

MEMORANDUM

September 17, 2009

TO: Planning, Housing, and Economic Development Committee
FROM: Jeffrey L. Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 09-06, Town Sector (TS) Zone – Minimum Area

Background

On July 28, 2009 Zoning Text Amendment (ZTA) 09-06 was introduced. Councilmembers Knapp, Elrich, and Floreen sponsored the ZTA to implement the Germantown Sector Plan. The ZTA would amend the Town Sector (TS) Zone to allow a TS zoned area to be reduced below 1,500 acres. Such a reduction would only be allowed by the Council's approval of a sectional map amendment. A sectional map amendment may only be filed by the District Council to implement the zoning recommendations of a master plan or to correct inaccurate depictions of zoning boundaries.

There are 2 areas in the County zoned TS: 1) Churchill, and 2) Montgomery Village. Only the Churchill area has a sector plan that recommends reducing the acreage of TS zoning.

Public Hearing Testimony

On September 15, 2009 the Council held a public hearing. The Planning expressed concern about the consequences of ZTA 09-06. In the Board's opinion:

- 1) it appears to conflict with a provision of the TS zone that prohibits any application for zoning reclassification until 50 years after the grant of the TS zone;
- 2) undeveloped TS zoned parcels may need lengthy grandfathering provisions;
- 3) there is more flexibility in the TS zone than in the TMX-2 zone because it does not have an FAR limit.

The Planning Board's concerns did not result in a specific recommendation to deny, amend, or approve ZTA 09-06.

The Planning Staff report gave the concerns of Montgomery Village as a reason to not adopt ZTA 09-06. Testimony from Montgomery Village cited the "debate between Council staff regarding the impact

ZTA 09-06 may have on Montgomery Village” as a reason for their concern. The Planning Staff report’s only reference to any possible implication for Montgomery Village was stated as follows:

An important issue is whether the intended purpose of ZTA 09-06 can be achieved without also amending the provision of the Town Sector zone that ties Town Sector zoned land to a 50-year time period.¹

Issues

The concerns expressed in the Planning Board’s testimony were previously given to the Council during the Council’s deliberations on the Germantown Sector Plan Amendment. The Council reviewed these concerns in detail and did not find them persuasive in approving the Germantown Sector Plan Amendment. The implementation of that plan would be aided by the adoption of ZTA 09-06. Staff has not changed its opinion. For the benefit of the record and to address the concerns of the Montgomery Village Foundation, staff has addressed each issue in detail.

Can the intent of ZTA 09-06 be achieved without also amending the provision of the Town Sector zone that ties Town Sector zoned land to a 50-year time period?

If the Council adopts ZTA 09-06, it would not require amending the provision of the Town Sector zone that ties Town Sector zoned land to a 50-year time period. *The 50-year limit concerning the rezoning of TS zoned property only applies to zoning applications (Local Map Amendments) from private land owners (not Sectional Map Amendments).* ZTA 09-06 would not change that situation. The County Attorney agrees with this conclusion.²

The only reference to a delay period for new zoning applications from TS zoned land is in the provision below, reproduced in its entirety:

59-C-7.28. Procedures for application and approval.

- (e) Record plats shall indicate that the land is in the town sector zone and shall also include the following notations:
 - (1) An appropriate statement concerning all of the land which is designated for common or quasi-public use but not to be in public ownership. This statement shall grant to the public, on such land, easements covering all rights of development, construction or use other than the recreational or other quasi-public uses indicated in the approved site plan, except that, at the time of site plan approval, utilities easements may be excluded from specified areas.
 - (2) A statement indicating that the plat is in accordance with the approved site plan and that development of the land is permitted only in accordance with the approved site plan and the accompanying agreements concerning the ownership and maintenance of common land, which are on file at the offices of the planning board, and that application for reclassification

¹ Memorandum to the Planning Board, September 3, 2009, page 2.

² Although Planning Staff posed a legal question, there is no opinion from their General Counsel in the material forwarded to the Council.

shall not be permitted until 50 years after the grant of the town sector zone.

Section 59-C-7.28 refers to record plats and the obligation of current and future landowners. A Sectional Map Amendment is made by application of the Planning Board to implement the Council's master plan vision. The notation on a record plat made by the land owner under §59-C-7.28 does not bind the Planning Board and the Council.

The 50 year provision deals only with the application and approval of record plats. There is nothing about duration of the zone or a prohibition on zoning changes by Sectional Map Amendments in any other provision of the TS zone, including the purpose clause.

Although it is not stated directly in their memorandum, Planning Staff is concerned that the phrase "Local Map Amendment" does not appear in §59-C-7.28. This concern is unjustified, given the context of the provision. Barring a future application for a different zone by the land owner is one of several notes required on the plat memorializing **the applicant's agreements**. Plat restrictions are to provide notice of restrictions to future land owners. The land owner does not have the authority to seek a Sectional Map Amendment and would not have that authority under ZTA 09-06. The phrase "application for reclassification" in the context of §59-C-7.28 only has the authority to refer to Local Map Amendments.

Amending §59-C-7.28 to refer only to a local map amendment application would not change the note on previous recorded plats. The language on the plat would remain the same. The authority to do Sectional Map Amendments would not change. The inability of a private property owner to do a Sectional Map Amendment would not change.

Would ZTA 09-06 affect Montgomery Village?

ZTA 09-06 will not affect Montgomery Village. ZTA 09-06 does not express any intent to affect Montgomery Village. TS zoned land would only be allowed to be reduced below 1,500 acres as the result of a Sectional Map Amendment. An application for a Sectional Map Amendment can be made by the Planning Department to implement an adopted comprehensive plan (or to correct zoning boundaries). It would require a change in an approved master or sector plan to allow any reduction to the TS zone below 1,500 acres. There are no master or sector plans that make that recommendation concerning Montgomery Village before the Council.

The Montgomery Village's prohibition on Local Map Amendments from TS zoned land expires in 2015. A review of the Gaithersburg East Master Plan will be before the Planning Board in the next several years. The Council does not know what the Planning Board may propose in the future Gaithersburg East Master Plan. It is possible the Planning Board could recommend rezoning some portion of the land zoned TS. The Council would have to consider this and the recommendation of all other parties on their merits. Failure to pass this ZTA would not prevent someone from advocating rezoning. A Sectional Map Amendment in Germantown should not be viewed as a threat to Montgomery Village.

Would ZTA 09-06 require grand fathering provisions for undeveloped parcels in the TS zone?

The short answer is no. The recommendation of the Germantown Sector Plan would reduce the total TS area to below 1,500 acres. The intent of ZTA 09-06 is to make sure that the land remaining in the TS

zone is not in a non-conforming zone.³ It does not change the rights and privileges of property owners remaining in the zone. The remaining TS zoned land in the Churchill TS zone conforms to the requirements of the TS zone.⁴ The current approved development plan would stay in effect. Amendments to the development plan can still be submitted in a manner that conforms to the TS zone.

Is it wise to change land in Churchill currently zoned TS to TMX-2?

The Planning Board touted the infinite flexibility of the TS zone as a reason to retain it; however, the Sector Plan limitation on height and density do not change by the application of a different zone. The land uses and density allowed by the TMX-2 zone are sufficient to accomplish the land use and density vision of the Sector Plan. The grandfathering provision of the TMX-2 zone allows projects approved in any stage (development plan, preliminary plan, or site plan) to proceed as previously approved. Any substantial new development beyond that which was already approved would have to meet the requirement of the TMX-2 zone.

The TS zone versus the TMX-2 zone issue was carefully reviewed by the Council when it adopted the Germantown Sector Plan. The following might be familiar to the Committee; it was in a memorandum to Council recommending adoption of the Germantown Plan as amended:

TS Versus TMX-2 Zoning

Committee Recommendation: Replace TS zoning with TMX-2 zoning in various locations in the Sector Plan to better achieve the Sector Plan recommended land use vision and amenity requirements.

One of the issues that impacts several of the following properties is whether the Town Sector (TS) or Transit Station Mixed-Use (TMX-2) zone would be the better zone for mixed-use properties. Staff questions whether the TS zone is the best zone to achieve the Plan's visions for the following reasons:

- The TS zone was conceived as a suburban mixed-use zone for overall modest densities of development. It limits population to 15 people per acre, which equates to approximately 5 units per acre or up to 7.5 for multi-family, less than is appropriate for a transit station area. These population limits are problematic for some property owners.
- Since these limits apply to the entire area zoned TS, the only way to understand what may be allowed on a specific property is to know the amount of population capacity already used up and what other TS property owners are considering. The zone has worked well where there is a single property owner, but there could be various problems with multiple property owners. In theory, one TS development could use population capacity to the detriment of another property owner.
- There is nothing in the zone to indicate that the Planning Board may allocate this capacity among property owners or is required to adhere to a master plan recommended allocation.

³ The zone currently requires 1,500 acres. In the absence of a ZTA, the application of a Sectional Map Amendment that reduced the total area to less than 1,500 acres would make the area remaining in the zone non-conforming to the provisions of the zone. Non-conforming structures and non-conforming uses are relatively common; a non-conforming zoning would be rare, if not unique.

⁴ Memorandum from Sue Edwards to Greg Russ, September 3, 2009, © 13.

- The TS zone limits total commercial development to 10% and industrial development to 6%; it is not truly a mixed-use zone appropriate for a higher density, mixed-use transit center.
- The zone provides no limits on floor area ratio (FAR), density, height, or setback.
- It does **not** require consistency with the master plan and, therefore, Staff questions whether the Planning Board would have the basis to implement many of the Sector Plan provisions that limit FAR, height, etc.
- It does not include requirements for transferable development rights or building lot termination rights.
- It does not require the provision of amenities, although several are identified in the Sector Plan.
- It does not allow bonus market units for those who exceed the minimum requirement for MPDUs, nor does it have a workforce housing provision.

Given all these factors, Staff concludes that the TS zone is no longer appropriate for application in the Employment Corridor and Town Center areas of Germantown, where transit-oriented development should be more intense and where public amenities and policies need more focus and application. The Planning Board reached a different conclusion and an e-mail from the Chair attached at © 20 to 21 argues for the TS zone. **Staff does not agree with his conclusion that the densities would be more restricted under the TMX-2 zone, because the Sector Plan calls for average densities over properties of no greater than 2 FAR, and this is consistent with the TMX-2 zone.** Staff also does not recommend any amendments to the TS zone (other than allowing a TS area to be less than 1,500 acres if rezoned by a sectional map amendment.) More extensive amendments to the TS zone could have unintended impacts on areas outside the Sector Plan, including Montgomery Village.

In Germantown, there is considerable merit to rezoning all commercial mixed-use properties to the same zone. This promotes uniformity of administration and design implementation. It avoids inadvertent anomalies in the implementation of the master plan as well. It will also allow for an easier transition to any possible future zone developed and applied in the zoning ordinance rewrite program. The land uses, mix of uses, and recommended amenities in the Sector Plan would work very well with the TMX-2 zone, which is recommended for parts of Germantown. TMX-2 is intended for mixed-use development near transit stations; the densities are consistent with the recommendations in the Plan; and the zone requires conformance with the master plan, as well as the provision of amenities and the purchase of BLTs. This issue is addressed below for each property zoned TS.

<u>This packet contains</u>	<u>© page</u>
ZTA 09-06	1 – 3
Planning Board Recommendation	4 – 5
Planning Staff Recommendation	5 – 16
Montgomery Village Foundation	17

Zoning Text Amendment No: 09-06
Concerning: Town Sector Zone -
Minimum Size
Draft No. & Date: 1 - 7/21/09
Introduced: July 28, 2009
Public Hearing:
Adopted:
Effective:
Ordinance No:

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

By: Councilmembers Knapp, Elrich, and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Allow, under certain circumstances, a reduction in the land area required for land currently zoned TS.

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

DIVISION 59-C-7. "PLANNED UNIT DEVELOPMENT ZONES"
Section 59-C-7.2 "Town sector zone"

*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-7 is amended as follows:**

2 **Division 59-C-7. Planned Unit Development Zones.**

3 * * *

4 **Sec. 59-C-7.2 Town sector zone.**

5 * * *

6 **59-C-7.24. Area requirements.**

7 59-C-7.241. Minimum area of tract. Each application for the town sector
8 zone shall be for a tract of land which has an area of 1,500 acres or more; except[,
9 that];

10 a) an application for a tract of any size adjoining a tract in the town sector zone
11 may be filed by the original applicant or a successor in title [.] or

12 b) a sectional map amendment may reduce the area zoned TS to less than 1,500
13 acres.

14 * * *

15 **Sec. 2. Effective date.** This ordinance takes effect immediately after the
16 date of Council adoption.

17

18 This is a correct copy of Council action.

19

20 _____

21 Linda M. Lauer, Clerk of the Council



#8-1

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

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

September 10, 2009

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 09-06

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-06 at its regular meeting on September 10, 2009. The text amendment allows a Town Sector zoned area to be reduced below 1,500 acres only if accomplished by sectional map amendment. After careful review of the material of record, the Board provides the following comments.

The Board's key concerns with the ZTA 09-06 are discussed in the attached staff report. The stated purpose of ZTA 09-06 appears to conflict with a provision of the Town Sector zone that prohibits any application for reclassification until 50 years after the grant of the Town Sector zone. Under this existing provision the earliest a reclassification of Town Sector zoned land could occur would be 2015 (in Montgomery Village). A corresponding revision to ZTA 09-06 appears to be needed to avoid this problem.

Also, the regulatory implications of a Code change that accommodates a reduction in the area classified in the Town Sector zone need to be carefully considered, since the maximum density, green area, open space, right-of-way dedications and other commitments of the original Churchill Town Sector (in this case) approval were based on a minimum development area of 1,500 acres and an approved development plan. An option to avoid the need for lengthy grandfathering, may be to not reclassify undeveloped Town Sector properties, which otherwise present different problems from grandfathering developed properties.

The Board is also concerned with the impacts of the text amendment on the Churchill Town Sector of the Sector Plan for the Germantown Employment Area. The Planning Board recommendation retained the TS zone within the sector plan areas of Town Center, West End, and the western side of the North End District in order to meet a central objective of the Plan to create a vibrant town center, with an overall density of 2.0 FAR for the area from the MARC station in the West End to the CCT station at Aircraft Drive and Century Boulevard. The Board found this level of overall FAR to be important, both to support the CCT and to provide the level of activity necessary for a strong mixed use center. The Planning Board determined that it was possible to achieve both the density needed to make a vibrant town center and provide the boost in density in that area because the TS Zone does not have an FAR limitation for non-residential uses. It is even more flexible than the TMX-2 Zone, it is in the right place to have the right effect, and its continued use does not raise any of the issues associated with severing it from the rest of the TS zoned property in Germantown.

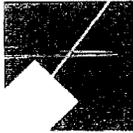
CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, September 10, 2009.



Royce Hanson
Chairman

RH: GR



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

MCPB
Item #12
09/10/09

DATE: September 3, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review
Ralph Wilson, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendments
PURPOSE: To amend the text of the Zoning Ordinance to allow a TS zoned area to be reduced below 1,500 acres.

TEXT AMENDMENT: 09-06
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: Councilmembers Knapp, Elrich and Floreen
INTRODUCED DATE: July 28, 2009

PLANNING BOARD REVIEW: September 10, 2009
PUBLIC HEARING: September 15, 2009, 1:30 PM

STAFF COMMENTS:

- The purpose of the text amendment appears to conflict with a provision of the Town Sector zone that prohibits any application for reclassification until 50 years after the grant of the Town Sector zone.
- Questions exist as to the regulatory implications of a code change that accommodates a reduction in the area classified in the Town Sector zone, since maximum density, green area, open space, right-of-way dedications and other commitments of the original Churchill (part of Germantown Master Plan) approval were based on a minimum development area of 1,500 acres and an approved development plan.
- The Montgomery Village Foundation has some concern that to allow the minimum acreage requirement to be lowered below 1,500 acres could facilitate rezoning of land in Montgomery Village in conjunction with the Gaithersburg East Master Plan update before to the 50-year mark for allowing rezoning of land currently zoned Town Sector

BACKGROUND/ANALYSIS

ZTA 09-06 was sponsored by Councilmembers Knapp, Elrich and Floreen to achieve certain Council expressed land use objectives for the Germantown Sector Plan. The

8787 Georgia Avenue, Silver Spring, Maryland 20910 Director's Office: 301.495.4500 Fax: 301.495.1310

www.MontgomeryPlanning.org

Plan focuses on the Town Center and employment areas along I-270 covering approximately 2,400 acres of the 11,000 acre Germantown Planning Area. The County Council specifically recommended replacement of the Town Sector (TS) Zone with the Transit Station Mixed-Use-2 (TMX-2) zone for approximately 246 acres presently zoned TS in the planning areas. As a result of this recommendation, an amendment to the TS Zone is necessary to allow a TS zoned area to be reduced below 1,500 acres. As proposed, a reduction would be allowed only if accomplished by sectional map amendment.

There are two areas in the County zoned TS: (1) Montgomery Village established in 1965 and (2) Churchill (Germantown) established in 1968.

An important issue is whether the intended purpose of ZTA 09-06 can be achieved without also amending the provision of the Town Sector zone that ties Town Sector zoned land to a 50-year time period.

Other Comments/Concerns

There are a number of overall potential issues associated with eliminating existing TS zoned land that, at a minimum, should be considered. The first is to what extent a property that is rezoned may rely upon open space and other contributions made under the TS zone to meet the requirements under the new zone. Typically, the grandfathering of existing development or approved development plans is provided when text amendment changes occur, including an allowance for a certain amount of expansion. The question in this case is whether undeveloped property or redevelopment of land that provided off-site contributions for its open space or other improvements will receive credit for those as part of development in the new reclassification.

The second concern with the subject proposal is that a sectional map amendment reclassifying portions of the Town Sector zone to the TMX-2 zone removes limitations that may have been placed via the development plans previously approved under the TS zone that designated particular sites for residential or non-residential uses. This enables the rezoned parcels to move forward, within the guidance of the plan, to develop without amending their development plans. However, to achieve more than standard method density in the TMX-2 zone, they must go through project plan approval by the Planning Board. This scenario at best creates confusion on what plans actually govern.

Master Plan

The 1989 Germantown Master Plan described the Churchill Town Sector as being “developed in accordance with the approved Development Plan. The Development Plan is in accordance with the 1974 Land Use Plan, although some areas are developed at lower densities” (page 50).

The 1,554-acre Churchill town sector area¹ has been created through three zoning cases:

- F-148 (October 1968) 1,504.0923 acres
- F-923 (September 1974) 25.17183 acres
- G-742 (October 1997) 24.74 acres

¹Staff was unable to verify the 1,554 acre area using G.I.S. The G.I.S. area computed to 1,537.52. Any new Development Plan Applications must verify and correct the acreage.

A portion of that acreage, approximately 300 acres, is contained within the boundaries of the Sector Plan for the Germantown Employment Area: An Amendment to the Germantown Master Plan Planning Board Draft (see map of TS boundaries/Sector Plan boundaries). The Planning Board retained the TS zone within the sector plan areas of Town Center, West End, and the western side of the North End District in order to meet a central objective of the Plan to create a vibrant town center, with an overall density of 2.0 FAR for the area from the MARC station in the West End to the CCT station at Aircraft Drive and Century Boulevard. The Board found this level of overall FAR to be important, both to support the CCT and to provide the level of activity necessary for a strong mixed use center.

The Planning Board determined that it was possible to achieve both the density needed to make a vibrant town center and provide the boost in density in that area sufficient to bring the overall average up to 2.0 using the Town Sector Zone. This is because the TS Zone does not have an FAR limitation for non-residential uses. It is even more flexible than the TMX, it is in the right place to have the right effect, and its continued use does not raise any of the issues associated with severing it from the rest of the TS zoned property in Germantown.

The County Council recommended removing approximately 246 acres from the TS zone and rezoning these properties to the TMX-2 zone (see map). The PHED Committee and County Council concluded that the TS zone was less than ideal for the Germantown Sector Plan because:

- It has no limits on density, height, or FAR.
- It does not require consistency with the Master Plan.
- It does not include requirements for transferable development rights or building lot termination easements.
- It does not require the provision of amenities (in the manner required by the TMX-2 zone).
- It limits total commercial development to 10% of the entire TS land and industrial development to 6% of the TS land area.
- It does not allow bonus market units for those who exceed the minimum requirement for MPDUs, nor does it have a workforce housing provision.

Status of Remaining Area in Churchill

The TS zone relies on a unique calculation of residential density based on unit type. In calculating density, the following standards shall apply:

- (a) One family detached dwellings shall be assumed to have an average occupancy of 3.7 persons.
- (b) Townhouses shall be assumed to have an average occupancy of 3 persons.
- (c) Multiple family dwellings less than 5 stories in height shall be assumed to have an average occupancy of 3 persons per dwelling unit.
- (d) Multiple family dwellings 5 stories in height or higher shall be assumed to have an average occupancy of 2 persons per dwelling unit.

The minimum open space within the TS zone is 10% of the total land area; the maximum commercial area is 10 % and the maximum industrial and major employment area is 6 %.

As detailed in the table within the Vision/Community-Based Planning Division memorandum (Attachment 2), the remaining area within the Churchill TS zone (based on the Council's recommendations) continues to adhere to the zoning and population requirements of the TS zone.

Property Owner Concerns

Bellmead Development Corporation submitted a letter to the PHED Committee on June 24, 2009 detailing their request for their properties to retain the TS zoning classification. Bellmead received approval in 1999 for 255,000 s.f. of retail space; approximately 180,000 s.f. has been constructed and occupied by Regal Cinema, new restaurants, banks, and a Rite Aid pharmacy.

The letter cites:

“Extensive easements for transit and roads, and a series of infrastructure improvements was constructed by Bellmead to widen Century Boulevard, improve Aircraft Drive, install utility lines, and construct a stormwater management system. A public plaza, sidewalk and streetscape improvements were provided by us. Working in cooperation with the Department of Public Works and Transportation, Bellmead constructed the Germantown Transit Center and Park and Ride facility. This investment by us of over \$15.6 million in land and improvements is an indication of Bellmead's long-standing commitment to Germantown.

This successful development has been created under the auspices of the Town Sector (TS) zone. We believe the TS zone remains the appropriate zone for the completion and endurance of the approved project. The contracts and covenants executed with the lessees and purchasers in Germantown Town Center east are based on the requirements of the TS zone. Changing the zone at this point would create confusion and force renegotiation of our contractual commitments in the midst of challenging economic times. We would rather encourage those businesses to continue and thrive under their current approvals and zone structure.

Bellmead's objective is to complete and sustain this Town center East development as a retail center. Rezoning the property to TMX now would create complications and uncertainty as to how these new standards and requirements could apply, for potential lessees of the remaining parcels as well as for improvements to existing buildings. The TMX grandfathering language is not adequate to give those assurances to our current and prospective tenants" (Attachment B).

RECOMMENDATION

The staff recommends that the concerns raised regarding ZTA No. 09-06 be transmitted to the County Council. Staff is particularly concerned that no reclassifications were to occur to Town Sector zoned land for fifty years.

Attachments

1. Zoning Text Amendment No. 09-06
2. Memorandum from Sue Edwards, Vision/Community-Based Planning to Greg Russ
3. Letter to Council President Andrews from Montgomery Village Foundation, Inc.



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

September 3, 2009

MEMORANDUM

TO: Greg Russ, Planner Coordinator, Zoning Section
Build Division

FROM: Sue Edwards, Team Leader, North Central Transit Corridor *SE*
Vision Division

Leslie Saville, Planner, North Central Transit Corridor *LS*
Vision Division

SUBJECT: Zoning Text Amendment 09-06 (Town Sector Zone)

This zoning text was drafted by Council staff to amend the Town Sector Zone, Section 59-C-7.241 Area requirements to read "a sectional map amendment may reduce the area zoned TS to less than 1,500 acres". Under Section 59-H-2.6, a sectional map amendment may only be filed by the District Council to implement the zoning recommendations of a master plan or to correct inaccurate depictions of zoning boundaries.

There are two areas in the County zoned TS: Montgomery Village established in 1965 and Churchill established in 1968.

Master Plan Consideration

The 1989 Germantown Master Plan described the Churchill Town Sector as being "developed in accordance with the approved Development Plan. The Development Plan is in accordance with the 1974 Land Use Plan, although some areas are developed at lower densities" (page 50).

The 1,554-acre Churchill town sector area¹ has been created through three zoning cases:

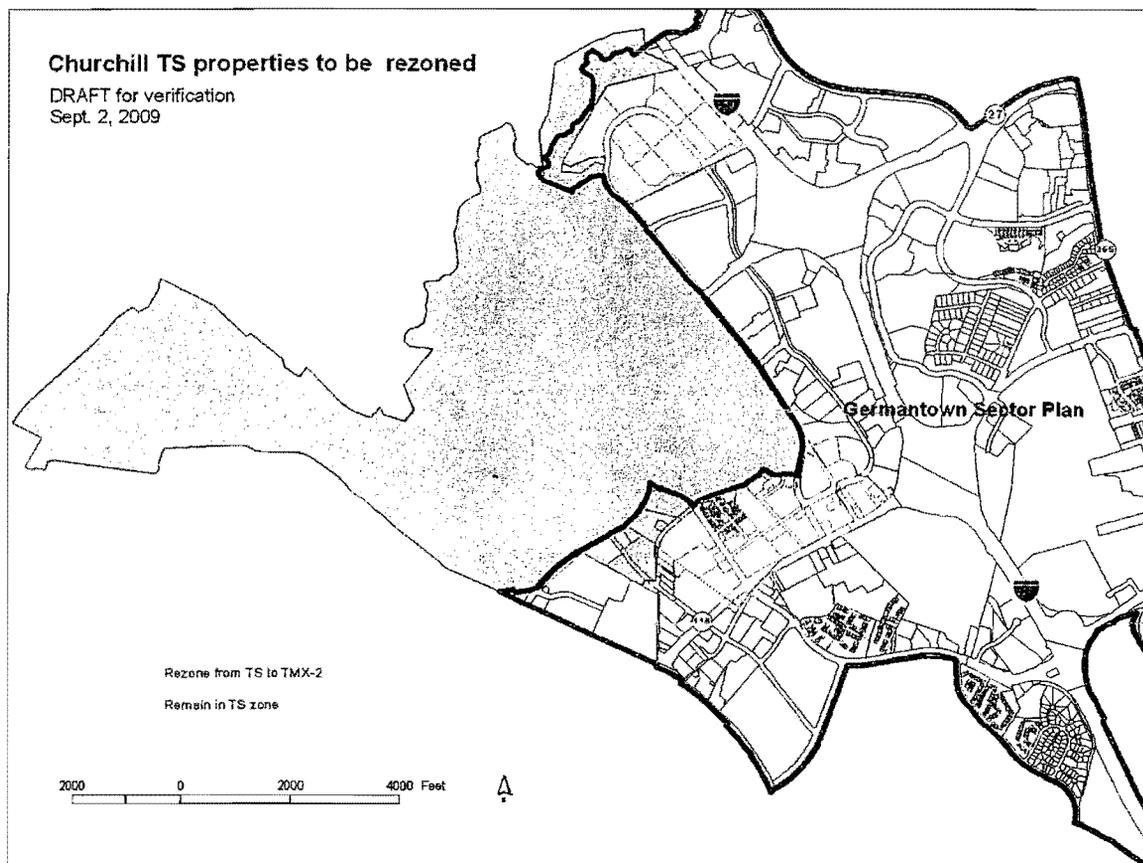
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¹Staff was unable to verify the 1,554 acre area using G.I.S. The G.I.S. area computed to 1,537.52. Any new Development Plan Applications must verify and correct the acreage.

(10)

A portion of that acreage, approximately 300 acres, is contained within the boundaries of the Sector Plan for the Germantown Employment Area: An Amendment to the Germantown Master Plan Planning Board Draft (see map of TS boundaries/Sector Plan boundaries). The Planning Board retained the TS Zone within the sector plan areas of Town Center, West End, and the western side of the North End District in order to meet a central objective of the Plan to create a vibrant town center, with an overall density of 2.0 FAR for the area from the MARC station in the West End to the CCT station at Aircraft Drive and Century Boulevard. The Board felt this level of overall FAR is important, both to support the CCT and to provide the level of activity necessary for a strong mixed-use center.

The Planning Board determined that it is possible to achieve both the density needed to make a great place of the town center and provide the boost in density in that area sufficient to bring the overall average up to 2.0 using the Town Sector Zone. This is because the TS Zone does not have an FAR limitation for non-residential uses. It is even more flexible than the TMX, it is in the right place to have the right effect, and its continued use does not raise any of the issues associated with severing it from the rest of the TS zoned property in Germantown.



The County Council recommended removing approximately 246 acres from the TS Zone and rezoning these properties to the TMX-2 Zone. The PHED Committee and County Council concluded that the TS Zone was less than ideal for the Germantown Sector Plan because:

- It has no limits on density, height, or FAR.
- It does not require consistency with the Master Plan.
- It does not include requirements for transferable development rights or building lot termination easements.
- It does not require the provision of amenities (in the manner required by the TMX-2 zone).
- It limits total commercial development to 10% of the entire TS land and industrial development to 6% of the TS land area.
- It does not allow bonus market units for those who exceed the minimum requirement for MPDUs, nor does it have a workforce housing provision.

Status of Remaining Area in Churchill

The TS Zone relies on a unique calculation of residential density based on unit type. In calculating density, the following standards shall apply:

- (a) One family detached dwellings shall be assumed to have an average occupancy of 3.7 persons.
- (b) Townhouses shall be assumed to have an average occupancy of 3 persons.
- (c) Multiple family dwellings less than 5 stories in height shall be assumed to have an average occupancy of 3 persons per dwelling unit.
- (d) Multiple family dwellings 5 stories in height or higher shall be assumed to have an average occupancy of 2 persons per dwelling unit.

The minimum open space within the TS Zone is 10% of the total land area; the maximum commercial area is 10% and the maximum industrial and major employment area is 6%.

The following tables array the land uses population, and population remaining, using the acreage included in the Planning Board Draft and acreage resulting from the County Council recommendation.

Zoning Maximums and minimums				
Based on the table in the PB Draft Appendices, p. 38. and the draft map dated 9-2-09				
	Acres	Commercial (10% max)	Industrial/ major employment (6% max)	Open space (10% min)
Total acres (existing)	1,554.00	75.8	0	745.2
Approved, unbuilt		0	75	0
Percent		4.9%	4.8%	48.0%
Maximum allowed (min req)		155.4	93.2	155.4
Remaining (above min)		79.6	18.2	589.8
Total acres (proposed)	1,307.98	18.2		739.9

Zoning Maximums and minimums				
Based on the table in the PB Draft Appendices, p. 38. and the draft map dated 9-2-09				
	Acres	Commercial (10% max)	Industrial/ major employment (6% max)	Open space (10% min)
Approved, unbuilt		0	0	0
Percent		1.4%	0.0%	56.6%
Maximum allowed (min req)		130.8	78.5	130.8
Remaining (above min)		112.6	78.5	609.1

Population				
Based on the table in the PB Draft Appendices, p. 39, and the draft map dated 9-2-09				
	PB draft		Council recommendation	
Total acres		1,554.00		1,307.98
People per acre allowed by zone		15		15
Total population permitted		23,310		19,619

Remaining Population *				
	PB draft		Council recommendation	
	Market units	Population	Market units	Population
One-family detached	827	3,060	827	3,060
Townhouses	2,314	6,942	2,187	6,561
Multiple family less than 5 stories	2,697	8,091	2,285	6,855
Multiple family 5 or more stories*	651	1,302		0
Total	6,489	19,395	5,299	16,476
Remainder of population credits		3,915		3,143

*Unbuilt

Staff concludes that the Council recommended acreage does not exceed any threshold of land uses contained in the zone. Open space as a proportion of the overall acreage increases. The Council recommendation reduces the commercial and industrial/major employment proportion in the remaining Churchill Town Sector.

Property Owner Concerns

Bellmead Development Corporation submitted a letter to the PHED Committee on June 24, 2009 detailing their request for their properties to retain the TS zoning classification. Bellmead received approval in 1999 for 255,000 square feet of retail space; approximately 180,000 square feet has been constructed and occupied by Regal Cinema, new restaurants, banks, and a Rite Aid pharmacy.

The letter cites:

"Extensive easements were dedicated for transit and roads, and a series of infrastructure improvements was constructed by Bellmead to widen Century Boulevard, improve Aircraft Drive, install utility lines, and construct a stormwater management system. A public plaza, sidewalk and streetscape improvements

were provided by us. Working in cooperation with the Department of Public Works and Transportation, Bellmead constructed the Germantown Transit Center and Park and Ride facility. This investment by us of over \$15.6 million in land and improvements is an indication of Bellmead's long-standing commitment to Germantown.

This successful development has been created under the auspices of the Town Sector (TS) zone. We believe the TS zone remains the appropriate zone for the completion and endurance of the approved project. The contracts and covenants executed with the lessees and purchasers in Germantown Town Center east are based on the requirements of the TS zone. Changing the zone at this point would create confusion and force renegotiation of our contractual commitments in the midst of challenging economic times. We would rather encourage those businesses to continue and thrive under their current approvals and zone structure.

Bellmead's objective is to complete and sustain this Town Center East development as a retail center. Rezoning the property to TMX now would create complications and uncertainty as to how these new standards and requirements could apply, for potential lessees of the remaining parcels as well as for improvements to existing buildings. The TMX grandfathering language is not adequate to give those assurances to our current and prospective tenants" (Attachment B).

Development Approvals

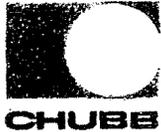
Changing the zoning from TS to TMX-2 removes the limitations that may have been placed, via the development plans previously approved under the TS Zone that designated particular sites for residential or non-residential uses. This action enables the rezoned parcels to move forward, within the guidance of the plan, to develop without amending their development plans, but to achieve more than standard density (0.5 FAR) the properties must go through project plan approval by the Planning Board.

This raises the question to what extent, if any, a property that is rezoned may rely upon open space and other contributions made under the TS Zone toward requirements under the new zone. Properties currently within Churchill TS are exempt from Forest Conservation requirements. Under requirements of the TMX-2 Zone, applicants will need to prepare an NRI/FSD, prepare a Forest Conservation Plan and be required to maximize preservation of Priority I forest.

Other requirements for stormwater management and public use space may be substantively different for the TMX-2 Zone than for TS.

SE:LS:ha G: Edwards/ZTA.Town Sector.090109

Attachment A: Bellmead letter, July 24, 2009



BELLEMEAD DEVELOPMENT CORPORATION

15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615
Phone: (908) 903-7400

June 24, 2009

By Electronic Mail

Hon. Michael Knapp
Hon. Nancy Floreen
Hon. Marc Elrich
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Germantown Master Plan: TS Zone Issues

Dear Council Members:

It is our understanding that consideration is being given to rezoning the properties currently in the TS zone in Germantown to the TMX zone. Following a review of the provisions of both zones, Bellemead would like to make establish on the record that it is opposed to this potential rezoning.

Bellemead acquired the subject parcels in the Germantown Town Center area, then B/C, D E and F, in the early 1980s. Approximately ten years ago, rezoning to the Town Sector Zone was granted, and a site plan was approved in 1999 for a master planned retail center, Germantown Town Center East, designed to complement the Town Center being developed to the west by Artery. This approval provided for approximately 255,000 square feet of retail space. To date, close to 180,000 square feet of space has been constructed and occupied in thirteen buildings along Century Boulevard and Aircraft Drive. The development includes the creation of the Regal Cinema and, together with several new restaurants, provides an entertainment center to anchor the eastern end of Town Center.

Extensive easements were dedicated for transit and roads, and a series of infrastructure improvements was constructed by Bellemead to widen Century Boulevard, improve Aircraft Drive, install utility lines and construct a stormwater management system. A public plaza, sidewalk and streetscape improvements were provided by us. Working in cooperation with the Department of Public Works and Transportation, Bellemead constructed the Germantown Transit Center and Park and Ride facility. This investment by us of over \$15.6 million in land and improvements is an indication of Bellemead's long-standing commitment to Germantown.

Hon. Michael Knapp
Hon. Nancy Floreen
Hon. Marc Elrich
Page 2

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Bellemead's objective is to complete and sustain this Town Center East development as a retail center. Rezoning the property to TMX now would create complications and uncertainty as to how those new standards and requirements could apply, for potential lessees of the remaining parcels as well as for improvements to existing buildings. The TMX zone grandfathering language is not adequate to give those assurances to our current and prospective tenants.

There may be a point in the long-term future when wholesale redevelopment becomes desirable and supported by market conditions. If that becomes the case, Bellemead would then initiate discussions with Montgomery County and planning staff as to the appropriate amendments to the TS zone or even another zone. At this point in time, however, the Town Sector Zone has fostered a successful center of life and activity for us in Germantown and should be maintained for our properties.

Thank you for this opportunity to comment.

Very truly yours,



Adrian P. Sloodmaker
Senior Vice President

cc: Ms. Marlene Michaelson
Ms. Sue Edwards
Ms. Diana Fainberg
Mr. Pete Henry
Robert G. Brewer, Esq.



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.mvf.org

August 13, 2009

The Honorable Phil Andrews, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Andrews:

I am writing on behalf of the Montgomery Village Foundation Board of Directors to express concern about the proposal to amend the Town Sector Zone (TSZ) in conjunction with the Germantown Master Plan and the impact this could have on Montgomery Village. Proposed Zoning Text Amendment (ZTA) 09-06, *Town Sector Zone*, makes provision for a sectional map amendment to reduce the area zoned Town Sector to less than 1,500 acres.

We have been told that an area less than 1,500 acres would only be allowed if the area is reduced by a sectional map amendment, and a sectional map amendment can only be done to implement a master plan. The Gaithersburg East Master Plan will likely be up for revision in 2011-2012.

We understand, however, that there is some debate between Council staff and the Park and Planning staff regarding the impact ZTA 09-06 may have on Montgomery Village. This heightens our concerns. We think that allowing rezoning of any of Town Sector Zone prior to the 50-year mark could have a negative impact on Montgomery Village because it may make it possible for the owner of a parcel within Montgomery Village to facilitate rezoning of their land in conjunction with the Gaithersburg East Master Plan update. We would greatly appreciate it if you could clarify this issue for us.

We don't want the proposed Zoning Text Amendment to impact Montgomery Village. We look forward to discussing Town Sector Zone in the future, particularly in conjunction with the Gaithersburg East Master Plan update. But we ask that the door not be opened *now* for a zoning change of TS Zone, if it in fact affects Montgomery Village.

Please include this letter in the record for ZTA 09-06.

Sincerely,

Bob Hydorn, President
MVF Board of Directors

cc: Dr. Royce Hanson, Chair, Montgomery County Planning Board
Sue Edwards, I-270 Corridor Team Leader, Dept. of Park and Planning
MVF Board of Directors
Bob Anderson, Chair, TD&PF Committee
David B. Humpton, EVP, Montgomery Village Foundation