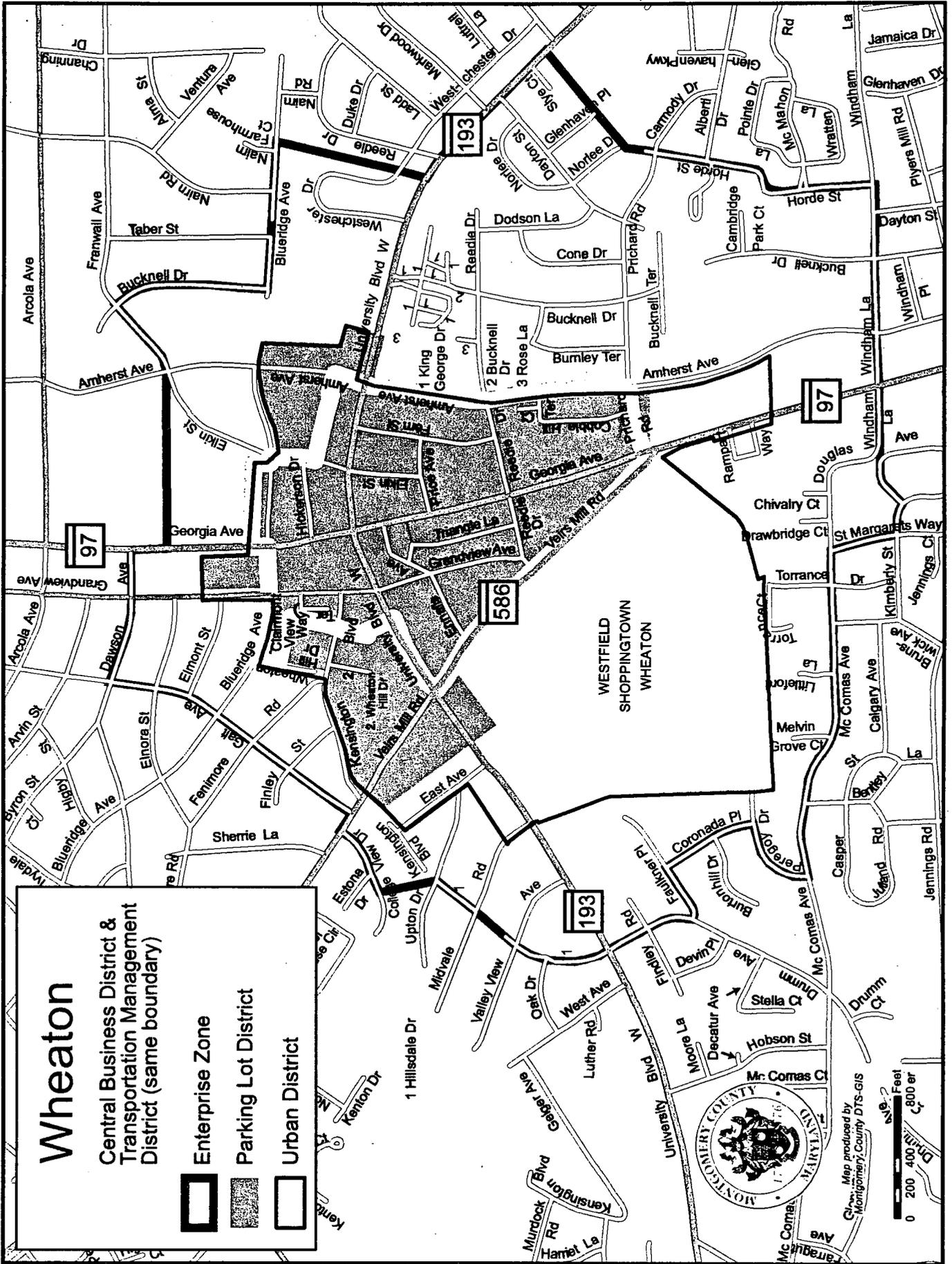
This Civic Association is on record throughout various testimonies before the Council and Park and Planning (including the September 2004 ZTA for MPDUs) as opposing lot line to lot line coverage and promoting open green space and trees for an optimum % of public use/green space. Open green space and trees should be maintained for at least 45% - not just for aesthetics, but for health reasons for the entire community. Trees absorb pollutants and give off oxygen. Increased density has brought increased traffic, exhaust fumes and smog. More greenery and trees are needed to keep the air breathable.

If the goal is to incorporate more MPDUs into a structure, it is better for the community to have height restrictions lifted to 100 - 125 feet, under optional method,

provided that the extra height allows more green space, rather than a three story block of construction devoid of greenery. If you are going to have high rise buildings you must have adequate open space. Then you do not need to build lot line to lot line to provide 15% MPDUs.

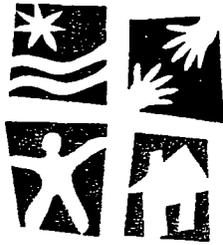
I hope that the adoption of the ZTA, with the changes we are suggesting, will encourage responsible redevelopment creating the vision of a Wheaton Town Center with abundant public use space and green areas. With proposed increases in development, the Council needs to address traffic flow and infrastructure improvements. Redevelopment of Wheaton is dreaded by many in our community for fear of increasing traffic congestion that gets worse all the time. Currently, driving the few blocks of University Blvd. from Georgia Avenue to Westfield Mall can take 20 minutes in the months of November and December. Proposed plans to narrow streets and slow traffic are a prescription for frustration and total gridlock. Proposed plans following the Wheaton Metro Air Rights construction call for routing all Eastside metro traffic to the right and toward Wheaton Forest instead of allowing a left turn to Georgia Avenue. The same construction will destroy the berm that has functioned as a park for our community since the inception of the Wheaton metro. Our community is feeling the stress of growth in unpleasant ways. With all the new development bordering Amherst Avenue, it seemed an easy fix to at least re-surface all of Amherst Avenue, which was potholed and cut from Brownstone construction. Unbelievably, only the Brownstone side was re-surfaced after our requests,

even though construction damage is on both sides. While Wheaton Forest looks forward to the benefits of Wheaton's revitalization, we hope you also share our concerns and will work with us to address them.

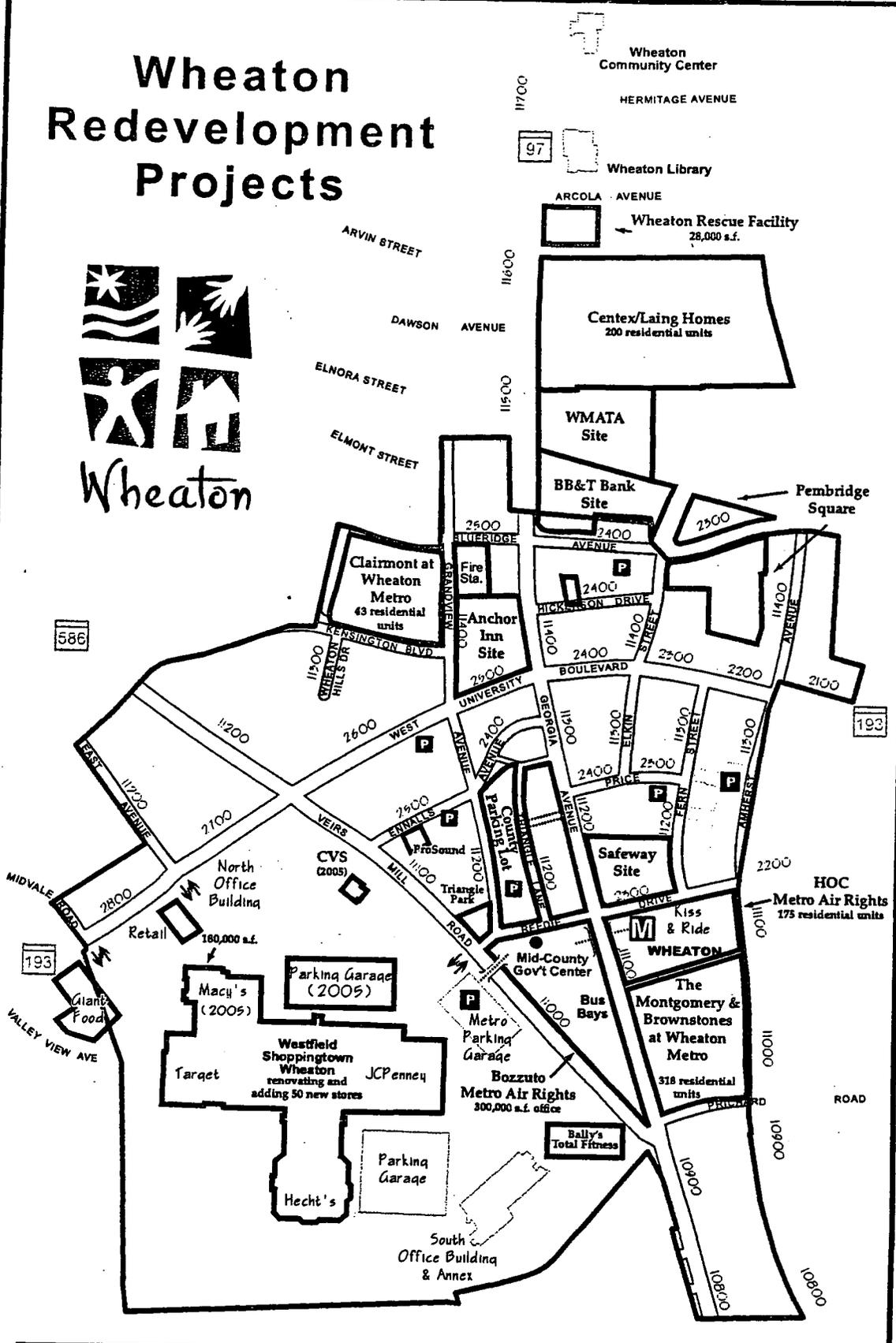


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Wheaton Redevelopment Projects



Wheaton



	Redevelopment/Revitalization Site		Parking Lot
	Potential Future Redevelopment Site		Parking Garage
	Wheaton Urban District		Pedestrian Walkway
			Future Pedestrian Walkway



Map produced by Montgomery County DTS-GIS

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