

MEMORANDUM

October 29, 2009

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Legislative Attorney
SUBJECT: Zoning Text Amendment 09-08, Commercial/Residential (CR) Zones - Establishment

The Committee heard briefings by the Planning Department on July 27 and October 13, 2009. The summary of the CR zones was in the memorandum to the Council for the October 27, 2009 public hearing.

Summary of the ZTA 09-08

Zoning Text Amendment (ZTA) 09-08, sponsored by the District Council at the request of the Planning Board, was introduced on September 22, 2009. ZTA 09-08 would establish a new family of Commercial/Residential (CR) zones; the zones would only be applied by sectional map amendment to implement the recommendations of a master or sector plan. Every CR zone would allow the same land uses and require the same development procedures. Each zone would have a different total maximum floor area ratio (FAR). The maximum allowable FAR in the family of zones would be 8.0. Within the maximum FAR, each zone would have a maximum residential FAR and a maximum non-residential FAR. Unless the residential FAR maximum or the non-residential maximum equals the total maximum FAR, a mix of uses would be required to achieve the total maximum FAR of the zone. The maximum allowable height of any structure would also vary with each zone; the maximum height would be limited to 300 feet. There are design standards in the zones and references to Planning Board adopted design guidelines. Site plan approval would be required for projects adding more than 10,000 feet of floor area.

CR zones would have a "standard method of development" similar to Central Business District zones; however, a maximum standard method density of .5 FAR is the same for all zones. Structures under the standard method of development would not be allowed to be higher than 40 feet.

The optional method of development would establish 5 categories of public benefit under which a project may achieve the zones' maximum density:

- 1) Transit proximity
- 2) Connectivity and mobility
- 3) Diversity (affordability, public facilities, and land use)
- 4) Design
- 5) Environment

Within the 5 public benefit categories, 33 different criteria would allow the approval of increased density above the standard method of development. Each criterion allows a range of increased density, expressed as

a percentage of the applicant's requested FAR minus .5 FAR (the standard method of development FAR). The ZTA specifies the circumstances under which a project might be allowed the upper end of the density range within each criterion. It would not be possible to achieve the applicant's requested optional method of development density by satisfying all of the criteria in a single public benefit category. An applicant may only be allowed 30 percent of the incentive density from any single public benefit category. If a project is not near transit, maximum density will require the use of criteria from 4 different public benefit categories. The Planning Board would have the authority to add ways to increase the density of a project or waive particular requirements of some criteria. The purchase of Building Lot Termination Easements would be required for 12.5 percent of the FAR that exceeds .5 FAR.

A project in a CR zone may include more than 1 building or more than 1 parcel. Some criteria only apply to buildings and not the entire project. A building that satisfies such criteria would be entitled to a density increase in proportion to its size.

Public Hearing

On October 27, 2009 the Council held a public hearing on ZTA 09-08. The Planning Board forwarded proposed revisions to ZTA 09-08 after the public hearing. Those revisions included: changing how incentive density can apply to individual buildings; separating a sketch plan in time from a preliminary plan; limiting free bike parking to outside a building; reducing the parking requirement for retail uses; providing more flexibility for some drive-through service windows; limiting the flexibility of sites larger than 3 acres to provide off-site public use space; clarifying the parking minimum incentive; removing the site size minimum for the parking in structures incentive; allowing incentive density for energy generated off-site but in the same area; amending the amount of density incentive for LEED silver, gold, and platinum buildings; removing the requirement for the purchase of BLT easements and making such a purchase a density incentive criterion; amending the grandfathering provisions; and making numerous technical amendments.

The County Executive described ZTA 09-08 as ambitious and well-intentioned but in need of considerable work. In particular, the Executive raised legal issues concerning the delegations of authority in the ZTA and possible constitutional violations. He also expressed a concern about current and pending laws that may conflict with specific requirements or density incentives and questioned the need for putting some provisions in the Zoning Ordinance. The Executive recommended asking the Planning Board's advice on alternative zones to implement the Gaithersburg West and White Flint plans.

Public testimony was essentially divided into 2 camps. The development community supported the CR zones but expressed concern about the math and mechanics to achieve and use density. They supported the Planning Board recommended changes to allow current approvals to proceed but wanted increased density for standard method and greater latitude for additions to currently developed sites.

The civic community wanted the Council to send ZTA 09-08 back to the Planning Board. They were concerned about the public process for applying the CR zones. They feared the application of CR zones without a new master plan that specifically recommended the zone.¹ In their opinion, the sketch plan as proposed was not a sufficient replacement for information and public hearing requirements in a project plan. The civic community would require some of the density incentive criteria attributes without a density increase. The incentive criteria would not allow negotiations for a significantly sized facility for benefit of the greater community.

¹ The CR zones were brought to the attention of the Planning Board's Zoning Advisory Panel as a possible replacement for many current commercial and mixed-use zones. A replacement of a current zone would be accomplished by a sectional map amendment.

Limits of this Memorandum

This memorandum highlights major issues in establishing the CR zones. It sometimes has staff recommendations; it sometimes suggests the need for more information from Planning Staff. The use of specific details as examples is not to imply that other details should be ignored.

Staff did not have the opportunity to combine line by line recommendations from Tuesday's testimony in time for this memorandum. That level of detail can be provided at future worksessions along with a more complete review of the public testimony and each density incentive criteria. Executive staff expressed a willingness to help identify areas where the Code may be amended or the density incentive may be amended to support the intent of the CR zones.

Issues

Why should the CR zones be adopted in advance of the Zoning Ordinance Re-write?

Reasons in favor of creating the CR family of zones:

- 1) The zones would better implement the newly proposed sector plans.
- 2) Adoption by sectional map amendment would better implement the newly proposed sector plans.
- 3) It provides more clarity and certainty to residents and property owners by replacing the discretion in the CBD zones with more explicit standards.
- 4) It is better able to provide a walkable urban environment than other zones.
- 5) It discourages car use by requiring a mix of land uses for projects to achieve maximum density and limit the number of parking spaces.
- 6) It will create a basis for reducing the total number of zones in the Zoning Ordinance re-write process.

Reasons to use current zones:

- 1) Creating more zones is counter to one of the goals of the Zoning Ordinance re-write; the number of possible CR zones might be 60,000.
- 2) One or more of the 118 current zones should be capable of producing a walkable urban environment.
- 3) The new zones will take the Council's time and distract the Council from focusing on proposed sector plans.
- 4) The new zones create a new "sketch plan" process and delete a known project plan process; negotiations in project plans have been successful.
- 5) The zones increase the complexity of the ordinance.
- 6) The zones, once adopted, may be amended through the Zoning Ordinance re-write process.

Staff recommends amending and approving the CR family of zones in advance of the Zoning Ordinance re-write. The zones' clarity and certainty for all interested parties is currently absent from other mixed-use zones. The essential structure of the CR zones is sound: 1) zones applied by sectional map amendment to achieve the vision of a master or sector plan; 2) clear maximum development standards; and 3) a defined but flexible method to achieve those maximums. These characteristics of the CR zones are admirable and worthy of working through the details. There are a lot of details in creating a new family of zones with a new process for approval, 33 criteria for incentive density, and the mathematical rules to achieve any given

density. Staff recommended revisions to those details should not be construed as a recommendation against adopting the zones.

Staff does not believe that the legal issues raised by the County Executive are insurmountable. In Staff's opinion, the CR zones would comply with the state's requirement for uniformity within zones; they establish the same standards for each zone. The application of the zones might create a legal problem if every landowner along the same block were to receive a different zone; on its face, a CR zone would not violate the uniformity requirement of Article 28. The delegation of authority in ZTA 09-08 as introduced is wide-ranging but can be revised where necessary.²

It will take time for the Committee to work through the details of a 42 page zone. Line numbers in this memorandum refer to ZTA 09-08 as introduced, starting on ©65.

How should the CR zones be applied?

A CR zone could only be applied "in conformance with the zoning recommendations of an approved or adopted master or sector plan" (lines 44-46). As introduced, the CR zones would be Euclidian zones applied by sectional map amendment. In that respect, the zones are similar to CBD zones. Staff does not agree with testimony that suggested floating zones are a better option because of the additional opportunities for public input and deliberation. Floating zones result in a patched quilt zoning pattern that would not achieve the objectives of the master plan. The public process for the adoption of sectional map amendments has been used for more than 35 years. It relies, in part, on the record of the master plans. The master plan process takes years and provides many opportunities for the public to provide information and opinions.

Testimony suggested allowing CR zones to be applied only if the zones are specifically recommended in a master or sector plan. This removes the possibility of applying a CR zone anywhere without a master plan amendment. Staff does not recommend this change.

What are the standards for the approval of a "sketch plan" and, if approved, should all of the elements of the plan be binding?

A sketch plan would be required for all applicants seeking a density greater than .5 FAR.³ It has the notice requirements of other development applications and requirements to provide:

- 1) total FAR, conceptual uses, and maximum densities per use;
- 2) building massing, height, public use and other open spaces, and the relationship of proposed buildings to adjacent buildings;
- 3) general vehicular, pedestrian, and cyclist circulation and access;
- 4) table of proposed public benefits and incentive density requested for each benefit; and
- 5) general phasing of structures, uses, public benefits, and site plans.

There are no standards for the approval or denial of a sketch plan by the Planning Board. Although a provision implies that development is subject to the sketch plan (line 36), a different provision states (line 199) that only specific elements made binding by the Planning Board on a case by case basis would be binding on future site plans. By comparison, a project plan requires the Planning Board to make

² Although the CR zones would delegate substantial authority to the Planning Board, the Council granted the Planning Board even more authority in CBD zones.

³ Testimony called for reconciliation between the North Bethesda Plan's call for a concept plan and the requirement for a sketch plan in the CR zones. Staff favors reconciliation as long as it is reconciled in favor of a sketch plan; a concept plan already has a defined meaning in the zoning ordinance. It is part of the process used in the Life Sciences Center zone.

specific findings for approval and the approval is binding on future preliminary plans and site plans. Some in the community touted the attributes of the negotiated project plan over the more mechanical density incentives in the sketch plan. Staff prefers the clarity of the CR zones.

If the sketch plan is only advisory, it will not help residents or the applicant to know what to expect in future applications. If the sketch plan were a fixed approval with no flexibility, it would require a high level of design investment at an early stage of the approval process. The Planning Staff should let the Committee know their recommendations for a public hearing, approval standards, and binding elements.

The Planning Department used an approved project plan with the Zoning Advisory Panel to demonstrate what information and illustrations would be included if it were a sketch plan. The Council may want to see if the proposed sketch plan information is sufficient for public discussion.

How should the CR density incentive “calculus” be established?

A) Standard method density

ZTA 09-08 would establish the standard method density at .5 FAR without regard to the maximum density of the zone. Non-residential densities higher than .5 typically require structured parking. Sites with less than .5 FAR (Mid Pike Plaza) have substantial uses. Some property owners described .5 FAR for standard method of development projects as a down zoning from which density can be purchased by buying a density incentive. It is possible for this density to be a down zoning depending upon the owner’s current zoning; however, it is a reasonable use of land.

To the extent that density incentives are unrelated to the amount for bonus FAR, the CR zones’ density incentives place the greatest burden on the smallest, least dense sites. If this remains true, the Council may wish to allow a higher standard method density for smaller sites. This type of change was suggested by the City of Takoma Park.

B) Incentive density

ZTA 09-08 would establish 33 different criteria for the approval of density above an FAR of .5. The density increase allowed for satisfying each criterion (density incentive) is expressed as a percentage of “incentive density”. Incentive density would be defined as **the amount of proposed floor area** above .5 FAR. The method of calculating incentive density will give applicants an incentive to apply for the maximum density allowed by the zone for 3 reasons:

- 1) Many of the criteria do not vary with the amount of development. For example, the size of a daycare center would not be required to change if the proposed development used 10,000 square feet of incentive density or 1,000,000 square feet.
- 2) Even small additions above a .5 FAR would be required to satisfy 4 different public benefit categories. The same would be true for large additions above .5 FAR.
- 3) The requirement for a sketch plan and site plan approval is the same for all additions above a .5 FAR.

Staff sees the wisdom of establishing the incentive density as **the maximum floor area** allowed by the zone minus .5 FAR. Under this type of provision, an applicant who proposed using only 30 percent of the incentive density would be required to satisfy fewer criteria, but the design standards and site plan

requirements would still apply. If you believe that maximum density is always desirable, the definition of incentive density in ZTA 09-08 would be appropriate.

C) Proportional incentive density for a lot within a CR subdivision of many buildings

ZTA 09-08 includes the following provision:

Public benefits that apply to 1 building in a multi-building project must be weighted proportionally to the density of the applicable building compared to the total density of the project.

For example, assume a proposed project with 300,000 square feet of land area, 3 buildings to be built sequentially, and an incentive density of 1 FAR. This provision, as introduced, could be interpreted to mean that each building (if on 3 lots of equal size) must be 1.5 FAR. The provision does not allow 1 building to have a higher density than the other buildings. The proposed LSC zone would allow density sharing between lots under common ownership.

Some criteria to increase density apply to an entire tract of land and not a single building on a single lot.⁴ Using the same example as above (a 300,000 square foot site proposing 1 FAR of incentive density), the transit access improvement would allow an additional 300,000 square feet of density. Even if that improvement were completed with the first building, the provision for proportionality could be interpreted not to allow the first building to use more than one third of the density bonus.

The Planning Board's testimony recommended a change to the proportional density provision to allow density on a lot consistent with the sketch plan. Planning Staff may want to explain why the CR zones would have a different density sharing provision than the LSC zone.

D) Relativity - increasing public benefits with increased density

Unlike the Central Business District zones, and with apologies to Albert Einstein, there would be almost no relativity in the CR zones. Public benefits do not necessarily increase with density. For example, there is no change to the amount of transit access required for any site, but a site with a higher maximum FAR gets more floor area for the same improvement. Ten percent of a larger absolute number is larger than 10 percent of a lower number. Some criteria relate to the size of the site (off-site side-walks) and some criteria relate to the number of housing units (the size of community gardens), but no criterion changes directly with the amount of floor area allowed.⁵

The Committee may want to review the incentive criteria to determine if the quantity of a particular public attribute should be related to the absolute quantity of floor area that it allows. The Committee may also want Planning Staff to identify the density increasing criteria that apply to an entire site as distinguished from the criteria that apply to a single building as recommended by testimony.

E) The percentage of incentive density increase for any given criterion

⁴ Transit access improvements allow increased density for the entire site. Whether a density increase applies to the entire site or to a building is not always clear in every incentive density criteria.

⁵ Density incentives would be relative to the size of the tract if the increments of increased density were set in terms of absolute FAR increases.

Some criteria allow a 5 to 10 percent increase in density; other criteria allow a 20 to 30 percent density increase. Sites near Metrorail get twice the density bonus of sites near light rail.⁶ Any rational basis for these differences would be sufficient to sustain these differences in court. It could be related to cost, utility, or public policy to encourage one attribute over the other. Planning staff should explain their basis for the numbers recommended.

ZTA 08-15 disfavored pedestrian-through block connectors; project plans were not required to conform to such recommendations in a sector plan. Eliminating this criterion would be consistent with Council's past action.

F) Using FAR to define the density of housing

The CR zone would use FAR as the measure of density for both residential and non-residential uses. Some members of the civic community believed that using FAR as the sole density limit instead of using the number of dwelling units per acre would make the forecasting for school infrastructure extremely difficult. The number of units would be known at the site plan stage of development; the amount of parking required would still be determined by the number of dwelling units. Even before that, the number of housing units per FAR can be estimated.

Should the incentive criteria include aspects of the building code or operating characteristics of a building?

A) Aspects of the building or water quality code

Incentive density criteria include:

- LEED rating
- Dark-Skies
- energy efficiency and generation
- green walls
- vegetative roofs
- stormwater recharge

Typically, these building or water quality attributes are or could be regulated by non-zoning law. Multifamily housing over 4 stories and non-residential building greater than 10,000 square feet are required to be LEED certified or certified under an equivalent rating system. ZTA 09-08 would allow increased density for a silver or gold rating. Those higher ratings may require some of the other density incentive criteria: energy efficiency and generation, green walls, or vegetative roofs. Staff would recommend including the enhanced LEED rating as justification for increased density but would delete the other criteria.

The environmental/sustainability incentive criteria are not directly within the zoning powers granted to the County; the density that those attributes would allow is a zoning matter.⁷ Staff was directed to

⁶ Testimony cites a transportation study that found mode share increased by a factor of 1.45 compared to light rail. The recommended incentive density difference is 2 to 1.

⁷ Article 28 Section 8-101 (b)(2): The zoning ordinance text [is]to regulate... (i) the location, height, bulk, and size of buildings, other structures, and units therein, building lines, minimum frontages, depths and areas of lots, and percentages of lots which may be occupied; (ii) the size of lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and structures; (iv) the density and distribution

Chicago's zoning ordinance, which does grant density for many of the same criteria proposed by ZTA 09-08. Staff does not claim any knowledge of Chicago's zoning enabling legislation.

A bill to amend the building code to require compliance with Dark-Skies criteria was introduced but never acted upon by the Council. Code currently requires energy efficiency; it does not require power generation. Green walls and green roofs could be part of meeting LEED gold or silver requirements.

B) Operating characteristics

The reach of the CR zones goes to the inside attributes of buildings:

- local retail preservation
- community connectivity (retail use for 4 years)
- free parking (under certain circumstances)
- care centers
- percentage of on-site energy generation
- unit mix

In addition to indoor incentive density criteria, the CR zone would require free bike parking, showers for bikers in larger structures, and indoor residential amenity space. These improvements would not be discretionary and would not increase the applicant's latitude to build.⁸ To date, only the provisions for MPDUs and workforce housing regulate the price of required development. The Planning Board recommended amending the provision to require free bike parking to the extent the parking is outside a building.

Tenants, rents, energy use, and interior walls change inside a building. The activities are out of sight and can change without permits. It will be a challenge to inspect and enforce indoor attributes. A violation will never result in a lowering of the density of a building. Commercial rent control, residential amenity space, and dwelling unit mix regulations could be accomplished outside of the Zoning Ordinance.

Staff suggests a conversation about enforcement with the Planning Department and the Department of Permitting Services before recommending these attributes as part of the Zoning Ordinance.

Is the delegation of authority proposed by the CR zone appropriate?

Many aspects of the CR zone would give the Planning Board discretion with standards on how the discretion is to be used. The proposed CR zones would allow an applicant to propose density increase criteria not listed in the text of the ordinance if it will further the goals and objectives of the master plan (lines 404-407). Staff believes a delegation to allow the approval of unlisted density increase criteria is overbroad and should be deleted. Additional criteria could certainly be the subject of future ZTAs. In that manner, the Council's judgment is paramount and other applicants have the assurance of being similarly treated.

of population; (v) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (vi) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes.

⁸ The building code could include a requirement for showers and indoor amenity space if the Council wanted to do so.

CR zones would have specific design criteria for retail street frontages, surface parking, height, and setbacks. Streetscapes would need to be consistent with the recommendations of the applicable master or sector plan (lines 240 -241). Beyond this, a CR zone site plan would need to be found consistent with the master plan and any design guidelines adopted by the Planning Board (lines 212-214). Staff believes that standards should be in the zone or the master plan but, barring that, the Council should approve any design guidelines as a regulation.

As introduced, the Public Arts Trust Steering Committee would have authority to approve density increase criteria (line 644). The Planning Board has identified this as a problem that should be corrected; Staff agrees.

In the Dark-Skies criteria, the standards would be delegated to the International Dark-Sky Association (line 754-755). Staff recommends deleting the Dark-Sky criteria.

The Small Business Administration would determine the definition of small business (line 105). For retail uses, the Administration's definition requires knowing the business's gross earnings. Staff would not recommend this approach; it would add an unnecessary level of complication.

ZTA 09-08 would require ADA compliance for a new improvement (line 509). This is redundant; the building code currently requires such compliance.

Should the purchase of BLT easements be required or a density incentive purchased at the option of the applicant?

The fact that this is a close question was illustrated by the Planning Board's recommendations. The Board's most recent recommendation called for making the purchase of BLT easements a density incentive criteria; ZTA 09-08, introduced at the Planning Board's request, required the purchase of BLT easements for all projects more dense than .5 FAR. The Committee should hear from Planning Staff on the pros and cons of making the purchase of BLT easements a requirement.

Should the open space requirement be revised?

In a reversal of CBD requirements, the CR zones would require more open space for standard method development (10 percent) than optional method projects (0 to 10 percent). Testimony indicated that this was over-burdensome for small projects on small lots.

For optional method projects, a table of standards is proposed based on site size and the number of street frontages. Various categories change by 2 percent. Why not make the same requirement for standard and optional projects dependent on sites above or below 3 acres?

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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

October 26, 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: Planning Board on Zoning Ordinance Text Amendment No. 09-08

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No. 09-08 at its regular meeting on October 22, 2009. The Board recommends approval of the text amendment as modified and attached. The proposed text amendment is based on recommendations from the pending Gaithersburg West, White Flint, Takoma/Langley, and Kensington Master Plans that anticipate more integrated uses and pedestrian-oriented communities with diverse, well-connected, well-designed, environmentally sustainable neighborhoods.

Zoning Text Amendment 09-08 establishes Commercial/Residential Zones to support the aforementioned master plans with a focus on a mix of uses and a mix of public benefits, appropriated densities and heights, and sustainable environments for living, working, and recreating. The CR Zones are being created specifically for development in transit-oriented areas and neighborhood centers that blend jobs, housing, and public amenities to decrease reliance on cars and focus redevelopment of underutilized commercial shopping centers.

CERTIFICATION

This is to certify that the attached text amendment is a true and correct copy of the modified text amendment and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at its regular meeting held in Silver Spring, Maryland, on Thursday, October 22, 2009.



Royce Hanson
Chairman

RH:js



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # _____

MEMO DATE: October 16, 2009
HEARING DATE: October 22, 2009
TO: Montgomery County Planning Board
VIA: Rollin Stanley, Director
FROM: Josh Sloan, Planner Coordinator
PURPOSE: ZTA 09-08-Discussion of recommendation of new mixed-use development district—The Commercial/Residential (CR) Zones – Transmit comments to the County Council.

This memorandum provides a final staff recommendation for Zoning Text Amendment (ZTA) 09-08 concerning the Commercial/Residential Zones. This zone has evolved over a year of discussions and gone through several iterations, which are outlined in the “Timeline” provided after the recommendation for the final text. This timeline shows how and why numerous edits have been made. This final recommended text is provided in the attached redline based on the draft that was before the Board and is posted on the Planning Department and County Council websites, labeled ZTA No: 09-08; Draft No. & Date: 3 – 9/15/09.

Recommendation

Per the redline version attached to this memo, the following modifications finalize the draft text recommendations for the CR zones ZTA:

- Line 196 Clarify that there is no requirement to submit a preliminary subdivision plan within 90 days “of sketch plan approval”.
- Line 320 Clarify that the illustration applies to “development proposing full optional method density”.

- Line 423 In the table, the Public Benefit for a Parking Below Grade is changed to Parking "Structure".
- Line 423 In the table, BLTs are added as an incentive for purchase as required by 59-C-15.87.
- Line 465 Parking at the minimum is changed to create a sliding scale for incentive density and an example is provided.
- Line 490 Clarify that pedestrian connections "may be provided through the first floor of a building if the property owner grants a perpetual public access easement for the walkway".
- Line 609 Add that the required 5% of the three-bedroom units apply to "larger" units.
- Line 615 Add that the required 7.5% of the three-bedroom units apply to "larger" units.
- Line 644 Change Parking Below Grade to "Parking Structures" and provide proportional incentives for above-ground structured parking and below-grade structured parking.
- Line 669 Clarify that the Public Arts Trust Steering Committee recommends approval to the Board, but does not provide approval.
- Line 791 Allow for renewable energy generation on site "or from another property within the same master or sector plan area" for the minimum incentive.
- Line 796 See line 791.
- Line 879 Add incentive calculations for BLT easements purchased.
- Line 888 Add "repaired" to the list of modifications lawfully made to existing buildings.

Timeline of General Discussions and Hearings

March 1, 2009 Legal Discussion with Zoning Advisory Panel Attorneys

An early meeting was held between Staff and a group of attorneys serving on the Zoning Advisory Panel (ZAP) to discuss basic threshold legal issues. Numerous aspects of case law were discussed and concerns presented regarding master plan implementation, uniformity, and delegation of authority.

April 1, 2009 Zoning Advisory Panel CR Zone Subgroup Discussion

The Zoning Advisory Panel (ZAP) is a blue-ribbon working group of land-use professionals and citizen representatives providing feedback on various topics involved in the larger zoning ordinance rewrite process being undertaken by the Planning Department. Subgroups of this panel were tasked with detailed discussion of individual topics, including a subgroup on the CR zone. This subgroup included citizen

representatives, developers, builders, attorneys, and design professionals. The discussions over several months were wide ranging and provided encouragement and suggestions to modify numerous aspects of the Zone. As a result of these debates, both detailed and general recommendations were made to the CR Zone that was finally presented to the Planning Board.

May 6, 2009 Zoning Advisory Panel CR Zone Subgroup Discussion

May 21, 2009 Planning Board Introduction to CR Zone Concepts

Prior to review of a draft zone, general concepts of the CR zones proposed framework was presented to the Board. This overview concentrated on several topics including, the challenges facing the County as its population increases, the general characteristics of the zone, where the CR zones should apply, the zoning nomenclature, the zoning dimensions, mapping, standards and requirements, the incentive philosophy that drives the optional method, some modeling and testing of the zone, and the enhanced public input provided by the zoning process. This presentation and discussion concentrated on new ideas in this zone: absolute, mapped height limits; FAR limits (no unit per acre limits); public amenity list; exemptions of FAR for affordable housing (later removed); and sustainability aspects of the zone.

The Board's discussion began with the conceptual architecture:

1. The standard and optional method approach;
2. The zoning sequence of use/mix/height;
3. Application of the zone;
4. Master plan implementation;
5. Techniques and issues regarding interim map amendments; and
6. General requirements.

The discussion then fluctuated between general topics and specific questions about:

1. How affordable housing could be given an FAR exclusion and whether that was contrary to expectations set by the zone;
2. Whether density should be calculated by FAR or units per acre;
3. Incentive requirements versus general requirements and whether incentive density should be provided as a set number or as a range;
4. Whether there is an inherent down-zoning because of the zone's structure;
5. What costs of development would change and the, then, forthcoming economic analysis;
6. Quantifiable nature versus subjective judgment of design incentives; and
7. Certainty provided by incentive list.

June 3, 2009 Zoning Advisory Panel CR Zone Subgroup Discussion

June 25, 2009 Planning Board Hearing on the Zoning Text Amendment to Establish the CR Zones

At this presentation to the Board, Staff presented the reasons for establishing the CR zone as an alternative to current zoning with several specific goals. Among these goals is the need to create a flexible zone for infill development throughout the commercial areas of the county that provide a mix of uses and public benefits commensurate with an appropriate range of densities. Examples of models that use the CR zone were presented and specific questions were asked regarding the basic tenets of the CR zone.

These fundamental questions were:

1. Should the zone set a cap on the mix of uses;
2. Should the zone have standard and optional methods and should standard method be set at 0.5 floor area ratio;
3. Should the zone list the incentives and public benefits required by the optional method to develop to full density;
4. Should parking maximums be set;
5. Should priority retail frontages be required as indicated by master plans or design guidelines;
6. Should open space requirements be reduced and tied to frontages as well as lot size;
7. Should the zone set recreational requirements for residential buildings;
8. Should the zoning sequence for each CR zone include maximum height; and
9. Should site plans be required for standard method projects based on impact.

The Board raised specific questions about and debated several topics:

1. Transit efficacy, frequency, routes, and types and requested Staff to further explore which transit facilities are appropriate for incentive densities;
2. Master plan versus zone as an implementation of the desired mix of uses in specific areas;
3. What specific zones are established and how the zone's architecture works;
4. How incentives and public benefits are determined and chosen project by project and their connection to the master plan and design guidelines;
5. Definition/characteristics of categories of incentives; incentive limits on categories;
6. How height is limited, governed, and understood;
7. Implementation of the zones over large, phased projects; and
8. Reasonable use and costs for property owners within these zones.

July 1, 2009 Council Zoning Text Advisory Committee Discussion

July 7, 2009 Zoning Advisory Panel CR Zone Subgroup Discussion

July 15, 2009 Full Zoning Advisory Panel Discussion

After the subgroup meetings outlined above, the full ZAP discussed the CR zone and provided both support and reservations about features of the zone. Individual members of the ZAP provided written summaries of concerns and red-line versions of drafts that Staff used in its revisions that were brought to the Board.

July 16, 2009 Planning Board Hearing on the Zoning Text Amendment to Establish the CR Zones

The third discussion with the Board on the CR zones focused on changes based on the prior hearing and hearings on pending master plans. Given the general recommendation that the fundamental architecture of the zones, these changes, aimed to simplify, clarify, organize, and detail the establishment of the zones and the provisions of the zones as outlined below:

Zones Established

- 15.11 was simplified to state the basic and exact parameters of the zoning sequence: CR, C, R, and H.
- 15.12 was consolidated to focus simply on the “rules” of establishing the zones and the application of them by sectional map amendment.

Purposes

- 15.2 was slightly edited (it was previously 15.21)

Land Uses

- 15.31 was unchanged but is the new home for the land use table.
- 15.32 became the new home for the operational restrictions; the restrictions on outdoor storage have been removed

Methods of Development

- 15.4 the methods of development were rewritten.

Parking

- 15.5 was dedicated entirely to the parking requirements for the CR zones; this section was clarified and simplified; and an example was provided.

General Requirements

- 15.6 became the new home of all the general requirements; the applicability of these requirements is now set at the outset and the categories of the requirements have been removed; these were previously under section 15.3.
- 15.61 was changed in name and significantly modified the requirements of what is now called “priority retail street frontage”; an example has been given.

- 15.62 and 15.63 changed to simply state that streetscape standards and master plan conformance is required.
- 15.64 had minor edits to the bike/shower requirements.

Development Standards

- 15.7 became the new home of the development standards (previously section 15.5).
- 15.71 and 15.72 did not change, but a diagram was added.
- 15.73, the setback standards, had minor changes for clarity.
- 15.74, the public open space requirements were simplified and clarified.
- 15.75 had minor edits

Incentive Zoning

- 15.8 was significantly modified for simplicity and directness; it changed to begin with a basic statement and three rules for determining incentive density increases (previously, this was 15.6).
- 15.81, the automatic increments, were not changed significantly.
- 15.82 through 15.85 and the subsections were significantly modified. These sections changed to delineate the requirements for the minimum incentive density increase and provisions for achieving the maximum density in the zone.

BLTs

- 15.9 changed to house the BLT provisions – similar in placement to the TMX zone

Grandfathering

- 15.10 changed to cover existing approvals but did not significantly change.

Discussion by the Board focused on the following questions and recommendations:

- The establishment of the zones by the matrix provided by the zoning sequence;
- The application of the zones by sectional or local map amendment;
- Threshold for site plan applications and sketch plan process;
- Grandfathering and non-conforming size/timing thresholds; and
- Density transfers as approved by a sketch plan.

Public testimony focused on details generally regarding grandfathering, conceptual processes, incentive density provisions – especially the amount of incentive density allowed for certain benefits, details about requirements for standard and benefit provisions, and density transfers between lots. Red-line versions of the draft and numerous meetings requested by stakeholders provided more context and debate on these topics and the draft evolved based on this input with the Board's direction.

July 27, 2009 Planning, Housing, and Economic Development (PHED) Committee Briefing

As part of the third briefing to the PHED on the Department's progress on the overall zoning ordinance rewrite, the CR zones were discussed. This discussion was focused on several questions provided by Council Staff. Those questions and the responses as reiterated in the hearing memo to the PHED Committee are provided below:

What are the basics of CR zones?

- Zones are a sequence of four symbols (CR, C, R, H) with associated numbers.
 - CR indicates use and maximum total density
 - C indicates maximum non-residential density
 - R indicates maximum residential density
 - H indicates maximum height
 - Examples of two CR zones: CR-2.0, C1.0, R1.5, H60 and CR-5.0, C4.0, R4.0, H160
- Establishes rules for assigning density and height to zones
- Establishes procedure for sectional map amendments and local map amendments (in limited circumstances)
- Maximum densities and heights are only attainable by optional method
- Establishes general requirements and development standards for more progressive and sustainable urban form
- Establishes standard method density of 0.5 FAR and height of 40 feet
- Provides incentives – public benefits – to achieve maximum density and height allowed by zone
- Establishes standards and procedures for allocating incentive density
- Defines terms used specifically in CR zones

What current zones should CR zones replace?

- Currently focused on RH, CT, OM, CO, CP, C-3, HM, I-3, Planned Unit Development, TS-R, TS-M, RS, TOMX, or TMX
- Potential to replace additional multi-family residential, mixed use, and single-use commercial zones

How will other sets of zones be clustered?

- Generally by use:
 - Agricultural
 - Low density residential (detached units)
 - Medium density residential (detached units, some ability for semi-detached or towns)
 - High density residential (detached, attached, towns, multi-)
 - Industrial

- Mixed Campus (for LSC, R&D, maybe some I-3)
- Planned Developments

How does the department anticipate translating current zones to CR zones?

- Initial review by a table that correlates existing allowed density/height with proposed CR density/height
- Additional review on case-by-case analysis of master plan recommendation and existing conditions
- Finalize with full report for comprehensive zoning study

How do CR zones relate to other aspects of the rewrite, such as list of uses, definitions, processes? How might CR zones lead or be changed by the ultimate zoning rewrite?

- Sets up uses in categories that will be proposed in the rewrite
- Begins changing definitions, but these will be consolidated in one place
- Changes process and establishes “sketch” plan to replace project plan; most processes will be significantly revamped because of focus on sustainability and design quality
- Establishes one form of incentive process – another will focus on incentive development “typologies”: defined and illustrated building and subdivision types for optional method fast-track approvals
- Uses no footnotes – terms are defined, conditions/caveats are incorporated in text
- Begins to use illustrations – more are necessary
- Generally is a hybrid of conventional, performance, and form-based zoning
- Will get cleaned up and simplified as processes, definitions, etc. are relegated to their own sections and further detailed to work with all zones

September 17, 2009 Planning Board Discussion of Economic Analysis of the CR Zones

Prior to this hearing, a number of changes based on internal discussions and the Council’s Zoning Advisory Committee’s recommendations were made. These are summarized here:

1. General
 - a. Numerous minor changes to wording for clarification, to ensure consistency of terms, to remove unnecessary language, and to format the document.
 - b. New computer-rendered illustrations replaced place-holder drawings.
2. 59-C-15.1
 - a. Insertion of disclaimer regarding examples – assuring that they are understood to be illustrative and do not alter the provisions of the ordinance.

- b. Removal of ability to apply for local map amendment in certain zones. The CR zone is only to be applied through a sectional map amendment.
3. 59-C-15.3
 - a. Insertion of CR-specific definitions in front of methods of development, etc.
 - b. Insertions of several new definitions for clarity.
4. 59-C-15.4
 - a. Clarification and expansion of contents of a sketch plan.
 - b. Minor changes and additions to procedure for a sketch plan.
 - c. Refined and modified land uses to be consistent with previously used land uses in established zones.
5. 59-C-15.8
 - a. Clarification that incentive density is equal to the incremental difference between the standard method density and the proposed project density.
 - b. Clarifications to process of judging and awarding incentive density.
 - c. Numerous modifications and clarifications for consistency, format, and interpretation.
 - d. BLTs made mandatory and no incentive density provided.

These changes will alter the final economics of the zone and will be further analyzed. The economic analysis, however, remains valid for many specific areas of concern and provides a general overview of the costs and benefits of the proposed CR zones as compared to existing commercial and mixed-use zones.

The recommendations for the CR zones derived from the economic analysis were:

1. Retain existing structure of the zone, including standard method maximum density and standard/optional method dichotomy;
2. Retain transit proximity incentive density and affordable housing incentive density, which are keys to the potential success of the zone in White Flint;
3. Clarify language in the local retail preservation incentive to provide key definitions;
4. Clarify or simplify the Building Lot Termination incentive; and
5. Review Council recommendations in light of economic analysis.

Public testimony was taken and written comments were received that has led to further internal debate and modifications that are presented in the attached red-line recommendations.

October 13, 2009 **PHED Briefing**

The final briefing prior to the public hearing for the ZTA focused on:

- The economics of the zone and the study parameters and assumptions;

- The question of whether environmental benefits, in particular, should be required by any development or remain benefits required only for incentive density; and
- General structure and purposes of the zones.

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

2 * * *

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

4
5 59-C-15.1. Zones Established.

6 59-C-15.11. The Commercial/Residential (CR) zones are established as
7 combinations of a sequence of four factors: maximum total floor area ratio
8 (FAR), maximum non-residential FAR, maximum residential FAR, and
9 maximum building height. These zones are identified by a sequence of
10 symbols: CR, C, R, and H, each followed by a number where:

- 11 a) the number following the symbol "CR-" is the maximum total FAR;
- 12 b) the number following the symbol "C" is the maximum non-residential
13 FAR;
- 14 c) the number following the symbol "R" is the maximum residential
15 FAR; and
- 16 d) the number following the symbol "H" is the maximum building height
17 in feet.

18 The examples in this Division do not add, delete, or modify any provision of
19 this Division. Examples are provided only to demonstrate particular
20 applications of the provisions in the Division. Examples are not intended to
21 limit the provisions.

22 59-C-15.12. Each unique sequence of CR, C, R, and H is established as a
23 zone under to the following limits:

- 24 a) the maximum total FAR must be established as an increment of 0.25
25 from 0.5 up to 8.0;
- 26 b) the maximum non-residential and residential FAR must be established
27 as an increment of 0.25 from 0.25 up to 7.5; and

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- 28 c) the maximum height must be established as an increment of 5 feet up
 29 to 100 feet and an increment of 10 feet from 100 feet up to 300 feet.
- 30 d) P[[p]]ermitted density may be averaged over 2 or more directly
 31 abutting or confronting lots in [[the same]] one or more CR zones
 32 provided that:
- 33 1) they are subject to the same sketch plan;
 - 34 2) they are created by the same preliminary subdivision plan;
 - 35 3) the maximum total density and nonresidential and residential
 36 density limits apply to the entire development subject to the
 37 sketch plan and subdivision plan, not to individual lots;
 - 38 4) no building may exceed the maximum height set by the zone;
 - 39 5) public benefits must be [[provided in proportion to any phased
 40 development on individual lots]]phased in accordance with the
 41 phasing element of an approved sketch plan; and
 - 42 6) the resulting development must fulfill the design and land use
 43 objectives of the applicable master or sector plan and design
 44 guidelines.

45 **59-C-15.13.** The CR zones can only be applied by sectional map amendment
 46 in conformance with the zoning recommendations of an approved and
 47 adopted master or sector plan.

48 Examples:

- 49 • An area zoned CR-2.0, C1.0, R1.0, H80 allows a total FAR of 2.0, with maximum non-
 50 residential and residential FARs of 1.0, thereby requiring an equal mix of uses to obtain
 51 the total FAR allowed. The height for any building in this zone is limited to 80 feet.
- 52 • An area zoned CR-6.0, C3.0, R5.0, H200 allows a residential FAR of up to [[of]] 5.0,
 53 whereas non-residential density is only allowed an FAR of up to 3.0, and a mix of the
 54 two uses could yield a total FAR of 6.0. This combination allows for flexibility in the

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55 market and shifts in the surrounding context. The height for any building in this zone is
 56 limited to 200 feet.

- 57 • An area zoned CR-4.0, C4.0, R4.0, H160 allows the ultimate flexibility in the mix of
 58 uses, even buildings with no mix, because the maximum allowed non-residential and
 59 residential FARs are both equivalent to the total maximum FAR allowed. The height for
 60 any building in this zone is limited to 160 feet.

61
 62 **59-C-15.2. Description and Objectives of the CR Zones.**

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

- 70 a) implement the policy recommendations of applicable master and sector
 71 plans;
 72 b) target opportunities for redevelopment of single-use areas and surface
 73 parking lots with a mix of uses;
 74 c) reduce dependence on the automobile by encouraging development that
 75 integrates a combination of housing types, mobility options, commercial
 76 services, and public facilities and amenities;
 77 d) encourage an appropriate balance of employment and housing opportunities
 78 and compatible relationships with adjoining neighborhoods;
 79 e) establish the maximum density and building height for each zone, while
 80 retaining appropriate development flexibility within those limits; and

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81 f) standardize optional method development by establishing minimum
82 requirements for the provision of the public benefits that will support and
83 accommodate density above the standard method limit.

84 **59-C-15.3. Definitions Specific to the CR Zones.**

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

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

89 **Cultural institutions:** public or private institutions or businesses including the
90 previously listed land uses: art, music, and photographic studios; auditoriums or
91 convention halls; libraries and museums; recreational or entertainment
92 establishments, commercial; theater, indoor; theater, legitimate.

93 **Day care facilities and centers:** facilities and centers that provide daytime care
94 for children and/or adults including the following previously listed land uses:
95 child daycare facility (family day care, group day care, child day care center);
96 daycare facility for not more than 4 senior adults and persons with disabilities;
97 and day care facility for senior adults and persons with disabilities.

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

100 **LEED:** the series of Leadership in Energy and Environmental Design (LEED)
101 rating systems developed by the Green Building Council as amended.

102 **Locally-owned small business:** a commercial business that:

103 **a)** is majority-owned by a resident of Montgomery County or any
104 adjacent jurisdiction; and

105 **b)** meets the size standards as determined by the Small Business
106 Administration’s Table of Small Business Size Standards [(SBA

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107 Table)]]or is a franchised company with total holdings by the local-
108 owner that meets the size standards of the Table.

109 **Live/Work unit:** Buildings or spaces within buildings that are used jointly for
110 commercial and residential purposes where the residential use of the space is
111 secondary or accessory to the primary use as a place of work.

112 **Manufacturing and production, artisan:** The manufacture and production of
113 commercial goods by a skilled manual worker or craftsman, such as jewelry,
114 metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food
115 products.

116 **Priority retail street frontage:** Frontage along a right-of-way identified in a
117 Master or Sector Plan to be developed with street-oriented retail to encourage
118 pedestrian activity.

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

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

124 **Recreational facilities, participatory, indoor:** Facilities used for indoor sports or
125 recreation. Spectators would be incidental on a nonrecurring basis. Such uses
126 typically include bowling alleys, billiard parlors, indoor tennis and handball
127 courts, and health clubs.

128 **Recreational facilities, participatory, outdoor:** Facilities used for outdoor sports
129 or recreation. Spectators would be incidental on a nonrecurring basis. Such
130 uses typically include driving ranges, miniature golf courses, swimming pools,
131 and outdoor ice skating rinks.

132 **Seasonal Outdoor Sales:** A lot or parcel where a use or product is offered
133 annually for a limited period of time during the same calendar period each year.

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134 The availability or demand for the use or product is related to the calendar
135 period, such as Christmas trees, pumpkin patches, or corn mazes.

136 **Transit proximity:** Level 1 proximity is based on the location of a project relative
137 to its [[with]] access to an existing or planned Metrorail Station at the time of a
138 development application. Level 2 proximity is based on the location of a
139 project relative to its [[with]] access to an existing or planned Marc Station,
140 light rail station, or a stop along a transportation corridor with fixed route bus
141 service where service intervals are no longer than 15 minutes during peak
142 commute hours at the time of a development application. A project is adjacent
143 or confronting a transit station or stop when it shares a property line, easement
144 line, or is only separated by a right-of-way from a property with a transit station
145 or stop. Except for adjacent or confronting properties, a project is considered to
146 have access to a transit facility if all parcels within the project's gross tract area
147 have no more than 25 percent of their area farther than the applicable distance
148 from the transit station or stop and if not more than 10 percent of the residential
149 units in the project are farther than the applicable distance from the station or
150 stop. A planned transit station or stop must be funded for construction within
151 the first 4 years of the Consolidated Transportation Program or the Capital
152 Improvement Program. If a property qualifies for more than one transit
153 proximity level, they may only take incentive density for one of the qualifying
154 benefits.

155 **59-C-15.4. Methods of Development and Approval Procedures.**

156 Two methods of development are available under the CR zones.

157 **59-C-15.41. Standard Method.**

158 Standard method development must comply with the general requirements
159 and development standards of the CR zones. Unless otherwise provided for

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160 in this division, a[[A]] site plan approval under Division 59-D-3 is required
 161 for a standard method development project only if:

- 162 a) the gross floor area exceeds 10,000 square feet;
 163 b) any building or group of buildings contains 10 or more dwelling units;
 164 or
 165 c) the proposed development generates 30 or more new peak-hour trips.

166 **59-C-15.42. Optional Method.**

167 Optional method development must comply with the general requirements
 168 and development standards of the CR zones and must provide public
 169 benefits under Section 59-C-15.8 to obtain the full densities and height
 170 allowed by the zone. A sketch plan and a site plan are required for any
 171 development using the optional method. A sketch plan must be filed under
 172 the provisions below; a site plan must be filed under Division 59-D-3. Any
 173 required preliminary subdivision plan must be submitted concurrently with
 174 the site plan.

- 175 a) Contents of a sketch plan:
- 176 1) justification statement for optional method development
 177 addressing the requirements and standards of this Division, how
 178 the development will further the objectives of the applicable
 179 master or sector plan, and how the development will be more
 180 efficient and effective than the standard method of
 181 development;
 - 182 2) total FAR[[, conceptual uses]] and maximum densities per non-
 183 residential and residential use;
 - 184 3) conceptual building massing, height, public use and other open
 185 spaces, and the relationship of proposed buildings to adjacent
 186 buildings;

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- 187 4) general vehicular, pedestrian, and cyclist circulation and access;
- 188 5) table of proposed public benefits and incentive density
- 189 requested for each benefit; and
- 190 6) general phasing of structures, uses, public benefits, and site
- 191 plans.

b) Procedure for a sketch plan:

- 193 1) Before filing a sketch plan application, an applicant must
- 194 comply with the provisions of Section 4 of the Manual for
- 195 Development Review Procedures for Montgomery County, as
- 196 amended, that concern the following procedures:
- 197 (a) notice;
- 198 (b) holding a public meeting; and
- 199 (c) posting the site of the submission.
- 200 2) The submittal, review procedure, and fees for a sketch plan are
- 201 the same as a pre-application submission under Section 50-
- 202 33A(a), except that there is no requirement to submit a
- 203 preliminary subdivision plan within 90 days of sketch plan
- 204 approval.
- 205 3) The Planning Board may require some elements of the sketch
- 206 plan to be binding on any subsequent site plans.

59-C-15.5. Land Uses.

No use is allowed in the CR zones except as indicated below:

- 209 - Permitted Uses are designated by the letter “P” and are permitted
- 210 subject to all applicable regulations.
- 211 - Special Exception Uses are designated by the letters “SE” and may be
- 212 authorized as special exceptions under Article 59-G.

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a) Agricultural	
Farm and country markets	P
Farm, limited to crops, vegetables, herbs, and ornamental plants	P
Nursery, horticultural – retail or wholesale	P
Seasonal outdoor sales	P
b) Residential	
Dwellings	P
Group homes, small or large	P
Hospice care facilities	P
Housing and related facilities for senior adults or persons with disabilities	P
Life care facilities	P
Live/Work units	P
Personal living quarters	P
c) Commercial Sales and Service	
Advanced technology and biotechnology	P
Ambulance or rescue squads	P
Animal boarding places	SE
Automobile filling stations	SE
Automobile rental services, excluding storage of vehicles and supplies	P
Automobile repair and services	P
Automobile sales, indoors and outdoors	P
Clinic	P
Conference centers	P
Eating and drinking establishments	P
Health clubs and gyms	P
Home occupations, major	SE
Home occupations, registered and no-impact	P
Hotels and motels	P
Laboratories	P
Dry cleaning and laundry pick-up stations	P
Offices, general	P
Recreational facilities, participatory, indoor	P
Recreational facilities, participatory, outdoor	SE
Research, development, and related activities	P
Retail trades, businesses, and services of a general commercial nature	P
Self-storage facilities	SE
Veterinary hospitals and offices without boarding facilities	P
Warehousing, not including self-storage, less than 10,000 square feet	P
d) Institutional & Civic	
Charitable and philanthropic institutions	P
Cultural institutions	P
Day care facilities and centers	P
Educational institutions, private	P
Hospitals	P

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

214 **59-C-15.6. General Requirements.**

215 Development in the CR zone must comply with the following requirements.

216 **59-C-15.61. Master Plan and Design Guidelines Conformance.**

217 Development that requires a site plan must be consistent with the applicable
 218 master or sector plan and any design guidelines approved][adopted]] by the
 219 Planning Board.

220 **59-C-15.62. Priority Retail Street Frontages.**

221 Development that requires a site plan and is located on a street identified as
 222 a priority retail street frontage must provide the following:

- 223 a) on-street parallel parking, unless specifically denied by the agency
 224 maintaining the right-of-way;
- 225 b) majority of display windows and entrances arranged between zero and
 226 45 degrees to the sidewalk;
- 227 c) shop entrances spaced at minimal distances in order to activate the
 228 street;

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- 229 d) at least 65 percent of the front building wall must be parallel to
- 230 [[building façade along at least 65 percent of]]the aggregate length of
- 231 the front street right-of-way and [[front building wall]]setback no
- 232 farther than 10 feet from the public right-of-way or 5 feet if no public
- 233 utility/improvement easement (PUE or PIE) is required; and
- 234 e) windows or glass doors on 60 percent of the building façade between
- 235 3 and 9 feet above sidewalk grade.

236 These provisions may be modified or waived by the Planning Board [[during

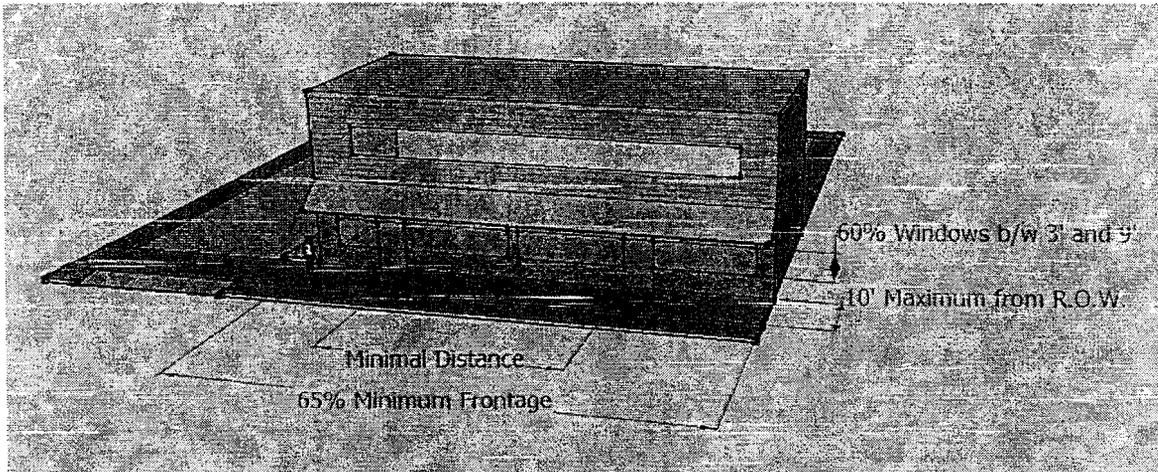
237 the review of a site plan]] if found to be unreasonably burdensome to a

238 proposed development due to conditions such as unusual lot size,

239 topography, limited frontage, provision of public use space, or other atypical

240 circumstance.

241



242

243

Priority Retail Building Requirements Illustrative

244

59-C-15.63. Streetscape.

245

Streetscape improvements must be consistent with the recommendations of

246 the applicable master or sector plan.

246

247

59-C-15.64. Bicycle Parking Spaces and Commuter Shower/Change

248 **Facility.**

248

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- 249 a) Bicycle parking facilities must be [[free of charge,]]secure[[,]] and
 250 accessible to all residents or employees of the proposed development.
 251 Exterior bicycle parking must be provided free of charge.
- 252 b) The number of bicycle parking spaces and shower/change facilities
 253 required is shown in the following table (calculations must be rounded
 254 to the higher whole number):

Bicycle and Shower/Change Facilities Required	
Use	Requirement
<i>Residential</i>	
<u>In a building containing less than 20 dwelling units.</u>	<u>At least 4 bicycle parking spaces.</u>
<u>In a building containing 20 or more dwelling units.</u>	<u>At least 0.5 bicycle parking spaces per dwelling unit, not to be less than 4 spaces and up to a maximum of 100 required spaces.</u>
<u>In any group living arrangement expressly for senior citizens.</u>	<u>At least 0.1 bicycle parking spaces per unit, not to be less than 2 spaces up to a maximum of 100 required spaces.</u>
<i>Non-Residential</i>	
<u>In a building with a total non-residential floor area of 1,000 to 9,999 square feet.</u>	<u>At least 2 bicycle parking spaces.</u>
<u>In a building with a total non-residential floor area of 10,000 to 99,999 square feet.</u>	<u>One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces.</u>
<u>In a building with a total non-residential floor area of 100,000 square feet or greater.</u>	<u>One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces. One shower/change facility for each gender available only to employees at any time the building is accessible.</u>

255 **59-C-15.65. Parking.**

- 256 a) The maximum number of parking spaces provided on site must not
 257 exceed the minimum number established under Article 59-E, except
 258 that the maximum number of parking spaces allowed for general retail
 259 and restaurant use is 4 spaces for every 1,000 square feet of gross
 260 leasable area and no parking spaces are required to be provided for
 261 restaurant outdoor patron areas.

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262 b) The minimum number of parking spaces required is based on transit
 263 proximity as follows:

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

- 265
- 266 c) Parking requirements must be met by any of the following:
- 267 1) providing the spaces on site;
- 268 2) constructing publicly available on-street parking, including on-
 269 street parking in the public right-of-way; or
- 270 3) entering into an agreement for shared parking spaces in a public
 271 or private facility within 1,000 feet of the subject lot, provided
 272 that the off-site parking facility is not in an agricultural
 273 (Division 59-C-9), planned unit development (Division 59-C-
 274 7), or residential (Division 59-C-1) zone.
- 275 d) Every “car-share” space provided reduces the total minimum number
 276 of required spaces by 6 spaces for non-residential use or 3 spaces for
 277 residential use.

278 Example: A non-residential site requiring at least 100 spaces under Article 59-E would be
 279 required to provide a maximum of 100 spaces on site. If that site was within ¼ to ½ mile of a
 280 transit station, the minimum requirement for parking would be 40 spaces (100 x 0.40 = 40). If 2

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281 car-share spaces were provided, that requirement would be 28 for non-residential use or 34 for
282 residential use.

283 e) The design of surface parking facilities must comply with the
284 following:

285 1) a parking facility at or above grade must not be located between
286 the street and the main front wall of the building or the side
287 wall of a building on a corner lot[]; however, []unless the
288 Planning Board[]may approve a design if it[]finds that []the
289 alternative design would provide []safe[] and []more[]
290 efficient circulation would be better served by a different
291 arrangement;

292 2) if a site is adjacent to an alley, the primary vehicular access to
293 the parking facility must be from that alley; and

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

296 f) The design of parking facilities with drive-through services must
297 comply with the following; however, the Planning Board may approve
298 a design if it finds that the alternative design would provide safer and
299 more efficient circulation:

300 1) the driveway must not be located between the street and the
301 main front wall of a building or the side wall of a building on a
302 corner lot;

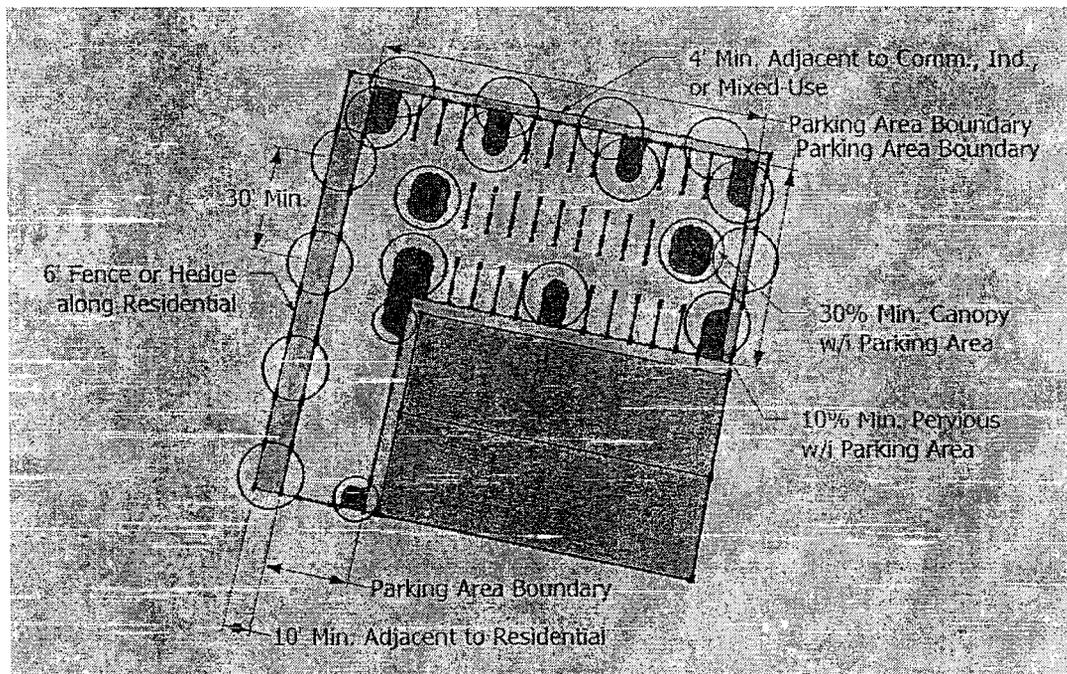
303 2) the drive-through service window must be located on the rear or
304 side wall of the building, provided that, in unusual
305 circumstances such as an atypical lot configuration or steep site,
306 if located on the side wall of the building, the drive-through

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- 307 service window must be permanently screened from any public
 308 street; and
 309 3) curb cuts to a street must be minimized to one drive aisle of no
 310 more than 20 feet in width for two-way traffic or two drive
 311 aisles each of no more than 10 feet in width for one-way traffic.
 312 g) Landscaping for surface parking facilities must satisfy the following
 313 requirements:

Minimum Landscape Standards for Surface Parking	
<u>Subject</u>	<u>Requirement</u>
<u>Right-of-Way Screening</u>	<u>6-foot width of continuous soil panel or stormwater management recharge facility (not including any PUE or PIE) with groundcover, planting bed, or lawn; a minimum 3-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.</u>
<u>Adjacent to a Property in any Commercial, Industrial, or Mixed-Use Zone</u>	<u>4-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; one deciduous tree per 30 feet of frontage.</u>
<u>Adjacent to a Property in an Agricultural or Residential District</u>	<u>10-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; 6-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of frontage.</u>
<u>Internal Pervious Area</u>	<u>10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.</u>
<u>Tree Canopy Coverage</u>	<u>30 percent of the parking facility area (at 15 years growth).</u>

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Surface Parking Landscape Requirements Illustrative

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316 **59-C-15.7. Development Standards.**

317 Development in any CR zone must comply with the following standards.

318 **59-C-15.71. Density.**

319 a) The maximum density for any standard method project is 0.5 FAR.
320 Any single land use or any combination of land uses allowed in the
321 zone may achieve the maximum density.

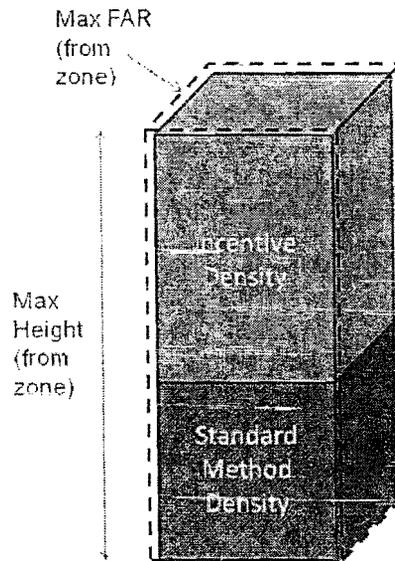
322 b) The maximum total density and mix of maximum non-residential and
323 residential density for any project using the optional method of
324 development is specified by the zone. The difference between the
325 standard method density and [[optional method]]proposed total
326 density is defined as “incentive density” and is allowed under the
327 incentive density provisions of Section 59-C-15.8.

328 **59-C-15.72. Height.**

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

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



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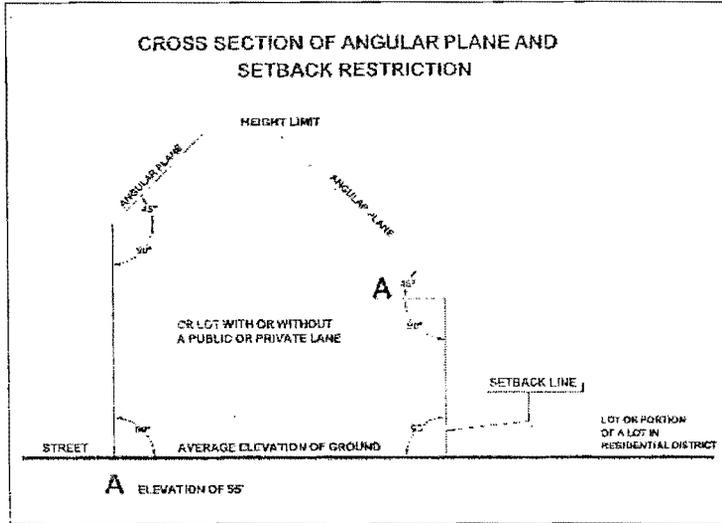
*Incentive Density Illustration of
Development Proposing Full Optional Method Density*

59-C-15.73. Setbacks.

337 A building must not be any closer to a lot line shared with [[of]] a[[n]]
338 property in an agricultural (Division 59-C-9) or residential (Division 59-C-1)
339 zone than:

- 340 a) 25 feet or the setback required by the adjacent lot, whichever is
- 341 greater; and
- 342 b) the building must not project beyond a 45 degree angular plane
- 343 projecting over the lot measured from a height of 55 feet at the
- 344 setback determined above, with the exception of those features
- 345 exempt from height and setback restrictions under Section 59-B-1.

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Angular Plan Setback Illustration

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59-C-15.74. Public Use Space.

- a) The minimum public use space for any standard method project is 10 percent of the net lot[[tract]] area of the site.
- b) Projects using the optional method of development must provide public use space as follows:

Minimum Required Public Use Space (percentage[[%]] of net lot area)				
Acres (Gross)	Number of Existing and Planned Right-of-Way Frontages			
	1	2	3	4+
< 1/2	0	0	4%	6%
1/2 - 1.00	0	4%	6%	8%
1.01 - 3.00	4%	6%	8%	10%
3.01 - 6.00	6%	8%	10%	10%
6.01 +	8%	10%	10%	10%

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- c) Public use space must:
 - 1) be calculated on the net lot area of the site;
 - 2) be rounded to the next highest 100 square feet;
 - 3) be easily and readily accessible to the public; and

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360 4) [[be placed under a public access easement in perpetuity;
 361 and]]contain amenities such as seating options, shade,
 362 landscaping, or other similar public benefits.

363 d) Instead of providing on-site public use space, for any site of 3 acres or
 364 less, a development may propose the following alternatives, subject to
 365 Planning Board approval:

366 1) public use space improvements [[to an area equal in]]of an
 367 equal or greater size within ¼ mile of the subject site; or

368 2) a payment in part or in full to the Public Amenity Fund, equal
 369 to the average cost of required site improvements, added to the
 370 current square foot market value of the area required as public
 371 use space.

372 A development on a site greater than 3 acres may only provide off-site
 373 public use space in order to provide master-planned open space
 374 improvements, or a payment per paragraph 2 above, for an area of
 375 equal or greater size within the master plan area of the proposed
 376 development and in accordance with an approved sketch plan.

377 **59-C-15.75. Residential Amenity Space.**

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

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

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382 b) The amenity space is not required for Moderately Priced Dwelling
383 Units (MPDUs) on a site within a metro station policy area or where
384 the Planning Board finds that there is adequate recreation and open
385 space within a 1/2 mile radius of the subject site.

386 c) The amenity space requirement may be reduced by 1/2 for Workforce
387 Housing Units (WFHUs) located within a metro station policy area or
388 if the minimum public open space requirement is satisfied on site.

389 d) The provision of residential amenity space may be counted towards
390 meeting the required recreation calculations under the M-NCPPC
391 Recreation Guidelines, as amended.

392 **59-C-15.8. Special Regulations for the Optional Method of Development**

393 **59-C-15.81. Incentive Density Provisions.**

394 This section establishes incentives for optional method projects to provide
395 public benefits in return for increases in density and height, consistent with
396 the applicable master or sector plan, up to the maximum permitted by the
397 zone.

398 a) The incentive density approved for each proposed public benefit for
399 single-building developments is calculated as a percentage of the
400 proposed[[total]] incentive density, which is the incremental
401 difference between the standard method maximum FAR (0.5) and the
402 proposed project FAR up to the maximum FAR allowed by the zone.

403 b) Public benefits that apply to one building in a multi-building project
404 must be weighted proportionally to the density of the applicable
405 building compared to the total density of the project.

406 Example: A project with two buildings, one of which provides a green
407 roof will only be granted incentive density for that public benefit as
408 calculated on 10 or 20% of the incentive density FAR of the

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individual building. If the same project provides a community facility, the 10 or 20% incentive density will be calculated on the entire project's incentive density FAR.

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- c) The minimum and maximum incentive density percentage increases for each public benefit are established in Section 59-C-15.81(f).
- d) The Planning Board may accept[[,]] or reject[[, or modify]] the incentive density requested for individual public benefits[[a proposed incentive density and/]] or modify the requested percentage above the minimum [[of incentive density established up to the maximum established]]for each public benefit. Except for those benefits with specific maximum standards, in approving incentive densities above the minimum, the Planning Board must consider:

 - 1) the size and configuration of the parcel;
 - 2) the policy objectives and priorities of the applicable master or sector plan;
 - 3) the applicable design guidelines;
 - 4) the relationship of the site to adjacent properties;
 - 5) the presence or lack of similar benefits nearby; and
 - 6) quantitative and qualitative enhancements, such as the examples provided in Sections 15.83 through 15.86, [[provided]] exceeding the delineated minimum incentive density standards.
- e) In addition to the public benefits set forth below, an applicant may propose other public benefits that will further the goals and objectives of the applicable master or sector plan for the purpose of obtaining an incentive density increase.
- f) The Planning Board may grant no more than 30 percent of the total incentive density for a project for each of the connectivity, design,

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436 diversity, or environment incentive categories under (h) below or any
437 public benefit approved under (e) above.

438 Example: A single-building development using its entire available incentive density in a zone
439 with a maximum FAR of 5.5 would base all public benefit calculations on the incentive density
440 of 5.0 FAR (5.5-0.5). Thus, being on a site adjacent to a metro station would yield an automatic
441 incentive density of 2.5 FAR (5.0 x 0.50), and full density would be allowed by providing
442 public benefits equal to an additional 50 percent.

443 g) Provision for inspections, maintenance, and enforcement of public
444 benefits provided in return for incentive density must be established in
445 a Site Plan Enforcement Agreement approved by the Department of
446 Permitting Services and by resolution of the Planning Board before
447 the certification of a site plan.

448 h) Table of density incentives:

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Incentive Zoning Table			
Public Benefit	Percent of Incentive Density		Section
	Minimum	Maximum	Reference
<i>Transit Proximity</i>	See section reference		15.82
Connectivity & Mobility			
<u>Community Connectivity</u>	10	20	15.831
<u>Community Garden</u>	5	10	15.832
<u>Parking at the Minimum</u>	[[1]]10	20	15.833
<u>Pedestrian Through-Block Connection</u>	5	10	15.834
<u>Public Parking</u>	20	30	15.835
<u>Transit Access Improvement</u>	10	20	15.836
Diversity			
<u>Adaptive Buildings</u>	15	30	15.841
<u>Affordable Housing: MPDUs</u>	See section reference		15.842
<u>Affordable Housing: WFHUs</u>	See section reference		
<u>Care Center</u>	10	20	15.843
<u>Community Facility</u>	10	20	15.844
<u>Local Retail Preservation</u>	10	20	15.845
<u>Unit Mix and Size</u>	5	10	15.846
Design			
<u>Floor Plate Size</u>	10	20	15.851
<u>Historic Resource Protection</u>	10	20	15.852
<u>Parking [[Below Grade]]Structure</u>	10	20	15.853
<u>[[Podium/]]Tower Setback</u>	5	10	15.854
<u>Public Art</u>	10	20	15.855
<u>Public Plaza/Open Space</u>	5	10	15.856
<u>Streetscape, Off-Site</u>	5	10	15.857
<u>Exceptional Design</u>	10	20	15.858
Environment			
<u>Bio-retention and Stormwater Recharge</u>	5	10	15.861
<u>Conveyed Parkland</u>	10	20	15.862
<u>Dark Skies</u>	5	10	15.863
<u>Energy Efficiency and Generation</u>	10	20	15.864
<u>Green Wall</u>	5	10	15.865

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<u>LEED Rating</u>	<u>10</u>	<u>30</u>	<u>15.866</u>
<u>Rainwater Reuse</u>	<u>5</u>	<u>10</u>	<u>15.867</u>
<u>Transferable Development Rights</u>	<u>10</u>	<u>30</u>	<u>15.868</u>
<u>Tree Canopy</u>	<u>10</u>	<u>20</u>	<u>15.869</u>
<u>Vegetated Area</u>	<u>5</u>	<u>10</u>	<u>15.8610</u>
<u>Vegetated Roof</u>	<u>10</u>	<u>20</u>	<u>15.8611</u>
<u>[[BLTs]]</u>	<u>[[See section reference]]</u>	<u>[[25]]</u>	<u>[[15.87]]</u>

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451 **59-C-15.82. Transit Proximity Incentives.**

452 A project on a site near transit encourages greater transit use and reduces
 453 vehicle miles traveled, congestion, and carbon emissions. The additional
 454 percent of incentive density automatically allowed is as follows:

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

455 **59-C-15.83. Connectivity and Mobility Incentives.**

456 A project that enhances connectivity and mobility encourages pedestrian and
 457 other non-auto travel for short and multi-purpose trips as well as for
 458 commuting. Such a project facilitates social interaction, provides
 459 opportunities for healthier living, and stimulates local businesses.

460 **59-C-15.831. Community Connectivity.**

461 a) The minimum incentive density increase for a building that enhances
 462 community connectivity by locating near existing retail uses or
 463 provides retail uses, requires that:

- 464 1) at least 10 different existing or proposed retail uses with direct
 465 pedestrian access are within 1/2 mile at the time of the sketch
 466 plan application and
- 467 2) at least 35 percent of those uses have a maximum gross floor
 468 area of 5,000 square feet per retail bay and that any newly
 469 provided retail bay [[uses]] square footage remain at or below
 470 that maximum gross floor area for a period of at least 4 years
 471 after the initial use-and-occupancy permit is issued for that use.

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472 b) The maximum increase requires additional benefits, such as a large
473 diversity of retail uses, a greater number of retail shops, provision of
474 services associated with live-work units, or that the required number
475 of retail uses are within ¼ mile.

476 **59-C-15.832 Community Garden.**

477 A community garden allows any resident to grow their own produce, reduce
478 reliance on automobiles, increase water and air quality, and interact with
479 other residents.

480 a) The minimum incentive density increase requires that the garden:
481 1) is located on the subject site or within 500 feet of the subject
482 site;
483 2) provides all garden spaces with at least 12 inches of soil depth
484 and access to water; and
485 3) provides community garden space at a rate equivalent to 1
486 space per 20 dwelling units. Each space must be at least 16
487 square feet. At least 1 out of each 10 spaces must be accessible
488 under ADA standards.

489 b) The maximum increase requires additional features such as a
490 composting facility, additional garden space, seating areas, doubling
491 as a green roof, or additional accessible garden plots.

492 **59-C-15.833. Parking at the Minimum.**

493 a) [[The minimum incentive density increase requires that sites of 1 acre
494 or more provide on-site only the minimum required number of
495 parking spaces.]] The incentive density increase is calculated on a
496 sliding scale from no increase for providing the maximum allowable
497 number of spaces on-site to a maximum of 20% for providing fewer
498 spaces on site.

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499 b) [[The maximum increase requires that sites of less than 1 acre provide
 500 on-site only the minimum required number of parking spaces.]] The
 501 incentive density increase is calculated as follows:

- 502 1) Numerator = maximum # of spaces allowed – actual # of spaces
 503 provided;
 504 2) Denominator = maximum # of spaces allowed – minimum # of
 505 spaces required; and
 506 3) The resulting ratio multiplied by 0.20 is equal to the bonus
 507 density.

508 Example: If a development has a minimum of 50 required spaces and a maximum of 100
 509 allowed spaces and provides 60 spaces: $((100-60)/(100-50)) \times 0.20 = 0.16$, or 16% incentive
 510 density increase.

511 **59-C-15.834. Pedestrian Through-Block Connections.**

512 A through-block connection enhances pedestrian mobility and helps to
 513 create a variety of open spaces, particularly on larger blocks.

514 a) The minimum incentive density increase for a pedestrian through-
 515 block connection requires that:

- 516 1) the pedestrian connection must provide direct access between
 517 streets and may be provided through the first floor of a building
 518 if the property owner grants a [[perpetual]]public access
 519 easement for the walkway;
 520 2) the pedestrian connection must be at least 15 feet in width
 521 unless less is found adequate by the Planning Board due to
 522 exceptional site circumstances;
 523 3) at least 35 percent of the walls facing the interior pedestrian
 524 connection below a height of 8 feet must have clear,

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525 unobstructed windows, unless the Planning Board finds that an
526 alternative design is at least equally safe;

527 4) the pedestrian connection must be open to the public between
528 sunrise and sunset and, where it leads to a level 1 or level 2
529 transit facility or publicly-accessible parking facility within 1/2
530 mile, for the hours of operation of the transit and/or parking
531 facility; and

532 5) retail uses fronting both a pedestrian connection and a street
533 must maintain operable doors from both unless not required by
534 the Planning Board during site plan review due to exceptional
535 site circumstances.

536 b) The maximum increase requires additional benefits such as:

- 537 1) direct connection to parks, transit facilities, or public buildings;
- 538 2) [[transit facilities; public buildings;]]pedestrian connection with
539 accessible retail uses along a majority of its length;
- 540 3) connections increased in width; and/or
- 541 4) integration of public artworks[[integrated into the walk]].

542 **59-C-15.835. Public Parking.**

543 Applicants are encouraged to provide publicly accessible parking spaces for
544 free or at a market rate. The incentive density increase is calculated based
545 on the ratio of publicly accessible parking to private parking provided on site
546 using a sliding scale from zero percent for no publicly accessible parking
547 spaces to a maximum of 20 percent.

548 Example: For a project with 100 total parking spaces, 40 of which are
549 publicly accessible, the incentive density equals 13% ((40/60) x 0.20=0.13
550 or 13%).

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551 [(a) The minimum increase requires providing on-site the difference
552 between the minimum number of required parking spaces and the
553 maximum number of allowed parking spaces as publicly accessible
554 spaces for free or at a market rate.

555 b) The maximum increase requires providing public parking spaces, as
556 required above, in combination with additional improvements, such as
557 constructing those spaces underground or in a structure.]]

558 **59-C-15.836. Transit Access Improvement.**

559 a) The minimum incentive density increase for transit access
560 improvements requires that the improvements:

561 1) are located within 1/2 mile of the proposed development site or,
562 in the case of mobile transit improvements such as a bus
563 shuttle, provide regular access for passengers within 1/2 mile
564 and

565 2) are built to ADA accessibility standards as amended.

566 b) The maximum increase requires additional benefits such as closer
567 access, new access easements, connecting walkways, mezzanines,
568 seating areas, structures for wind/rain protection, or concourse areas.

569 **59-C-15.84. Diversity Incentives.**

570 **59-C-15.841. Adaptive Buildings.**

571 An adaptive building can adjust to a diversity of uses over time, which
572 makes the building more accommodating of mixed uses, more sustainable,
573 and more embedded in the pattern of a community.

574 a) The minimum incentive density increase for an adaptive building
575 requires that:

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- 576 1) the floor to floor dimension must be at least 15 feet for any
- 577 floor(s) with access at grade and at least 12 feet for all other
- 578 floors and
- 579 2) the internal floor plan is based on a structural system allowing
- 580 flexibility of volumes divisible from an[[1]] open floor plate to
- 581 any number of parceled volumes.
- 582 b) The maximum increase requires additional benefits such as that:
- 583 1) the structural system has additive capacity for any available
- 584 density and height that is not used by the building without
- 585 demolition of the structure or
- 586 2) the internal layout is built to allow changes between residential,
- 587 retail, and office uses by minor modifications.

59-C-15.842. Affordable Housing.

- 589 a) All residential development must comply with the requirements of
- 590 Chapters 25A and 25B for the provision of Moderately Priced
- 591 Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs).
- 592 b) Provision of MPDUs above the minimum required grants an incentive
- 593 density increase, providing the following standards are met:
- 594 1) the required number of MPDUs [[increase in density]]is
- 595 calculated on the total number of dwelling units[[incentive
- 596 density]] as required by Chapter 25A and the percent of
- 597 incentive density increase is based on the proposed incentive
- 598 density FAR for the entire project and
- 599 2) [[the MPDUs must be reasonably distributed throughout the
- 600 project; and]]any dwelling units built under this section must
- 601 be controlled under the M[[D]]PDU or WFHU provisions for a
- 602 minimum period of 99 years.

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603 Example: Provision of 14.5 percent MPDUs achieves an incentive density increase of 20 percent
 604 (25-A-5(c)(3)). In the case of a CR4.5[[,]] that proposes full density, that would equal 0.20×4.0
 605 (the incentive density), which is 0.8 FAR.

606 c) Provision of WFHUs grants an incentive density increase at the
 607 following rate: 2 times the percentage of units provided as WFHUs up
 608 to 30 percent.

609 Example: Provision of 5 percent WFHUs achieves an incentive density increase of 10 percent;
 610 provision of 12 percent WFHUs achieves an incentive density increase of 24 percent.

611 **59-C-15.843. Care Center.**

612 a) The minimum incentive density increase for a center for daytime adult
 613 or child care requires a facility for at least 12 users and the general
 614 public must have the opportunity to comprise at least 25 percent of the
 615 users.

616 b) The maximum increase requires additional benefits such as providing
 617 for additional users, a [[safe]]drop-off area, an increase in users from
 618 the general public, and recreation facilities provided above those
 619 required by law.

620 **59-C-15.844. Community Facility.**

621 a) The minimum incentive density increase for a community facility that
 622 helps meet the needs of residents and workers requires that the
 623 community facility:

624 1) is recommended in the applicable master plan or sector plan and
 625 2) is accepted for operation and use by an appropriate public
 626 agency, community association, or nonprofit organization.

627 b) The maximum increase requires further benefits, such as an entrance
 628 to the facility directly on the street, location of the building within 10
 629 feet of a public sidewalk, associated outdoor open space, or

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630 integration into an area with a residential FAR of at least 2.0 (or at
631 least 30 dwelling units per acre).

632 **59-C-15.845. Local Retail Preservation.**

633 Preservation of locally-owned small businesses on site at the time of use-
634 and-occupancy of a proposed development is eligible for incentive density
635 as follows:

636 a) preservation of up to 2 locally-owned small businesses: 10 percent
637 and

638 b) preservation of 3 or more locally-owned small businesses: 20 percent.

639 Exact terms of lease requirements and rental agreements must be established
640 by the site plan enforcement agreement.

641 **59-C-15.846. Unit Mix and Size.**

642 a) The minimum incentive density increase for creating residential
643 buildings with a minimum mix of dwelling unit types (calculated by
644 rounding to the next higher whole number) requires provision of at
645 least:

- 646 1) 7.5 percent as efficiency dwelling units;
- 647 2) 8 percent as one-bedroom dwelling units;
- 648 3) 8 percent as two-bedroom dwelling units; and
- 649 4) 5 percent as three-bedroom or larger dwelling units.

650 b) The maximum increase requires provision of at least (calculated by
651 rounding to the next higher whole number):

- 652 1) 10 percent as efficiency dwelling units;
- 653 2) 10 percent as one-bedroom units;
- 654 3) 10 percent as two-bedroom units; and
- 655 4) 7.5 percent as three-bedroom or larger units.

656 **59-C-15.85. Design Incentives.**

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59-C-15.851. Floor Plate Size.

- a) The minimum incentive density increase for the provision of floor plate restrictions requires that:
 - 1) the floor area of any floor above a height of 120 feet does not exceed 10,000 square feet for residential uses or 19,000 square feet for non-residential uses, or 12,000 square feet for mixed-uses (if not more than 60 percent of a mixed-use floor is used for any single use) and
 - 2) the exterior of the building facing any street or public open space has at least 60 percent glass on the floors with the reduced floor plate.
- b) The maximum increase requires additional benefits, such as providing the reduced floor plates in conjunction with the Exceptional Design factor, providing smaller floor plates, combining this incentive with the tower setback, providing a larger percentage of glass, or integrating sustainable technologies into the architecture.

59-C-15.852. Historic Resource Protection.

- a) The minimum incentive density increase for the preservation of a historic resource that has been designated in the Master Plan for Historic Preservation requires that a preservation strategy for the resource is approved by the Planning Board as part of the site plan enforcement agreement and that a historic area work permit is issued by the Historic Preservation Commission.
- b) The maximum increase requires that other benefits are provided, such as interpretive signs/exhibits, integration and construction of context-appropriate landscapes and settings, or protection of important viewsheds.

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59-C-15.853. Parking [[Below Grade]]in Structures.

- a) The minimum incentive density increase requires that [[sites of 1 acre or more provide]]all on-site parking spaces are provided in structured parking with active uses fronting on all priority retail street frontages, when applicable[[below the average grade of the primary street frontage]].
- b) The maximum increase requires [[that sites of less than 1 acre provide]]all on-site parking spaces are provided below the average grade of the primary street frontage.
- c) A proportional incentive density between the minimum and maximum increase may be granted based on the number of total spaces provided in structured parking above grade to the total number of spaces provided below the average grade of the primary street frontage.

59-C-15.854. [[Podium/]]Tower Setback.

- a) The minimum incentive density increase for the provision of a tower setback requires that the tower must be set back from the first floor building frontage at or below 72 feet and the setback must be at least 6 feet.
- b) The maximum increase requires that the tower setback be at or below 50 feet and that the setback be at least 12 feet.

59-C-15.855. Public Art.

Public art is considered a public benefit because it enhances the quality of place and creates a sense of identity in a community.

- a) The minimum incentive density increase for public art requires that it:
 - 1) enhances the general or specific cultural objectives of the applicable master or sector plan and

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710 2) is [[approved]]reviewed for comment by the Public Arts Trust
711 Steering Committee.

712 b) The maximum increase requires that, in addition to the above
713 requirements, the artwork fulfill at least 5 of the following [[goals as
714 determined by the Public Arts Trust Steering Committee:]]goals:

- 715 1) achieve aesthetic excellence;
- 716 2) ensure an appropriate interaction between the art and the
717 architectural setting in terms of scale, materials, and context;
- 718 3) ensure public access and invite public participation;
- 719 4) encourage collaboration between the artist(s) and other project
720 designers early in the design phases;
- 721 5) ensure long-term durability of permanent works through
722 material selection or a documented maintenance program;
- 723 6) encourage a rich variety of arts including permanent, temporary
724 (revolving), and event programming;
- 725 7) increase public understanding and enjoyment of art through
726 interpretive information and/or programmed events; and
- 727 8) achieve a collection of commissioned art that is unique and
728 contributes in a positive way to the identity of the community.

729 c) A fee instead of public art may be accepted for incentive density as
730 follows:

- 731 1) the minimum fee is calculated on 1 percent of the
732 development's projected cost;
- 733 2) the fee is paid to the Public Arts Trust Steering Committee;
- 734 3) the fee is used for installation, management, and maintenance
735 of public art at the discretion of the Public Arts Trust Steering

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736 Committee, with preference given to the policy area where the
737 proposed development is located; and

738 4) the incentive density is equal to a 5 percent increase for every 1
739 percent of projected development cost paid to the Public Arts
740 Trust, up to 20 percent.

741 **59-C-15.856. Public [[Plaza/]]Open Space.**

742 Public open space[[Plazas are]] is an important public amenity[[ies]] and
743 creates interesting spaces and active gathering areas.

744 a) The minimum incentive density increase for any public open
745 space[[plaza]] requires that:

746 1) it[[the plaza]] is directly accessible to and visible from a street;

747 2) it[[the plaza]] must be open to the public at least between
748 sunrise and sunset;

749 3) no proposed loading or parking facilities should be directly
750 adjoining to or visible from the public open space[[below a
751 height of the fourth floor]]; and

752 4) it[[the plaza]] must be in addition to any public use space
753 required by the development standards or other minimum
754 public use[[open]] space requirement of this Division.

755 b) The maximum increase requires that the above requirements are met,
756 in addition to the following:

757 1) its[[The plaza's]] width must be at least 50 feet for the majority
758 of its length or depth;

759 2) where the public open space[[plaza]] is provided as part of a
760 redevelopment, buildings facing the public open space[[plaza]]
761 must be designed so that:

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- 762 A) the walls of any non-residential floor area facing the
- 763 public open space[[plaza]] must have windows on at least
- 764 60 percent of the façade below a height of 40 feet; and
- 765 B) the main entry to any dwelling units is from a wall facing
- 766 the public open space[[plaza]]; and
- 767 3) the public open space[[plaza]] should contain seating, trash
- 768 receptacles, landscaping, and other amenities such as water
- 769 features, kiosks, and passive recreation areas.

59-C-15.857. Streetscape, Off-Site.

Streetscape improvements enhance the pedestrian experience and better connect buildings to the public spaces.

- 773 a) The minimum incentive density increase for streetscape
- 774 improvements requires that the following criteria are met:
- 775 1) the improvements must be located within 1/2 mile of the
- 776 subject site and
- 777 2) the improvements are equal to 18 percent of the net lot.
- 778 b) The maximum increase requires that the improvements be equal to at
- 779 least 36 percent of the net lot area.

59-C-15.858. Exceptional Design.

The minimum incentive density increase for high-quality site and architectural design requires that at least 3 of the following criteria are met; the maximum density increase requires that at least 5 of the following criteria are met:

- 785 a) provides innovative solutions in response to the architectural context
- 786 and surrounding landscape, for example, by rotating floor plates for
- 787 views or reconciling offset street-walls;

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- 788 b) creates a sense of place that will serve as a landmark in the
789 community, for example, by creating a distinguishing element that is
790 visible from an important view or at a gateway to an area;
- 791 c) enhances the public realm in a distinct and original manner, for
792 example, by using existing materials and forms in new ways to
793 provide continuity and contrast;
- 794 d) adds to the diversity of the built realm within the community, for
795 example, by introducing new materials, building methods, or design
796 styles;
- 797 e) uses design solutions to make compact/infill living, working, and
798 shopping environments pleasurable and desirable, for example, by
799 retrofitting surface parking lots and single-use retail malls or creating
800 multi-use, pedestrian-dominated realms in previous auto-oriented
801 areas; and
- 802 f) integrates environmentally sustainable solutions, for example, by
803 using stormwater management facilities that incorporate best
804 management practices in an apparent and observable way or
805 integrating passive solar features into the visible structure of a
806 building or site.

807 **59-C-15.86. Environment Incentives.**

808 **59-C-15.861. Bio-retention and Stormwater Recharge.**

- 809 a) The minimum incentive density increase for the use of bio-retention
810 and recharge facilities requires that at least 25 percent of projected
811 stormwater ~~[[outfall]]~~runoff for a 10-year event be contained and
812 recharged on site or within ¼ mile of the site.
- 813 b) The maximum increase requires that at least 50 percent of projected
814 stormwater runoff for a 10-year event be contained and recharged.

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815 **59-C-15.862. Conveyed Parkland.**

- 816 a) The minimum incentive density increase for land conveyed to the M-
817 NCPPC for inclusion in or provision of parkland, trail area, or other
818 master-planned Parks' use requires conveyance of at least of 15
819 percent of the gross lot area.
- 820 b) The maximum increase requires conveyance of at least 30 percent of
821 the gross lot area.

822 **59-C-15.863. Dark Skies.**

- 823 a) The minimum incentive density increase for dark skies-compliant
824 projects requires that they be built and maintained in conformance
825 with the standards established by the International Dark-Sky
826 Association as amended.
- 827 b) The maximum increase requires that the exterior lighting plan be
828 integrated into an energy efficiency plan for the entire property
829 submitted and approved by the Planning Board with a site plan
830 application.

831 **59-C-15.864. Energy Efficiency and Generation.**

- 832 a) The minimum density incentive increase for the use of on-site
833 renewable energy generation requires that buildings must meet the
834 minimum energy efficiency standards of 17.5 percent for new
835 buildings, 10.5 percent for existing buildings, or generate at least 1.5
836 percent of their energy on-site or from a renewable energy generation
837 facility located on another property within the same master or sector
838 plan area.
- 839 b) The maximum increase requires additional benefits such as greater
840 energy efficiency and the generation of at least 2.5 percent of energy

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841 on-site or from a renewable energy generation facility located on
842 another property within the same master or sector plan area.

843 **59-C-15.865. Green Walls**

844 a) The minimum incentive density increase for a green wall requires that
845 it:

846 1) must be designed, installed, and maintained to cover at least 30
847 percent of the area of an above-grade blank wall or parking
848 garage wall facing a street or plaza; and

849 2) must be found to add to the aesthetic quality and environmental
850 sustainability of the project.

851 b) The maximum increase requires additional benefits such as a greater
852 percent of coverage, southern or western exposure, the use of plants
853 with varying flowering seasons, or integration into an overall energy
854 or environmental site design program.

855 **59-C-15.866. LEED Rating.**

856 A LEED-rated building or equivalent rating system approved under Chapter
857 8 Article VII is eligible for an incentive density increase if it meets any
858 continuing requirements necessary to maintain that status.

859 [[<http://www.usgbc.org/Default.aspx>]] The amount of incentive density
860 increase is equal to the following:

861 a) LEED Silver: 10 percent for non-residential; 15 percent for
862 residential;

863 b) LEED Gold: 20 percent for non-residential; 25 percent for residential;
864 and

865 c) LEED Platinum: 30 percent for non-residential and residential.

866 **59-C-15.867. Rainwater Reuse.**

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- 867 a) The minimum incentive density increase for the collection of
868 rainwater for on-site irrigation, grey-water use, or filtration for re-use
869 requires that a minimum of 25 percent of projected rainwater for a 10-
870 year event be collected and used on-site or within ¼ mile of the site.
871 b) The maximum increase requires that at least 50 percent of projected
872 rainwater for a 10-year event be collected and used.

873 **59-C-15.868. Transferable Development Rights.**

874 The incentive density increase for the purchase of transferable development
875 rights (TDRs) must meet the following:

- 876 a) the purchase must be executed and recorded before approval of a
877 record plat;
878 b) the use of this incentive must be for development on land
879 recommended as a TDR receiving area in the appropriate master or
880 sector plan;
881 c) TDRs must be purchased in increments of 10; and
882 d) the incentive density increase is equal to 10 percent for every 10
883 TDRs purchased, up to 30 percent.

884 **59-C-15. 869. Tree Canopy.**

- 885 a) The minimum incentive density increase for the provision of tree
886 canopy requires coverage of at least 25 percent of the on-site open
887 space at 15 years growth.
888 b) The maximum increase requires coverage of at least 50 percent of the
889 on-site open space at 15 years growth.

890 **59-C-15.8610. Vegetated Area.**

- 891 a) The minimum incentive density increase for a vegetated area requires
892 that the following criteria are met:

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- 893 1) the area must be in addition to any required on-site open space
894 or any vegetated roof incentive;
895 2) the area must replace at least 5,000 square feet of impervious
896 area;
897 3) the area provides at least 12 inches of soil depth; and
898 4) the area is planted with well-maintained vegetation.
899 b) The maximum increase requires additional benefits, such as larger
900 area or greater soil depth.

901 **59-C-15.8611. Vegetated Roof.**

- 902 a) The minimum incentive density increase for a vegetated roof requires
903 that the:
904 1) vegetated roof must cover at least 33 percent of the roof of the
905 building, excluding any space occupied by mechanical
906 equipment; and
907 2) soil or media depth must be at least 4 inches.
908 b) The maximum increase requires coverage of at least 60 percent of the
909 roof area.

910 **59-C-15.87. Special Regulations for Purchase of Building Lot**

911 **Termination (BLT) Development Rights.**

912 Except for residential development subject to the requirement of workforce
913 housing under Section 59-A-6.18, the approval of an application for any
914 gross floor area in an optional method of development project must be
915 subject to the following requirements:

- 916 a) 12.5 percent of any floor area above the maximum allowed under the
917 standard method of development must be supported through the
918 purchase by the applicant of a BLT easement through a contribution
919 to the Agricultural Land Preservation Fund under Chapter 2B for

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920 purchase of a BLT easement on real property to preserve agricultural
921 land in the County according to the following formulas:

- 922 1) one buildable RDT lot must be extinguished for each 9,000
- 923 square feet of gross residential floor area;
- 924 2) one buildable RDT lot must be extinguished for each 7,500
- 925 square feet of gross non-residential floor area; and
- 926 3) the BLT requirement does not apply to residential development
- 927 in areas subject to the workforce housing program under
- 928 Section 59-A-6.18 and Chapter 25B.

929 b) If the applicant for optional method of development under the CR
 930 zones cannot purchase an easement or the amount of density to be
 931 attributed to a BLT easement is a fraction of the applicable floor area
 932 equivalent, the Planning Board must require the applicant to pay the
 933 Agricultural Land Preservation Fund an amount set annually by
 934 Executive Regulation.

935 [[a) A development under the Optional Method must purchase building
 936 lot termination (BLT) easements under Chapter 2B, or a contribution
 937 must be made to the Agricultural Land Preservation Fund under
 938 Chapter 2B, equal to 12.5 percent of the incentive density floor area
 939 using the following formula:

- 940 1) one BLT easement is required for each 9,000 square feet of
- 941 residential floor area;
- 942 2) one BLT easement is required for every 7,500 square feet of
- 943 non-residential floor area.

944 b) When a BLT easement cannot be purchased or the amount of floor
 945 area attributed to a building lot termination easement is a fraction of
 946 the floor area equivalent, payment must be made to the Agricultural

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947 Land Preservation Fund according to the rate set annually by
948 executive regulation.]]

949 **59-C-15.9. Existing Approvals.**

- 950 a) One or more lawfully existing buildings or structures on a site and the uses
951 therein, which predate the applicable sectional map amendment, are
952 conforming-structures or uses, and may individually or collectively be
953 continued, renovated, repaired, or reconstructed to the same size and
954 configuration or enlarged up to a total of 10 percent above the total existing
955 floor areas of all buildings and structures on a site or 30,000 square feet,
956 whichever is less, and does not require a site plan. Enlargements in excess
957 of the limitations in this subsection will require compliance with the full
958 provisions of this Division.]]A lawfully existing building or structure and
959 the uses therein, which predates the applicable sectional map amendment, is
960 a conforming structure or use, and may be continued, renovated,
961 reconstructed to the same size and configuration, or enlarged up to 10
962 percent above the existing floor areas or 30,000 square feet, whichever is
963 less, and does not require a site plan. A larger addition requires compliance
964 with the full provisions of this Division.]]
- 965 b) A project that received an approved development plan under Division 59-D-
966 1 or schematic development plan under Division 59-H-2 before the
967 enactment of the CR zones may proceed under the binding elements of the
968 development plan and will thereafter be treated as a lawfully existing
969 building and may be renovated or reconstructed under Subsection (a) above.
970]]Such projects may be amended as allowed under Division 59-D-1 or 59-H-
971 2, under the provisions of the previous zone; however, any increase in the
972 total floor area or building height beyond that allowed by Subsection (a)
973 above requires full compliance with the full provisions of this Division.]]

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974 Such development plans or schematic development plans may be amended
975 as allowed under Division 59-D-1 or 59-H-2 under the provisions of the
976 previous zones; however, any incremental increase in the total floor area
977 beyond that allowed by Subsection (a) above or any incremental increase in
978 the building height beyond 15 feet requires, with respect to the incremental
979 increase only, full compliance with the provisions of this Division.

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

986 d) A project which has had a preliminary or site plan approved before the
987 applicable sectional map amendment may be built or altered at any time,
988 subject to either the full provisions of the previous zone or this division, at
989 the option of the owner. If built under the previous approval, it will be
990 treated as a lawfully existing building and may be renovated or reconstructed
991 under Subsection (a) above.

992
993 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of
994 Council adoption.

995
996 This is a correct copy of Council action.

997
998 _____
999 Linda M. Lauer, Clerk of the Council

TESTIMONY OF COUNTY EXECUTIVE ISLAH LEGGETT

ON ZTA 09-08 Establishing the CR Zones

October 27, 2009

Good evening Council President Andrews and members of the Council. My name is Gary Stith and I am pleased to provide testimony on behalf of County Executive Leggett on ZTA 09-08 which would establish the mixed-use CR Zones.

County Executive Leggett finds the concept of the CR Zones to be an innovative approach to promote smart growth and encourage quality higher density mixed-use development near transit through incentives. While the County Executive agrees with these objectives and believes that there is merit to the concept of a CR zone, the proposed Zoning Text Amendment still needs considerable work.

The draft ZTA for the CR Zones is ambitious and well-intentioned but raises several legal issues such as excessive, and in some cases improper, delegation of authority, lack of standards and even constitutional questions which must be worked out prior to adoption. As examples of some of the issues, the proposed zoning text amendment delegates significant authority to the Planning Board on an extensive list of density incentives without establishing standards to govern how the Planning Board is to exercise its discretion. The ZTA delegates decisions about spending to an advisory task force. It allows the Planning Board to waive street retail frontages based on various loose criteria. It is in direct conflict with a ZTA adopted last year pertaining to mid-block paths. And, the ZTA gives favored status to locally owned businesses to occupy retail space in a development, which while very attractive, raises legal concerns.

There are provisions of this ZTA that provide "density incentives" for complying with existing statutory requirements; and there are some incentives that could be in conflict with existing County Code. Under Priority Retail Street Frontage the requirement for shop entrances spaced at minimal distances in order to activate the street could create conflicts with Building Code egress requirements. Under Floor Plate Size requirements for some facades to be 60 percent glass could conflict with the Fire Code. Montgomery County has not adopted Dark Skies standards which should not be in the Zoning Ordinance, but in other County Codes.

Some of the incentives as written are ambiguous or can change in the future making it difficult to enforce over time. This includes the requirement that "at least 10 different existing or proposed retail uses with direct pedestrian access are within ½ mile". There are other provisions that would require ongoing monitoring to ensure compliance after a development is completed such as who uses day care facilities.

Several of the incentives are already requirements in County Code or are going to be included in changes to the Codes that are in the process of being drafted. DEP has indicated that

many of the environmental incentives in this ZTA are similar to the required standards in the Maryland 2007 Stormwater Management Act. Compliance with law is a mandate, not an incentive. There are other practices that have been classified by the State that can be used for stormwater management but are not included in the incentives. Stormwater Management is delegated to the Department of Environmental Protection and decisions relating to it must be made by the administrative agency legally charged with enforcement and application of the law and with expertise on these matters.

The intention for the future use of the CR Zones is to apply them wherever mixed-use development is desired. It can not be a one size fits all and still be effective in achieving the desired results. It is being considered not only for White Flint, a high density area at a Metro station, but in Kensington and Takoma/Langley Crossroads as well, two very different areas in terms of the desired character of development and the strength and quality of the market. This difference is recognized in the plans for these areas. However, there needs to be a stronger link between the Master Plans and the CR Zones that goes beyond setting the FAR and height limits. The Master Plans should indicate what amenities are desired and which incentives in the CR Zone are favored and will result in the type and character of development that is desired. The Planning Board has indicated that this will be accomplished through design guidelines, but these guidelines will not have force of law and have not been proposed to go through the same vetting with the community and the Council as the Master Plans.

As I said at the outset, Mr. Leggett supports the goals that the Planning Board is trying to achieve with the proposed ZTA. There are however numerous and significant issues yet to be worked out. The County Executive is very concerned that pending master plans propose to employ the CR zones, yet there is much work still to be done in order for the CR zone to be acceptable. Mr. Leggett urges the Council and the Planning Board to identify alternate zones for these master plans so that they are not delayed as the CR zone is sorted out. Executive staff will provide technical comments to the Council to help sort through these issues. This zone needs to be clear and understandable, defensible, enforceable, transparent, and objective in its application. The CR Zones should result in quality high-density mixed-use development near transit. The County Executive wants a zoning ordinance that will accomplish these important objectives for the future.

City of Takoma Park, Maryland

3

Office of the City Manager

Telephone: (301) 891-7100
Fax: (301) 270-8794



7500 Maple Avenue
Takoma Park, MD 20912

October 27, 2009

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

RE: Public Hearing Testimony
Zoning Text Amendment 09-08, Commercial Residential (CR) Zones

Dear President Andrews and Members of the Council;

I am submitting, as a supplement to my testimony provided today, a copy of City of Takoma Park, Maryland Resolution No. 2009-67, *Recommending Adoption of the Zoning Text Amendment No. 09-08 Commercial Residential (CR) Zones*. The Resolution, adopted by the Takoma Park City Council on Monday, October 26, 2009, expresses the Council's overall endorsement of the proposed Commercial Residential Zones and identifies specific recommendations for changes to the proposed text amendment which we believe will further our shared goals to provide for the development of environmentally sustainable mixed use commercial centers that are walkable, diverse, and compact.

If you have any questions regarding the Council's position, or would like clarification of the recommendations included in the accompanying Resolution, please contact City Manager, Barbara B. Matthews at 301.891.7230.

Thank you for your consideration of our comments. We look forward to continuing to work with you to ensure the appropriate redevelopment of the region.

Sincerely,

Councilmember Donna Victoria
City of Takoma Park – Ward 6

Enclosure

Introduced by: Councilmember Clay

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION NO. 2009-67

**RECOMMENDING ADOPTION OF THE ZONING TEXT AMENDMENT NO. 09-08
COMMERCIAL/ RESIDENTIAL (CR) ZONES**

(MONTGOMERY COUNTY)

- WHEREAS, the Zoning Text Amendment No. 09-08 is an amendment to the Montgomery County Zoning Ordinance establishing a new Commercial/Residential (CR) zone, its intent, allowed land uses, development methods, general requirements, development standards, density incentives, and approval procedures; and
- WHEREAS, the Montgomery County Council is holding a public hearing on October 27, 2009 to solicit comment on the proposed amendment; and
- WHEREAS, the CR zone would regulate future growth and redevelopment near transit facilities and in established commercial areas in Montgomery County, including areas included in the Takoma/Langley Crossroads Sector Plan; and
- WHEREAS, the Council of the City of Takoma Park has reviewed and discussed the Zoning Text Amendment and its impact on the future growth and development of Takoma Park; and
- WHEREAS, the Council has advocated for and strongly supports the development method included in the CR zones, which encourage the development of environmentally sustainable mixed use commercial centers that are walkable, diverse, and compact; and
- WHEREAS, the Council supports the proposed "public benefit groups" included in the CR zones, particularly those which encourage the preservation of local businesses, development of affordable housing, and the incorporation of environmentally-sensitive design features; and
- WHEREAS, Takoma Park is generally built out, providing few new green field development opportunities in the community; and
- WHEREAS, the Council's goal is to foster infill development; and
- WHEREAS, the Council supports the contributions of the many smaller, locally owned and operated businesses located within Takoma Park and throughout the region,

which provide a diversity of goods and services to the community and are often operating out of smaller buildings located on parcels of less than one acre in size; and

WHEREAS, for many years, even with the flexible zoning and financial incentives currently available to new and expanding business owners and commercial real estate developers, the City has found it to be difficult to attract new investment in the community and believes that additional public incentives are needed to facilitate the redevelopment of its aging and often obsolete commercial districts; and

WHEREAS, to achieve pedestrian orientation and compact development form, the City strongly believes that the development standards included in the CR zones should be flexible, enhance pedestrian mobility, and encourage opportunities for shared vehicular access and parking facilities; and

WHEREAS, the structure of the density incentives included in the CR zones are less favorable when applied to parcels less than one acre in size, many of which are either unlikely to be awarded or not applicable, or otherwise cost-intensive and generally burdensome to the owners of smaller properties; and

WHEREAS, the Council wishes to provide comment to the Montgomery County Council on the impact of the proposed CR zones on future development in Takoma Park.

NOW, THEREFORE, BE IT RESOLVED THAT the Council of the City of Takoma Park supports the adoption of the Zoning Text Amendment No. 09-08 Commercial/Residential (CR) Zone by the Montgomery County Planning Board, conditioned upon the following changes to the draft Zoning Text Amendment:

1. *59-C-15.5 Land Uses*: Reclassify “Automobile repair and services,” and “Automobile rental services, excluding storage of vehicles and supplies” currently listed as Permitted Uses” as “Special Exception Uses.”
2. *59-C-15.5 Land Uses*: Delete “Automobile sales, indoors and outdoors” from the list of Permitted Uses.
3. *59-C-15.65.g Parking*: Amend the minimum landscape standards for parcels adjacent to, or located within a Commercial, Industrial, or Mixed Use Zone to allow for more flexibility when reviewing projects which include design features such as shared driveway access and parking.
4. *59-C-15.73.a Setbacks*: Amend the minimum side building setback from an agricultural or residential lot to allow for more flexibility in the placement of the

BE IT FURTHER RESOLVED that the Council of the City of Takoma Park expresses its appreciation to the Montgomery County Council and the Montgomery County Planning Board for its recognition of the importance of an updated, innovative planning tool that promotes transit-oriented development and for providing density incentives which encourage diversified, compact, and environmentally sustainable development.

Adopted this 26th day of October, 2009.

ATTEST:


Jessie Carpenter, CMC
City Clerk

**General Recommendations for revisions to the draft
Zoning Text Amendment 09 08 Commercial/Residential (CR) Zones
City of Takoma Park**

1. *59-C-15.3. Definitions Specific to the CR Zones. Locally-owned small business:* Definition of local as “Montgomery County or any adjacent jurisdiction” is not well-defined. Recommend revision to adopt a numeric distance to define “local.”
2. *59-C-15.62.a Priority Retail Street Frontages:* The requirement to provide on-street parallel parking is not flexible and does not take into consideration individual street configuration. Amend the requirement to allow flexibility.
3. *59-C-15.63. Streetscape:* Specify that streetscape improvements be consistent with the applicable master or sector plan and its urban design guidelines.
4. *59-C-15.65.f Parking:* Drive-through services do not contribute to a walkable, mixed use community and a positive pedestrian experience. Specify that drive-through services drive aisles are not to be located on Priority Retail Streets.
5. *59-C-15.74.a Public Use Space:* Revise “net tract area” to “net lot area” to be consistent with the accompanying table and to allow reference to the Montgomery County Zoning Ordinance Definitions. Net tract area is currently not defined in the Zoning Ordinance Sec. 59-A-2.1. Definitions.
6. *59-C-15.845. Local Retail Preservation:* Clarify whether this provision applies to all locally owned small businesses or just locally owned retail small businesses.
7. *59-C-15.865. Green Walls:* Provide a definition of a green wall.

Ordinance No:
Zoning Text Amendment No: 09-08
Concerning: Commercial/Residential (CR) Zones -
Establishment
Draft No. & Date: 3 - 9/15/09
Introduced: September 22, 2009
Public Hearing:
Adopted:
Effective:

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

By: District Council at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

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

2 * * *

3 **DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL (CR) ZONES**

4
5 **59-C-15.1. Zones Established.**

6 **59-C-15.11.** The Commercial/Residential (CR) zones are established as
7 combinations of a sequence of four factors: maximum total floor area ratio
8 (FAR), maximum non-residential FAR, maximum residential FAR, and
9 maximum building height. These zones are identified by a sequence of
10 symbols: CR, C, R, and H, each followed by a number where:

- 11 a) the number following the symbol “CR-“ is the maximum total FAR;
12 b) the number following the symbol “C” is the maximum non-residential
13 FAR;
14 c) the number following the symbol “R” is the maximum residential
15 FAR; and
16 d) the number following the symbol “H” is the maximum building
17 height in feet.

18 The examples in this Division do not add, delete, or modify any provision of
19 this Division. Examples are provided only to demonstrate particular
20 applications of the provisions in the Division. Examples are not intended to
21 limit the provisions.

22 **59-C-15.12.** Each unique sequence of CR, C, R, and H is established as a
23 zone under the following limits:

- 24 a) the maximum total FAR must be established as an increment of 0.25
25 from 0.5 up to 8.0;
26 b) the maximum non-residential and residential FAR must be
27 established as an increment of 0.25 from 0.25 up to 7.5;

28 c) the maximum height must be established as an increment of 5 feet up
29 to 100 feet and an increment of 10 feet from 100 feet up to 300 feet;
30 and

31 d) permitted density may be averaged over 2 or more directly abutting or
32 confronting lots in the same CR zone, provided that:

33 1) the lots are subject to the same sketch plan;

34 2) the lots are created by the same preliminary subdivision plan;

35 3) the maximum total density and nonresidential and residential
36 density limits apply to the entire development subject to the
37 sketch plan and subdivision plan, not to individual lots;

38 4) no building may exceed the maximum height set by the zone;

39 5) public benefits must be provided in proportion to any phased
40 development on individual lots; and

41 6) the resulting development must conform to the design and land
42 use objectives of the applicable master or sector plan and
43 design guidelines.

44 **59-C-15.13.** The CR zones can only be applied by sectional map
45 amendment in conformance with the zoning recommendations of an
46 approved and adopted master or sector plan.

47 *Examples:*

- 48 • An area zoned CR-2.0, C1.0, R1.0, H80 allows a total FAR of 2.0, with maximum non-
49 residential and residential FARs of 1.0, thereby requiring an equal mix of uses to obtain
50 the total FAR allowed. The height for any building in this zone is limited to 80 feet.
- 51 • An area zoned CR-6.0, C3.0, R5.0, H200 allows a residential FAR up to of 5.0, whereas
52 non-residential density is only allowed an FAR of up to 3.0, and a mix of the two uses
53 could yield a total FAR of 6.0. This combination allows for flexibility in the market and
54 shifts in the surrounding context. The height for any building in this zone is limited to
55 200 feet.

- An area zoned CR-4.0, C4.0, R4.0, H160 allows the ultimate flexibility in the mix of uses, even buildings with no mix, because the maximum allowed non-residential and residential FARs are both equivalent to the total maximum FAR allowed. The height for any building in this zone is limited to 160 feet.

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

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

- a) implement the policy recommendations of applicable master and sector plans;
- b) target opportunities for redevelopment of single-use areas and surface parking lots with a mix of uses;
- c) reduce dependence on the automobile by encouraging development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities;
- d) encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;
- e) establish the maximum density and building height for each zone, while retaining appropriate development flexibility within those limits; and
- f) standardize optional method development by establishing minimum requirements for the provision of the public benefits that will support and accommodate density above the standard method limit.

59-C-15.3. Definitions Specific to the CR Zones.

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

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

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

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

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

99 **LEED:** the series of Leadership in Energy and Environmental Design (LEED)
100 rating systems developed by the Green Building Council as amended.

101 **Locally-owned small business:** a commercial business that:

- 102 **a)** is majority-owned by a resident of Montgomery County or any
103 adjacent jurisdiction; and
- 104 **b)** meets the size standards as determined by the Small Business
105 Administration's Table of Small Business Size Standards (SBA Table)
106 or is a franchised company with total holdings by the local-owner that
107 meets the size standards of the Table.

108 **Live/Work unit:** Buildings or spaces within buildings that are used jointly for
109 commercial and residential purposes where the residential use of the space is
110 secondary or accessory to the primary use as a place of work.

111 **Manufacturing and production, artisan:** The manufacture and production of
112 commercial goods by a skilled manual worker or craftsman, such as jewelry,
113 metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food
114 products.

115 **Priority retail street frontage:** Frontage along a right-of-way identified in a
116 master or sector plan to be developed with street-oriented retail to encourage
117 pedestrian activity.

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

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

123 **Recreational facilities, participatory, indoor:** Facilities used for indoor sports
124 or recreation. Spectators would be incidental on a nonrecurring basis. Such
125 uses typically include bowling alleys, billiard parlors, indoor tennis and
126 handball courts, and health clubs.

127 **Recreational facilities, participatory, outdoor:** Facilities used for outdoor
128 sports or recreation. Spectators would be incidental on a nonrecurring basis.
129 Such uses typically include driving ranges, miniature golf courses, swimming
130 pools, and outdoor ice skating rinks.

131 **Seasonal Outdoor Sales:** A lot or parcel where a use or product is offered
132 annually for a limited period of time during the same calendar period each year.

133 The availability or demand for the use or product is related to the calendar
134 period, such as Christmas trees, pumpkin patches, or corn mazes.

135 **Transit proximity:** Level 1 proximity is based on the location of a project with
136 access to an existing or planned Metrorail Station. Level 2 proximity is based
137 on the location of a project with access to an existing or planned MARC
138 Station, light rail station, or a stop along a transportation corridor with fixed
139 route bus service where service intervals are no longer than 15 minutes during
140 peak commute hours. A project adjacent or confronting a transit station or stop
141 shares a property line, easement line, or is only separated by a right-of-way
142 from a transit station or stop. In addition to a project that is adjacent or
143 confronting, a project is also considered to have access to a transit facility if all
144 parcels and lots within the project's gross tract area have no more than 25
145 percent of their area farther than the applicable distance from the transit station
146 or stop and if not more than 10 percent of the residential units in the project are
147 farther than the applicable distance from the station or stop. A planned transit
148 station or stop must be funded for construction within the first 4 years of the
149 Consolidated Transportation Program or the Capital Improvement Program. If
150 a project qualifies for more than one transit proximity level, the project may
151 only take incentive density for one of the qualifying benefits.

152 **59-C-15.4. Methods of Development and Approval Procedures.**

153 Two methods of development are available under the CR zones.

154 **59-C-15.41. Standard Method.**

155 Standard method development must comply with the general requirements
156 and development standards of the CR zones. A site plan approval under
157 Division 59-D-3 is required for a standard method development project only
158 if:

- 159 a) the gross floor area exceeds 10,000 square feet;
- 160 b) any building or group of buildings contains 10 or more dwelling
- 161 units; or
- 162 c) the proposed development generates 30 or more new peak-hour trips.

163 **59-C-15.42. Optional Method.**

164 Optional method development must comply with the general requirements
165 and development standards of the CR zones and must provide public
166 benefits under Section 59-C-15.8 to obtain the full densities and height
167 allowed by the zone. A sketch plan and site plan are required for any
168 development using the optional method. A sketch plan must be filed under
169 the provisions below; a site plan must be filed under Division 59-D-3. Any
170 required preliminary subdivision plan must be submitted concurrently with
171 the site plan.

- 172 a) Contents of a sketch plan:
- 173 1) justification statement for optional method development
- 174 addressing the requirements and standards of this Division,
- 175 how the development will further the objectives of the
- 176 applicable master or sector plan, and how the development will
- 177 be more efficient and effective than the standard method of
- 178 development;
- 179 2) total FAR, conceptual uses and maximum densities per use;
- 180 3) building massing, height, public use and other open spaces, and
- 181 the relationship of proposed buildings to adjacent buildings;
- 182 4) general vehicular, pedestrian, and cyclist circulation and
- 183 access;

- 184 5) table of proposed public benefits and incentive density
185 requested for each benefit; and
186 6) general phasing of structures, uses, public benefits, and site
187 plans.
- 188 b) Procedure for a sketch plan:
- 189 1) Before filing a sketch plan application, an applicant must
190 comply with the provisions of Section 4 of the Manual for
191 Development Review Procedures for Montgomery County, as
192 amended, that concern the following procedures:
- 193 (a) notice;
194 (b) holding a public meeting; and
195 (c) posting the site of the submission.
- 196 2) The submittal, review procedure, and fees for a sketch plan are
197 the same as a pre-application submission under Section 50-
198 33A(a), except that there is no requirement to submit a
199 preliminary subdivision plan within 90 days.
- 200 3) The Planning Board may require some elements of the sketch
201 plan to be binding on any subsequent site plans.

202 **59-C-15.5. Land Uses.**

203 No use is allowed in the CR zones except as indicated below:

- 204 - Permitted Uses are designated by the letter “P” and are permitted
205 subject to all applicable regulations.
- 206 - Special Exception Uses are designated by the letters “SE” and may be
207 authorized as special exceptions under Article 59-G.

a) Agricultural	
<u>Farm and country markets</u>	<u>P</u>
<u>Farm, limited to crops, vegetables, herbs, and ornamental plants</u>	<u>P</u>
<u>Nursery, horticultural – retail or wholesale</u>	<u>P</u>
<u>Seasonal outdoor sales</u>	<u>P</u>
b) Residential	
<u>Dwellings</u>	<u>P</u>
<u>Group homes, small or large</u>	<u>P</u>
<u>Hospice care facilities</u>	<u>P</u>
<u>Housing and related facilities for senior adults or persons with disabilities</u>	<u>P</u>
<u>Life care facilities</u>	<u>P</u>
<u>Live/Work units</u>	<u>P</u>
<u>Personal living quarters</u>	<u>P</u>
c) Commercial Sales and Service	
<u>Advanced technology and biotechnology</u>	<u>P</u>
<u>Ambulance or rescue squads</u>	<u>P</u>
<u>Animal boarding places</u>	<u>SE</u>
<u>Automobile filling stations</u>	<u>SE</u>
<u>Automobile rental services, excluding storage of vehicles and supplies</u>	<u>P</u>
<u>Automobile repair and services</u>	<u>P</u>
<u>Automobile sales, indoors and outdoors</u>	<u>P</u>
<u>Clinic</u>	<u>P</u>
<u>Conference centers</u>	<u>P</u>
<u>Eating and drinking establishments</u>	<u>P</u>
<u>Health clubs and gyms</u>	<u>P</u>
<u>Home occupations, major</u>	<u>SE</u>
<u>Home occupations, registered and no-impact</u>	<u>P</u>
<u>Hotels and motels</u>	<u>P</u>
<u>Laboratories</u>	<u>P</u>
<u>Dry cleaning and laundry pick-up stations</u>	<u>P</u>
<u>Offices, general</u>	<u>P</u>
<u>Recreational facilities, participatory, indoor</u>	<u>P</u>
<u>Recreational facilities, participatory, outdoor</u>	<u>SE</u>
<u>Research, development, and related activities</u>	<u>P</u>
<u>Retail trades, businesses, and services of a general commercial nature</u>	<u>P</u>
<u>Self-storage facilities</u>	<u>SE</u>
<u>Veterinary hospitals and offices without boarding facilities</u>	<u>P</u>
<u>Warehousing, not including self-storage, less than 10,000 square feet</u>	<u>P</u>
d) Institutional & Civic	
<u>Charitable and philanthropic institutions</u>	<u>P</u>
<u>Cultural institutions</u>	<u>P</u>

<u>Day care facilities and centers</u>	<u>P</u>
<u>Educational institutions, private</u>	<u>P</u>
<u>Hospitals</u>	<u>P</u>
<u>Parks and playgrounds, private</u>	<u>P</u>
<u>Private clubs and service organizations</u>	<u>P</u>
<u>Publicly owned or publicly operated uses</u>	<u>P</u>
<u>Religious institutions</u>	<u>P</u>
e) <u>Industrial</u>	
<u>Manufacturing and production, artisan</u>	<u>P</u>
<u>Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and projects resulting from biotechnical and biogenetic research and development</u>	<u>P</u>
<u>Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment</u>	<u>P</u>
f) <u>Other</u>	
<u>Accessory buildings and uses</u>	<u>P</u>
<u>Bus terminals, no-public</u>	<u>P</u>
<u>Parking garages, automobile</u>	<u>P</u>
<u>Public utility buildings, structures, and underground facilities</u>	<u>P</u>
<u>Radio and television broadcast studios</u>	<u>P</u>
<u>Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms</u>	<u>P</u>

209 **59-C-15.6. General Requirements.**

210 Development in the CR zone must comply with the following requirements.

211 **59-C-15.61. Master Plan and Design Guidelines Conformance.**

212 Development that requires a site plan must be consistent with the applicable
 213 master or sector plan and any design guidelines adopted by the Planning
 214 Board.

215 **59-C-15.62. Priority Retail Street Frontages.**

216 Development that requires a site plan and is located on a street identified as
 217 a priority retail street frontage must provide the following:

- 218 a) on-street parallel parking, unless specifically denied by the agency
 219 maintaining the right-of-way;
- 220 b) majority of display windows and entrances arranged between zero
 221 and 45 degrees to the sidewalk;

- 222 c) shop entrances spaced at minimal distances in order to activate the
- 223 street;
- 224 d) building façade along at least 65 percent of the aggregate length of
- 225 the front street right-of-way;
- 226 e) front building wall no farther than 10 feet from the public right-of-
- 227 way or 5 feet if no public utility/improvement easement (PUE or PIE)
- 228 is required; and
- 229 f) windows or glass doors on 60 percent of the building façade between
- 230 3 and 9 feet above sidewalk grade.

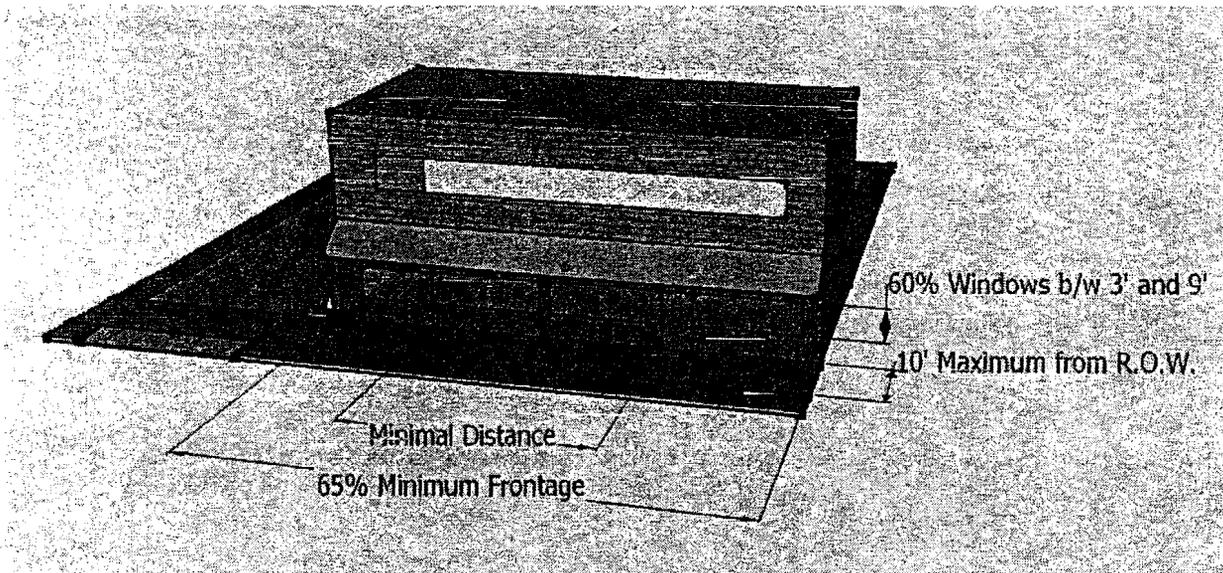
231 These provisions may be modified or waived by the Planning Board during

232 the review of a site plan if found to be unreasonably burdensome to a

233 proposed development due to conditions such as unusual lot size,

234 topography, limited frontage, or other atypical circumstance.

235
236



237
238

Priority Retail Building Requirements Illustrative

239 **59-C-15.63. Streetscape.**

240 Streetscape improvements must be consistent with the recommendations of
 241 the applicable master or sector plan.

242 **59-C-15.64. Bicycle Parking Spaces and Commuter Shower/Change**
 243 **Facility.**

- 244 a) Bicycle parking facilities must be free of charge, secure, and
 245 accessible to all residents or employees of the proposed development.
 246 b) The number of bicycle parking spaces and shower/change facilities
 247 required is shown in the following table (calculations must be
 248 rounded to the higher whole number):

<u>Bicycle and Shower/Change Facilities Required</u>	
<u>Use</u>	<u>Requirement</u>
<u>Residential</u>	
<u>In a building containing less than 20 dwelling units.</u>	<u>At least 4 bicycle parking spaces.</u>
<u>In a building containing 20 or more dwelling units.</u>	<u>At least 0.5 bicycle parking spaces per dwelling unit, not to be less than 4 spaces and up to a maximum of 100 required spaces.</u>
<u>In any group living arrangement expressly for senior citizens.</u>	<u>At least 0.1 bicycle parking spaces per unit, not to be less than 2 spaces up to a maximum of 100 required spaces.</u>
<u>Non-Residential</u>	
<u>In a building with a total non-residential floor area of 1,000 to 9,999 square feet.</u>	<u>At least 2 bicycle parking spaces.</u>
<u>In a building with a total non-residential floor area of 10,000 to 99,999 square feet.</u>	<u>One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces.</u>
<u>In a building with a total non-residential floor area of 100,000 square feet or greater.</u>	<u>One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces. One shower/change facility for each gender.</u>

250 **59-C-15.65. Parking.**

- 251 a) The maximum number of parking spaces provided on site must not
 252 exceed the minimum number established under Article 59-E.

253 b) The minimum number of parking spaces required is based on transit
 254 proximity as follows:

255

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

256

257 c) Parking requirements must be met by any of the following:

- 258 1) providing the spaces on site;
 259 2) constructing publicly available on-street parking; or
 260 3) entering into an agreement for shared parking spaces in a
 261 public or private facility within 1,000 feet of the subject lot,
 262 provided that the off-site parking facility is not in an
 263 agricultural (Division 59-C-9), planned unit development
 264 (Division 59-C-7), or residential (Division 59-C-1) zone.

265 d) Every “car-share” space provided reduces the total minimum number
 266 of required spaces by 6 spaces for non-residential use or 3 spaces for
 267 residential use.

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

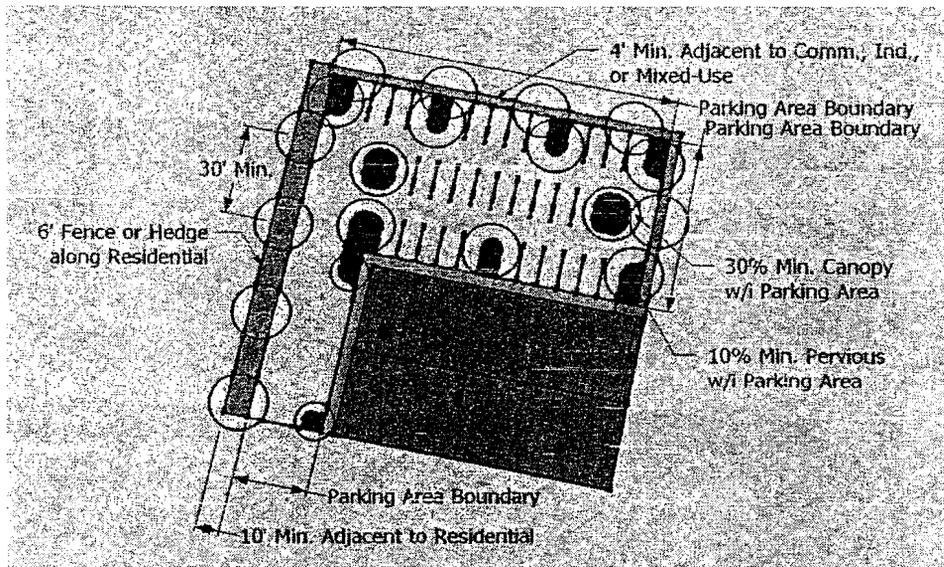
- 273 e) The design of surface parking facilities must comply with the
274 following:
- 275 1) a parking facility at or above grade must not be located
276 between the street and the main front wall of the building or the
277 side wall of a building on a corner lot; however, the Planning
278 Board may approve a design if it finds that the alternative
279 design would provide safer and more efficient circulation;
- 280 2) if a site is adjacent to an alley, the primary vehicular access to
281 the parking facility must be from that alley; and
- 282 3) curb cuts must be kept to a minimum and shared by common
283 ingress/egress easements whenever possible.
- 284 f) The design of parking facilities with drive-through services must
285 comply with the following; however, the Planning Board may
286 approve a design if it finds that the alternative design would provide
287 safer and more efficient circulation:
- 288 1) the driveway must not be located between the street and the
289 main front wall of a building or the side wall of a building on a
290 corner lot;
- 291 2) the drive-through service window must be located on the rear
292 wall of the building; and
- 293 3) curb cuts to a street must be minimized to one drive aisle of no
294 more than 20 feet in width for two-way traffic or two drive
295 aisles each of no more than 10 feet in width for one-way traffic.
- 296 g) Landscaping for surface parking facilities must satisfy the following
297 requirements:

298

Minimum Landscape Standards for Surface Parking	
<u>Subject</u>	<u>Requirement</u>
<u>Right-of-Way Screening</u>	<u>6-foot width of continuous soil panel or stormwater management recharge facility (not including any PUE or PIE) with groundcover, planting bed, or lawn; a minimum 3-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.</u>
<u>Adjacent to a lot or parcel in any Commercial, Industrial, or Mixed-Use Zone</u>	<u>4-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; one deciduous tree per 30 feet of frontage.</u>
<u>Adjacent to a lot or parcel in an Agricultural or Residential District</u>	<u>10-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; 6-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of frontage.</u>
<u>Internal Pervious Area</u>	<u>10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.</u>
<u>Tree Canopy Coverage</u>	<u>30 percent of the parking facility area (at 15 years growth).</u>

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Surface Parking Landscape Requirements Illustrative

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59-C-15.7. Development Standards.

Development in any CR zone must comply with the following standards.

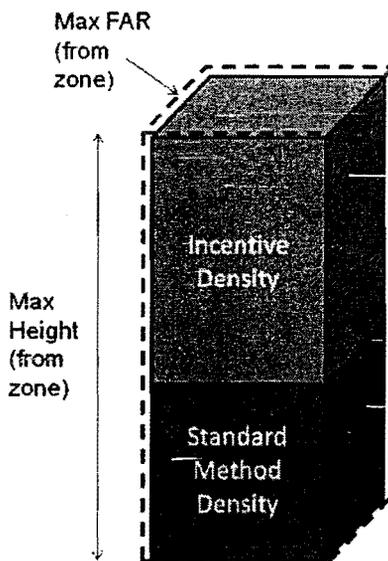
59-C-15.71. Density.

306

- 307 a) The maximum density for any standard method project is 0.5 FAR.
308 Any single land use or any combination of land uses allowed in the
309 zone may achieve the maximum density.
- 310 b) The maximum total density and mix of maximum non-residential and
311 residential density for any project using the optional method of
312 development is specified by the zone. The difference between the
313 standard method density and optional method density is defined as
314 “incentive density” and is allowed under the incentive density
315 provisions of Section 59-C-15.8.

316 **59-C-15.72. Height.**

- 317 a) The maximum height for any building or structure in a standard
318 method project is 40 feet.
- 319 b) The maximum height for any building or structure in an optional
320 method project is determined by the zone.

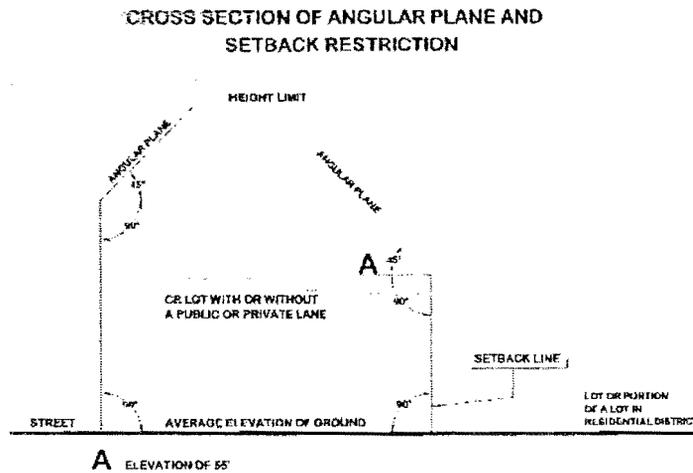


321 *Incentive Density Illustration (with maximum FAR)*

322 **59-C-15.73. Setbacks.**

323 A building must not be any closer to a lot line of an agricultural (Division
324 59-C-9) or residential (Division 59-C-1) zone than:

- 326 a) 25 feet or the setback required by the adjacent lot, whichever is
327 greater; and
328 b) the building must not project beyond a 45 degree angular plane
329 projecting over the lot measured from a height of 55 feet at the
330 setback determined above, with the exception of those features
331 exempt from height and setback restrictions under Section 59-B-1.
332



333
334 *Angular Plan Setback Illustration*
335

336 **59-C-15.74. Public Use Space.**

- 337 a) The minimum public use space for any standard method project is 10
338 percent of the net tract area of the site.
339 b) Projects using the optional method of development must provide
340 public use space as follows:

341

Minimum Required Public Use Space (% of net lot area)				
<u>Acres (Gross)</u>	<u>Number of Existing and Planned Right-of-Way Frontages</u>			
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4+</u>
<u>< 1/2</u>	<u>0</u>	<u>0</u>	<u>4%</u>	<u>6%</u>
<u>1/2 - 1.00</u>	<u>0</u>	<u>4%</u>	<u>6%</u>	<u>8%</u>
<u>1.01 - 3.00</u>	<u>4%</u>	<u>6%</u>	<u>8%</u>	<u>10%</u>
<u>3.01 - 6.00</u>	<u>6%</u>	<u>8%</u>	<u>10%</u>	<u>10%</u>
<u>6.01 +</u>	<u>8%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>

342

343

c) Public use space must:

344

1) be calculated on the net lot area of the site;

345

2) be rounded to the next highest 100 square feet;

346

3) be easily and readily accessible to the public;

347

4) be placed under a public access easement in perpetuity; and

348

5) contain amenities such as seating options, shade, landscaping,

349

or other similar public benefits.

350

d) Instead of providing on-site public use space, for any site of 3 acres

351

or less, a development may propose the following alternatives,

352

subject to Planning Board approval:

353

1) public use space improvements to an area equal in size within

354

1/4 mile of the subject site; or

355

2) a payment in part or in full to the Public Amenity Fund, equal

356

to the average cost of required site improvements, added to the

357

current square foot market value of the area required as public

358

use space.

359

59-C-15.75. Residential Amenity Space.

360

a) Any building containing 20 or more dwelling units must provide

361

amenity space for its residents as follows:

362

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

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b) The amenity space is not required for Moderately Priced Dwelling Units (MPDUs) on a site within a metro station policy area or where the Planning Board finds that there is adequate recreation and open space within a ½ mile radius of the subject site.

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

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

59-C-15.8. Special Regulations for the Optional Method of Development

59-C-15.81. Incentive Density Provisions.

This section establishes incentives for optional method projects to provide public benefits in return for increases in density and height, consistent with the applicable master or sector plan, up to the maximum permitted by the zone.

a) The incentive density approved for each proposed public benefit is calculated as a percentage of the total incentive density, which is the incremental difference between the standard method maximum FAR

383 (0.5) and the proposed project FAR up to the maximum FAR allowed
384 by the zone.

385 b) The minimum and maximum incentive density percentage increases
386 for each public benefit are established in Section 59-C-15.81(f).

387 c) The Planning Board may accept, reject, or modify a proposed
388 incentive density or modify the requested percentage above the
389 minimum of incentive density established up to the maximum
390 established. Except for those benefits with specific maximum
391 standards, in approving incentive densities above the minimum, the
392 Planning Board must consider:

393 1) the size and configuration of the parcel;

394 2) the policy objectives and priorities of the applicable master or
395 sector plan;

396 3) the applicable design guidelines;

397 4) the relationship of the site to adjacent properties;

398 5) the presence or lack of similar benefits nearby; and

399 6) quantitative and qualitative enhancements provided exceeding
400 the delineated minimum incentive density standards.

401 d) Public benefits that apply to 1 building in a multi-building project
402 must be weighted proportionally to the density of the applicable
403 building compared to the total density of the project.

404 e) In addition to the public benefits set forth below, an applicant may
405 propose other public benefits that will further the goals and objectives
406 of the applicable master or sector plan for the purpose of obtaining an
407 incentive density increase.

408 f) The Planning Board may grant no more than 30 percent of the total
 409 incentive density for a project for the connectivity, design, diversity,
 410 or environment incentive categories under (h) below or any public
 411 benefit approved under (e) above.

412 Example: A development in a zone with a maximum FAR of 5.5 would base all public benefit
 413 calculations on the incentive density of 5.0 FAR (5.5-0.5). Thus, being on a site adjacent to a
 414 metro station would yield an automatic incentive density of 2.5 FAR (5.0 x 0.50), and full
 415 density would be allowed by providing public benefits equal to an additional 50 percent.

416 g) Provision for inspections, maintenance, and enforcement of public
 417 benefits provided in return for incentive density must be established
 418 in a Site Plan Enforcement Agreement approved by the Department of
 419 Permitting Services and by resolution of the Planning Board before
 420 the certification of a site plan.

h) Table of density incentives Incentive Zoning Table

<u>Public Benefit</u>	<u>Percent of Incentive Density</u>		<u>Section Reference</u>
	<u>Minimum</u>	<u>Maximum</u>	
<u>Transit Proximity</u>	<u>See section reference</u>		<u>15.82</u>
<u>Connectivity & Mobility</u>			
<u>Community Connectivity</u>	<u>10</u>	<u>20</u>	<u>15.831</u>
<u>Community Garden</u>	<u>5</u>	<u>10</u>	<u>15.832</u>
<u>Parking at the Minimum</u>	<u>10</u>	<u>20</u>	<u>15.833</u>
<u>Pedestrian Through-Block Connection</u>	<u>5</u>	<u>10</u>	<u>15.834</u>
<u>Public Parking</u>	<u>20</u>	<u>30</u>	<u>15.835</u>
<u>Transit Access Improvement</u>	<u>10</u>	<u>20</u>	<u>15.836</u>
<u>Diversity</u>			
<u>Adaptive Buildings</u>	<u>15</u>	<u>30</u>	<u>15.841</u>
<u>Affordable Housing: MPDUs</u>	<u>See section reference</u>		<u>15.842</u>
<u>Affordable Housing: WFHUs</u>	<u>See section reference</u>		
<u>Care Center</u>	<u>10</u>	<u>20</u>	<u>15.843</u>

Community Facility	<u>10</u>	<u>20</u>	<u>15.844</u>
Local Retail Preservation	<u>10</u>	<u>20</u>	<u>15.845</u>
Unit Mix and Size	<u>5</u>	<u>10</u>	<u>15.846</u>
Design			
Floor Plate Size	<u>10</u>	<u>20</u>	<u>15.851</u>
Historic Resource Protection	<u>10</u>	<u>20</u>	<u>15.852</u>
Parking Below Grade	<u>10</u>	<u>20</u>	<u>15.853</u>
Podium/Tower Setback	<u>5</u>	<u>10</u>	<u>15.854</u>
Public Art	<u>10</u>	<u>20</u>	<u>15.855</u>
Public Plaza/Open Space	<u>5</u>	<u>10</u>	<u>15.856</u>
Streetscape, Off-Site	<u>5</u>	<u>10</u>	<u>15.857</u>
Exceptional Design	<u>10</u>	<u>20</u>	<u>15.858</u>
Environment			
Bio-retention and Stormwater Recharge	<u>5</u>	<u>10</u>	<u>15.861</u>
Conveyed Parkland	<u>10</u>	<u>20</u>	<u>15.862</u>
Dark Skies	<u>5</u>	<u>10</u>	<u>15.863</u>
Energy Efficiency and Generation	<u>10</u>	<u>20</u>	<u>15.864</u>
Green Wall	<u>5</u>	<u>10</u>	<u>15.865</u>
LEED Rating	<u>10</u>	<u>30</u>	<u>15.866</u>
Rainwater Reuse	<u>5</u>	<u>10</u>	<u>15.867</u>
Transferable Development Rights	<u>10</u>	<u>30</u>	<u>15.868</u>
Tree Canopy	<u>10</u>	<u>20</u>	<u>15.869</u>
Vegetated Area	<u>5</u>	<u>10</u>	<u>15.8610</u>
Vegetated Roof	<u>10</u>	<u>20</u>	<u>15.8611</u>

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59-C-15.82. Transit Proximity Incentives.

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A project on a site near transit encourages greater transit use and reduces

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vehicle miles traveled, congestion, and carbon emissions. The additional

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percent of incentive density automatically allowed is as follows:

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

Between ½ and 1 mile	20%	10%
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59-C-15.83. Connectivity and Mobility Incentives.

A project that enhances connectivity and mobility encourages pedestrian and other non-auto travel for short and multi-purpose trips as well as for commuting. Such a project facilitates social interaction, provides opportunities for healthier living, and stimulates local businesses.

59-C-15.831. Community Connectivity.

a) The minimum incentive density increase for a building that enhances community connectivity by locating near existing retail uses or provides retail uses, requires that:

- 1) at least 10 different existing or proposed retail uses with direct pedestrian access are within 1/2 mile; and
- 2) at least 35 percent of those uses have a maximum floor area of 5,000 square feet and that any newly provided retail uses remain at or below that area for a period of at least 4 years after the initial use-and-occupancy permit is issued for that use.

b) The maximum increase requires additional benefits, such as a large diversity of retail uses, a greater number of retail shops, provision of services associated with live-work units, or that the required number of retail uses are within ¼ mile.

59-C-15.832 Community Garden.

A community garden allows any resident to grow their own produce, reduce reliance on automobiles, increase water and air quality, and interact with other residents.

a) The minimum incentive density increase requires that the garden:

- 449 1) is located on the subject site or within 500 feet of the subject
450 site;
- 451 2) provides all garden spaces with at least 12 inches of soil depth
452 and access to water; and
- 453 3) provides community garden space at a rate equivalent to 1
454 space per 20 dwelling units. Each space must be at least 16
455 square feet. At least 1 out of each 10 spaces must be accessible
456 under ADA standards.
- 457 b) The maximum increase requires additional features such as a
458 composting facility, additional garden space, seating areas, doubling
459 as a green roof, or additional accessible garden plots.

460 **59-C-15.833. Parking at the Minimum.**

- 461 a) The minimum incentive density increase requires that sites of 1 acre
462 or more provide on-site only the minimum required number of
463 parking spaces.
- 464 b) The maximum increase requires that sites of less than 1 acre provide
465 on-site only the minimum required number of parking spaces.

466 **59-C-15.834. Pedestrian Through-Block Connections.**

467 A through-block connection enhances pedestrian mobility and helps to
468 create a variety of open spaces, particularly on larger blocks.

- 469 a) The minimum incentive density increase for a pedestrian through-
470 block connection requires that:
- 471 1) the pedestrian connection must provide direct access between
472 streets;
- 473 2) the pedestrian connection must be at least 15 feet in width;

- 474 3) at least 35 percent of the walls facing the interior pedestrian
475 connection below a height of 8 feet must have clear,
476 unobstructed windows, unless the Planning Board finds that an
477 alternative design is at least equally safe;
- 478 4) the pedestrian connection must be open to the public between
479 sunrise and sunset and, where it leads to a transit facility or
480 publicly-accessible parking facility within ½ mile, for the hours
481 of operation of the transit and/or parking facility; and
- 482 5) retail uses fronting both a pedestrian connection and a street
483 must maintain operable doors from both unless not required by
484 the Planning Board during site plan review due to exceptional
485 site circumstances.

486 b) The maximum increase requires additional benefits such as:

- 487 1) direct connection to parks;
488 2) transit facilities;
489 3) public buildings;
490 4) pedestrian connection with accessible retail uses along a
491 majority of its length;
492 5) connections increased in width; or
493 6) public artworks integrated into the walk.

494 **59-C-15.835. Public Parking.**

- 495 a) The minimum increase requires providing on-site the difference
496 between the minimum number of required parking spaces and the
497 maximum number of allowed parking spaces as publicly accessible
498 spaces for free or at a market rate.

499 b) The maximum increase requires providing public parking spaces, as
500 required above, in combination with additional improvements, such
501 as constructing those spaces underground or in a structure.

502 **59-C-15.836. Transit Access Improvement.**

503 a) The minimum incentive density increase for transit access
504 improvements requires that the improvements:

505 1) are located within 1/2 mile of the proposed development site
506 or, in the case of mobile transit improvements such as a bus
507 shuttle, provide regular access for passengers within 1/2 mile;
508 and

509 2) are built to ADA accessibility standards as amended.

510 b) The maximum increase requires additional benefits such as closer
511 access, new access easements, connecting walkways, mezzanines,
512 seating areas, structures for wind/rain protection, or concourse areas.

513 **59-C-15.84. Diversity Incentives.**

514 **59-C-15.841. Adaptive Buildings.**

515 An adaptive building can adjust to a diversity of uses over time, which
516 makes the building more accommodating of mixed uses, more sustainable,
517 and more embedded in the pattern of a community.

518 a) The minimum incentive density increase for an adaptive building
519 requires that:

520 1) the floor to floor dimension must be at least 15 feet for all
521 floors; and

522 2) the internal floor plan is based on a structural system allowing
523 flexibility of volumes divisible from 1 open floor plate to any
524 number of parceled volumes.

- 525 b) The maximum increase requires additional benefits such as that:
526 1) the structural system has additive capacity for any available
527 density and height that is not used by the building without
528 demolition of the structure; or
529 2) the internal layout is built to allow changes between residential,
530 retail, and office uses by minor modifications.

531 **59-C-15.842. Affordable Housing.**

- 532 a) All residential development must comply with the requirements of
533 Chapters 25A and 25B for the provision of Moderately Priced
534 Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs).
535 b) Provision of MPDUs above the minimum required grants an incentive
536 density increase, providing the following standards are met:
537 1) the increase in density is calculated on the incentive density as
538 required by Chapter 25A;
539 2) the MPDUs must be reasonably distributed throughout the
540 project; and
541 3) any dwelling units built under this section must be controlled
542 under the MDPU or WFHU provisions for a minimum period
543 of 99 years.

544 *Example: Provision of 14.5 percent MPDUs achieves an incentive density increase of 20 percent*
545 *(25-A-5(c)(3)). In the case of a CR4.5, that would equal 0.20 x 4.0 (the incentive density), which*
546 *is 0.8 FAR.*

- 547 c) Provision of WFHUs grants an incentive density increase at the
548 following rate: 2 times the percentage of units provided as WFHUs
549 up to 30 percent.

550 *Example: Provision of 5 percent WFHUs achieves an incentive density increase of 10 percent;*
551 *provision of 12 percent WFHUs achieves an incentive density increase of 24 percent.*

552 **59-C-15.843. Care Center.**

- 553 a) The minimum incentive density increase for a center for daytime
554 adult or child care requires a facility for at least 12 users and the
555 general public must have the opportunity to comprise at least 25
556 percent of the users.
- 557 b) The maximum increase requires additional benefits such as providing
558 for additional users, a safe drop-off area, an increase in users from the
559 general public, and recreation facilities provided above those required
560 by law.

561 **59-C-15.844. Community Facility.**

- 562 a) The minimum incentive density increase for a community facility that
563 helps meet the needs of residents and workers requires that the
564 community facility:
- 565 1) is recommended in the applicable master plan or sector plan;
566 and
 - 567 2) is accepted for operation and use by an appropriate public
568 agency, community association, or nonprofit organization.
- 569 b) The maximum increase requires further benefits, such as an entrance
570 to the facility directly on the street, location of the building within 10
571 feet of a public sidewalk, associated outdoor open space, or
572 integration into an area with a residential FAR of at least 2.0 (or at
573 least 30 dwelling units per acre).

574 **59-C-15.845. Local Retail Preservation.**

575 Preservation of locally-owned small businesses on site is eligible for
576 incentive density as follows:

- 577 a) preservation of up to 2 small businesses: 10 percent; and
578 b) preservation of 3 or more small businesses: 20 percent.

579 Exact terms of lease requirements and rental agreements must be established
580 by the site plan enforcement agreement.

581 **59-C-15.846. Unit Mix and Size.**

582 a) The minimum incentive density increase for creating residential
583 buildings with a minimum mix of dwelling unit types (calculated by
584 rounding to the next higher whole number) requires provision of at
585 least:

- 586 1) 7.5 percent as efficiency dwelling units;
- 587 2) 8 percent as one-bedroom dwelling units;
- 588 3) 8 percent as two-bedroom dwelling units; and
- 589 4) 5 percent as three-bedroom dwelling units.

590 b) The maximum increase requires provision of at least (calculated by
591 rounding to the next higher whole number):

- 592 1) 10 percent as efficiency dwelling units;
- 593 2) 10 percent as one-bedroom units;
- 594 3) 10 percent as two-bedroom units; and
- 595 4) 7.5 percent as three-bedroom units.

596 **59-C-15.85. Design Incentives.**

597 **59-C-15.851. Floor Plate Size.**

598 a) The minimum incentive density increase for the provision of floor
599 plate restrictions requires that:

- 600 1) the floor area of any floor above a height of 120 feet does not
601 exceed 10,000 square feet for residential uses or 19,000 square
602 feet for non-residential uses, or 12,000 square feet for mixed-
603 uses (if not more than 60 percent of a mixed-use floor is used
604 for any single use); and

605 2) the exterior of the building facing any street or public open
606 space has at least 60 percent glass on the floors with the
607 reduced floor plate.

608 b) The maximum increase requires additional benefits, such as providing
609 the reduced floor plates in conjunction with the Exceptional Design
610 factor, providing smaller floor plates, combining this incentive with
611 the tower setback, providing a larger percentage of glass, or
612 integrating sustainable technologies into the architecture.

613 **59-C-15.852. Historic Resource Protection.**

614 a) The minimum incentive density increase for the preservation of a
615 historic resource designated in the Master Plan for Historic
616 Preservation requires that a preservation strategy for the resource is
617 approved by the Planning Board as part of the site plan enforcement
618 agreement and that a historic area work permit is issued by the
619 Historic Preservation Commission.

620 b) The maximum increase requires that other benefits are provided, such
621 as interpretive signs/exhibits, integration and construction of context-
622 appropriate landscapes and settings, or protection of important
623 viewsheds.

624 **59-C-15.853. Parking Below Grade.**

625 a) The minimum incentive density increase requires that sites of 1 acre
626 or more provide all on-site parking spaces below the average grade of
627 the primary street frontage.

628 b) The maximum increase requires that sites of less than 1 acre provide
629 all on-site parking spaces below the average grade of the primary
630 street frontage.

631 **59-C-15.854. Podium/Tower Setback.**

- 632 a) The minimum incentive density increase for the provision of a tower
633 setback requires that the tower must be set back from the first floor
634 building frontage at or below 72 feet and the setback must be at least
635 6 feet.
- 636 b) The maximum increase requires that the tower setback be at or below
637 50 feet and that the setback be at least 12 feet.

638 **59-C-15.855. Public Art.**

639 Public art is considered a public benefit because it enhances the quality of
640 place and creates a sense of identity in a community.

- 641 a) The minimum incentive density increase for public art requires that it:
- 642 1) enhances the general or specific cultural objectives of the
643 applicable master or sector plan; and
- 644 2) is approved by the Public Arts Trust Steering Committee.
- 645 b) The maximum increase requires that, in addition to the above
646 requirements, the artwork fulfill at least 5 of the following goals as
647 determined by the Public Arts Trust Steering Committee:
- 648 1) achieve aesthetic excellence;
- 649 2) ensure an appropriate interaction between the art and the
650 architectural setting in terms of scale, materials, and context;
- 651 3) ensure public access and invite public participation;
- 652 4) encourage collaboration between the artist(s) and other project
653 designers early in the design phases;
- 654 5) ensure long-term durability of permanent works through
655 material selection or a documented maintenance program;

- 656 6) encourage a rich variety of arts including permanent, temporary
657 (revolving), and event programming;
- 658 7) increase public understanding and enjoyment of art through
659 interpretive information and/or programmed events; and
- 660 8) achieve a collection of commissioned art that is unique and
661 contributes in a positive way to the identity of the community.
- 662 c) A fee instead of public art may be accepted for incentive density as
663 follows:
- 664 1) the minimum fee is calculated on 1 percent of the
665 development's projected cost;
- 666 2) the fee is paid to the Public Arts Trust Steering Committee;
- 667 3) the fee is used for installation, management, and maintenance
668 of public art at the discretion of the Public Arts Trust Steering
669 Committee, with preference given to the policy area where the
670 proposed development is located; and
- 671 4) the incentive density is equal to a 5 percent increase for every 1
672 percent of projected development cost paid to the Public Arts
673 Trust, up to 20 percent.

674 **59-C-15.856. Public Plaza/Open Space.**

675 Plazas are important public amenities and create interesting spaces and
676 active gathering areas.

- 677 a) The minimum incentive density increase for any plaza requires that:
- 678 1) the plaza is directly accessible to a street;
- 679 2) the plaza must be open to the public at least between sunrise
680 and sunset;

- 681 3) no proposed loading or parking facilities should be visible
682 below a height of the fourth floor; and
683 4) the plaza must be in addition to any public use space required
684 by the development standards or other minimum open space
685 requirement of this Division.

686 b) The maximum increase requires that the above requirements are met,
687 in addition to the following:

- 688 1) the plaza's width must be at least 50 feet;
689 2) where the plaza is provided as part of a redevelopment,
690 buildings facing the plaza must be designed so that:
691 A) the walls of any non-residential floor area facing the
692 plaza must have windows on at least 60 percent of the
693 façade below a height of 40 feet; and
694 B) the main entry to any dwelling units is from a wall facing
695 the plaza; and
696 3) the plaza should contain seating, trash receptacles, landscaping,
697 and other amenities such as water features, kiosks, and passive
698 recreation areas.

699 **59-C-15.857. Streetscape, Off-Site.**

700 Streetscape improvements enhance the pedestrian experience and better
701 connect buildings to the public spaces.

- 702 a) The minimum incentive density increase for streetscape
703 improvements requires that the following criteria are met:
704 1) the improvements must be located within 1/2 mile of the
705 subject site; and
706 2) the improvements are equal to 18 percent of the net lot.

707 b) The maximum increase requires that the improvements be equal to at
708 least 36 percent of the net lot area.

709 **59-C-15.858. Exceptional Design.**

710 The minimum incentive density increase for high-quality site and
711 architectural design requires that at least 3 of the following criteria are met;
712 the maximum density increase requires that at least 5 of the following
713 criteria are met:

714 a) provides innovative solutions in response to the architectural context
715 and surrounding landscape, for example, by rotating floor plates for
716 views or reconciling offset street-walls;

717 b) creates a sense of place that will serve as a landmark in the
718 community, for example, by creating a distinguishing element that is
719 visible from an important view or at a gateway to an area;

720 c) enhances the public realm in a distinct and original manner, for
721 example, by using existing materials and forms in new ways to
722 provide continuity and contrast;

723 d) adds to the diversity of the built realm within the community, for
724 example, by introducing new materials, building methods, or design
725 styles;

726 e) uses design solutions to make compact/infill living, working, and
727 shopping environments pleasurable and desirable, for example, by
728 retrofitting surface parking lots and single-use retail malls or creating
729 multi-use, pedestrian-dominated realms in previous auto-oriented
730 areas; and

731 f) integrates environmentally sustainable solutions, for example, by
732 using stormwater management facilities that incorporate best

733 management practices in an apparent and observable way or
734 integrating passive solar features into the visible structure of a
735 building or site.

736 **59-C-15.86. Environment Incentives.**

737 **59-C-15.861. Bio-retention and Stormwater Recharge.**

738 a) The minimum incentive density increase for the use of bio-retention
739 and recharge facilities requires that at least 25 percent of projected
740 stormwater outfall for a 10-year event be contained and recharged on
741 site or within ¼ mile of the site.

742 b) The maximum increase requires that at least 50 percent of projected
743 stormwater for a 10-year event be contained and recharged.

744 **59-C-15.862. Conveyed Parkland.**

745 a) The minimum incentive density increase for land conveyed to the M-
746 NCPPC for inclusion in or provision of parkland, trail area, or other
747 master-planned Parks' use requires conveyance of at least of 15
748 percent of the gross lot area.

749 b) The maximum increase requires conveyance of at least 30 percent of
750 the gross lot area.

751 **59-C-15.863. Dark Skies.**

752 a) The minimum incentive density increase for dark skies-compliant
753 projects requires that they be built and maintained in conformance
754 with the standards established by the International Dark-Sky
755 Association as amended.

756 b) The maximum increase requires that the exterior lighting plan be
757 integrated into an energy efficiency plan for the entire project

758 submitted and approved by the Planning Board with a site plan
759 application.

760 **59-C-15.864. Energy Efficiency and Generation.**

- 761 a) The minimum density incentive increase for the use of on-site
762 renewable energy generation requires that buildings must meet the
763 minimum energy efficiency standards of 17.5 percent for new
764 buildings, 10.5 percent for existing buildings, or generate at least 1.5
765 percent of their energy on-site.
- 766 b) The maximum increase requires additional benefits such as greater
767 energy efficiency and the generation of at least 2.5 percent of energy
768 on-site.

769 **59-C-15.865. Green Walls**

- 770 a) The minimum incentive density increase for a green wall requires that
771 it:
- 772 1) must be designed, installed, and maintained to cover at least 30
773 percent of the area of a blank wall or parking garage facing a
774 street or plaza; and
- 775 2) must be found to add to the aesthetic quality and environmental
776 sustainability of the project.
- 777 b) The maximum increase requires additional benefits such as a greater
778 percent of coverage, southern or western exposure, the use of plants
779 with varying flowering seasons, or integration into an overall energy
780 or environmental site design program.

781 **59-C-15.866. LEED Rating.**

782 A LEED-rated building or equivalent rating system approved under Chapter
783 8 Article VII is eligible for an incentive density increase if it meets any

784 continuing requirements necessary to maintain that status.

785 (<http://www.usgbc.org/Default.aspx>) The amount of incentive density
786 increase is equal to the following:

- 787 a) LEED Silver: 10 percent
- 788 b) LEED Gold: 20 percent
- 789 c) LEED Platinum: 30 percent

790 **59-C-15.867. Rainwater Reuse.**

- 791 a) The minimum incentive density increase for the collection of
792 rainwater for on-site irrigation, grey-water use, or filtration for re-use
793 requires that a minimum of 25 percent of projected rainwater for a 10-
794 year event be collected and used on-site or within ¼ mile of the site.
- 795 b) The maximum increase requires that at least 50 percent of projected
796 rainwater for a 10-year event be collected and used.

797 **59-C-15.868. Transferable Development Rights.**

798 The incentive density increase for the purchase of transferable development
799 rights (TDRs) must meet the following:

- 800 a) the purchase must be executed and recorded before approval of a
801 record plat;
- 802 b) the use of this incentive must be for development on land
803 recommended as a TDR receiving area in the appropriate master or
804 sector plan;
- 805 c) TDRs must be purchased in increments of 10; and
- 806 d) the incentive density increase is equal to 10 percent for every 10
807 TDRs purchased, up to 30 percent.

808 **59-C-15. 869. Tree Canopy.**

809 a) The minimum incentive density increase for the provision of tree
810 canopy requires coverage of at least 25 percent of the on-site open
811 space at 15 years growth.

812 b) The maximum increase requires coverage of at least 50 percent of the
813 on-site open space at 15 years growth.

814 **59-C-15.8610. Vegetated Area.**

815 a) The minimum incentive density increase for a vegetated area requires
816 that the following criteria are met:

817 1) the area must be in addition to any required on-site open space
818 or any vegetated roof incentive;

819 2) the area must replace at least 5,000 square feet of impervious
820 area;

821 3) the area provides at least 12 inches of soil depth; and

822 4) the area is planted with well-maintained vegetation.

823 b) The maximum increase requires additional benefits, such as larger
824 area or greater soil depth.

825 **59-C-15.8611. Vegetated Roof.**

826 a) The minimum incentive density increase for a vegetated roof requires
827 that the:

828 1) vegetated roof must cover at least 33 percent of the roof of the
829 building, excluding any space occupied by mechanical
830 equipment; and

831 2) soil or media depth must be at least 4 inches.

832 b) The maximum increase requires coverage of at least 60 percent of the
833 roof area.

834 **59-C-15.87. Special Regulations for Purchase of Building Lot**
835 **Termination (BLT) Development Rights.**

836 a) A development under the Optional Method must purchase building
837 lot termination (BLT) easements under Chapter 2B, or a contribution
838 must be made to the Agricultural Land Preservation Fund under
839 Chapter 2B equal to 12.5 percent of the incentive density floor area
840 using the following formula:

841 1) one BLT easement is required for each 9,000 square feet of
842 residential floor area;

843 2) one BLT easement is required for every 7,500 square feet of
844 non-residential floor area.

845 b) When a BLT easement cannot be purchased or the amount of floor
846 area attributed to a building lot termination easement is a fraction of
847 the floor area equivalent, payment must be made to the Agricultural
848 Land Preservation Fund according to the rate set annually by
849 executive regulation.

850 **59-C-15.9. Existing Approvals.**

851 a) A lawfully existing building or structure and the uses therein, which
852 predates the applicable sectional map amendment, is a conforming structure
853 or use, and may be continued, renovated, reconstructed to the same size and
854 configuration, or enlarged up to 10 percent above the existing floor areas or
855 30,000 square feet, whichever is less, and does not require a site plan. A
856 larger addition requires compliance with the full provisions of this Division.

857 b) A project that received an approved development plan under Division 59-D-
858 1 or schematic development plan under Division 59-H-2 before the
859 enactment of the CR zones may proceed under the binding elements of the

860 development plan and will thereafter be treated as a lawfully existing
861 building and may be renovated or reconstructed under Subsection (a) above.
862 Such projects may be amended as allowed under Division 59-D-1 or 59-H-
863 2, under the provisions of the previous zone; however, any increase in the
864 total floor area or building height beyond that allowed by Subsection (a)
865 above requires full compliance with the full provisions of this Division.
866 c) A project which has had a preliminary or site plan approved before the
867 applicable sectional map amendment may be built or altered at any time,
868 subject to either the full provisions of the previous zone or this division, at
869 the option of the owner. If built under the previous approval, it will be
870 treated as a lawfully existing building and may be renovated or
871 reconstructed under Subsection (a) above.

872

873 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of
874 Council adoption.

875

876 This is a correct copy of Council action.

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879 _____
Linda M. Lauer, Clerk of the Council