PHED Committee #2
November 9, 2009

MEMORANDUM

November 5, 2009

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: Zoning Text Amendment 09-08, Commercial/Residential (CR) Zones - Establishment

Background

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. The staff memorandum for the Committee's November 2 meeting included a summary of the major issues in ZTA 09-08.

On October 26 the Council received proposed revisions to ZTA 09-08 from the Planning Board. 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; amending the grandfathering provisions; and making numerous technical amendments.

Committee meeting summary

On November 2, 2009 the Committee heard from Planning Staff and interested parties on a few of the major aspects of ZTA 09-08. Major issues discussed included the appropriate application of CR zones and the nature of the sketch plan. The Planning Board Chair and Planning Staff recommended further amendments to address some of the issues raised by the public hearing. Those recommendations included: apply a CR zone only if a master or sector plan specifically recommends the zone; allowing standard method of development projects to be the greater of 10,000 square feet of gross floor area or .5 FAR; including a more detailed procedure for a sketch plan, including findings for Planning Board approval; and making the purchase of BLT easements an incentive criteria instead of a requirement.

The Committee did not reach any conclusion, but decided to go through ZTA 09-08 line by line. Staff was directed to comprehensively compile the comments in the Council's record. The Committee was informed that Planning staff would provide a response for each of the issues raised in the Council's public hearing.

Explanation of attached material

ZTA 09-08 as introduced with comments

The ZTA is ZTA 09-08 as introduced. It is the starting point for Council action. All ZTA comments, recommendations, and questions, including the Planning Board's recommendations, were associated with the line in the ZTA that provoked the comment, recommendation, or question. The comments all start by identifying the source of the comment. Comments without an attribution starting with the words "Editorial", "Consistency", and "Policy Option" were made by staff.

The ZTA was printed in a landscape format to maximum the print size of the text and comments. This changed the line numbers from ZTA 09-08 as introduced; however, all comments are tied to the appropriate line of text. The Planning Board-recommended revisions of paragraph length were included as line-numbered attachments at the end of the document.

Planning Staff response and recommendation

Staff did not have an opportunity to review the material before attaching it to this memorandum.

This packet contains	© page
ZTA 09-08 (as introduced)	1 - 49
Material from Planning Staff	50 - 66

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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.*

OPINION

ORDINANCE

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

1 **Sec. 1. Division 59-C-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 combinations of a sequence of
7 [[four]] 4 factors: maximum total floor area ratio (FAR), maximum non-residential FAR, maximum
8 residential FAR, and maximum building height. These zones are identified by a sequence of symbols: CR,
9 C, R, and H, each followed by a number where:
10 a) the number following the symbol "CR-" is the maximum total FAR;
11 b) the number following the symbol "C" is the maximum non-residential FAR;
12 c) the number following the symbol "R" is the maximum residential FAR; and
13 d) the number following the symbol "H" is the maximum building height in feet.
14 The examples in this Division do not add, delete, or modify any provision of this Division. Examples are
15 provided only to demonstrate particular applications of the provisions in the Division. Examples are not
16 intended to limit the provisions.
17 **59-C-15.12.** Each unique sequence of CR, C, R, and H is established as a zone under the following limits:
18 a) the maximum total FAR must be established as an increment of 0.25 from 0.5 up to 8.0;
19 b) the maximum non-residential and residential FAR must be established as an increment of 0.25 from
20 0.25 up to 7.5;

Comment: M. Wellington, J. Davis…its too complicated for the Council to view in parts…send it back to the Planning Board…go slow

N. Goldberg…This needs to be settled before the review of the White Flint Sector Plan…and the Sector Plan needs staging; the CR zones are too complex

Comment: B. Chen…this ZTA creates one zone (that is not uniform within the zone as required by state law).

Comment: Staff…Editorial

Comment: Gables Residential…properties less than 3 acres should not be required to have mixed use to achieve maximum density

Comment: Executive…part of the argument about uniformity is because of the possibility of 60,000 zones.

Policy Option…name specific zones

Comment: Civic Fed, N. Goldberg…the amount of retail, office, and the number of housing units would not be known until preliminary plan.

21 c) the maximum height must be established as an increment of 5 feet up to 100 feet and an increment of
22 10 feet from 100 feet up to 300 feet; and
23 d) permitted density may be averaged over 2 or more directly abutting or confronting lots in the same
24 CR zone, provided that:
25 1) the lots are subject to the same sketch plan;
26 2) the lots are created by the same preliminary subdivision plan;
27 3) the maximum total density and nonresidential and residential density limits apply to the entire
28 development subject to the sketch plan and subdivision plan, not to individual lots;
29 4) no building may exceed the maximum height set by the zone;
30 5) public benefits must be provided in proportion to any phased development on individual lots;
31 and
32 6) the resulting development must conform to the design and land use objectives of the applicable
33 master or sector plan and design guidelines.
34 **59-C-15.13.** The CR zones can only be applied by sectional map amendment in conformance with the
35 zoning recommendations of an approved and adopted master or sector plan.

36 *Examples:*
37 • An area zoned CR-2.0, C1.0, R1.0, H80 allows a total FAR of 2.0, with maximum non-residential and residential FARs of 1.0,
38 thereby requiring an equal mix of uses to obtain the total FAR allowed. The height for any building in this zone is limited to
39 80 feet.

Comment: Planning Board, B Kominers, B Sears, White Flint Mall…change "same" to "one or more CR zones"

Comment: Consistency…In the LSC a subdivision was not required for the entire tract under common ownership. Why is this different?

Comment: Consistency…This is inconsistent with lines 200 and 201 which say that only some aspects are binding.

Comment: Planning Board would change to read…public benefits must be phased in accordance with the phasing element of an approved sketch plan.

Comment: Executive…delegation issue if not Council approved guidelines.

Comment: R. Harris…allow by LMA

Comment: B. Chen…earlier draft required a specific recommendation…SMA allows insufficient public participation…the CR zone would rezone individual properties with personal zones…this fails state required uniformity…this zone will be used in the zoning ordinance re-write on commercial zones.

Comment: M. Piety…limited public input…3 minutes of testimony…SMA process is illegal

Civic Fed…CR zones should be specifically recommended…some current zones have no height limit…there would not be compatablity test to apply the CR zones

Comment: Civic Fed., M. Wellington, J. Davis…CR zones should be specifically recommended or only allowed as a floating zone by LMA

Comment: Planning Staff…10/29/09 require a specific recommendation for a CR zone

- An area zoned CR-6.0, C3.0, R5.0, H200 allows a residential FAR up to [[of]] 5.0, whereas non-residential density is only allowed an FAR of up to 3.0, and a mix of the two uses could yield a total FAR of 6.0. This combination allows for flexibility in the market and shifts in the surrounding context. The height for any building in this zone is limited to 200 feet.

- An area zoned CR-4.0, 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.

Comment: Editorial

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:

Comment: Civic Fed ...this is questionable with minimum green area, no cap on previous surface (vegetative area is a planter box)

Comment: W. Thompson...add "integration of the park system"

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;

Comment: W. Thompson...add "national, state, regional, and local parks"

d) encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;

60 e) establish the maximum density and building height for each zone, while retaining appropriate development
61 flexibility within those limits; and
62 f) standardize optional method development by establishing minimum requirements for the provision of the
63 public benefits that will support and accommodate density above the standard method limit.

Comment: W. Thompson...add integration of park systems

64 **59-C-15.3. Definitions Specific to the CR Zones.**
65 The following words and phrases, as used in this Division, have the meaning indicated. The definitions in
66 Division 59-A-2 otherwise apply.
67 **Car share space:** a parking space that serves as the location of an in-service vehicle used by a vehicle-sharing
68 service.
69 **Cultural institutions:** public or private institutions or businesses including: art, music, and photographic studios;
70 auditoriums or convention halls; libraries and museums; recreational or entertainment establishments,
71 commercial; theater, indoor; theater, legitimate.

Comment: W. Thompson add... indoor/outdoor theater, art galleries, foundations, centers, societies, cultural centers, historical centers, parks, gardens; education, economic system, government, family and religion

Comment: W. Thompson add... Educational, Botanical Gardens, Research, Parks

72 **Day care facilities and centers:** facilities and centers that provide daytime care for children and/or adults,
73 including: child daycare facility (family day care, group day care, child day care center); daycare facility for not
74 more than 4 senior adults and persons with disabilities; and day care facility for senior adults and persons with
75 disabilities.
76 **Frontage:** a property line shared with an existing or master-planned public or private road, street, highway, or
77 alley right-of-way or easement boundary.

Comment: W. Thompson...add federal, regional, state, local parks

Comment: Takoma Park...missing a definition of a green wall

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

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

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

82 b) meets the size standards as determined by the Small Business Administration's Table of Small
83 Business Size Standards (SBA Table) or is a franchised company with total holdings by the local-
84 owner that meets the size standards of the Table.

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

87 **Manufacturing and production, artisan:** The manufacture and production of commercial goods by a skilled
88 manual worker or craftsperson, such as jewelry, metalwork, cabinetry, stained glass, textiles, ceramics, or hand-
89 made food products.

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

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

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

Comment: W. Thompson…add Include reference to NEPA purpose goals and objectives; mutually supportive

Comment: Takoma Park (consistency)…see line 549, this is retail only not commercial?

Comment: Takoma Park…use a distance from the County to define local…the state of Virginia is adjacent to the County

Comment: Simplification…why not do this by the number of employees? SBA uses business's gross earnings

Comment: Planning Board…editorial deletion of "(SBA Table)"

Consistency…if the Planning Board change accepted…the last phrase should change too to delete "Table"

Comment: Consistency…non-residential is used elsewhere in the zone.

Comment: W. Thompson…Live/Work unit should probably be defined as Work/Live unit since live is secondary

Comment: W. Thompson…add, including horticulture

Comment: W. Thompson…add new definition as follows…Public Private Partnerships: Involvement of a private enterprise (in the form of management expertise and/or monetary contributions) in a government project aimed at public.

Comment: W.Thompson…add …including those indoor facilities on parkland

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

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

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

105 **Transit proximity:** Level 1 proximity is based on the location of a project with access to an existing or planned
106 Metrorail Station. Level 2 proximity is based on the location of a project with access to an existing or planned
107 MARC Station, light rail station, or a stop along a transportation corridor with fixed route bus service where
108 service intervals are no longer than 15 minutes during peak commute hours. A project adjacent or confronting a
109 transit station or stop shares a property line, easement line, or is only separated by a right-of-way from a transit
110 station or stop. In addition to a project that is adjacent or confronting, a project is also considered to have
111 access to a transit facility if all parcels and lots within the project's gross tract area have no more than 25
112 percent of their area farther than the applicable distance from the transit station or stop and if not more than 10
113 percent of the residential units in the project are farther than the applicable distance from the station or stop. A
114 planned transit station or stop must be funded for construction within the first 4 years of the Consolidated

Comment: W.Thompson...add ...including those outdoor facilities on parkland

Comment: Clarification...should this include ballfields, basketball, handball, horseshoes, shuffleboard, playgrounds?

Comment: Clarification...is this to exclude roller or in-line skating?

Comment: W. Thompson... add...including those seasonal outdoor sales on Parklands (e.g., community food gardens, botanical garden where a wide variety of plants are cultivated for scientific, educational, and ornamental purposes and sales)

Comment: Planning Board. B. Kominers... revise to read "...project relative to its access"

Comment: Planning Board. B. Kominers ... revise to read "...project relative to its access"

Comment: Planning Board. B. Kominers ... revise to add "...at the time of a development application"

Comment: Policy Option...Should bus stops be treated the same as light rail? Service can change annually.

Comment: Planning Board. B. Kominers... revise to read.."a project is adjacent...

Comment: B. Sears...delete first phrase and replace with "Except for adjacent..."

Comment: B. Kominers...should this be related to lots or a percentage of the entire tract?

115 Transportation Program or the Capital Improvement Program. If a project qualifies for more than one transit
116 proximity level, the project may only take incentive density for one of the qualifying benefits.

117 **59-C-15.4. Methods of Development and Approval Procedures.**

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

119 **59-C-15.41. Standard Method.**

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

123 a) the gross floor area exceeds 10,000 square feet;

124 b) any building or group of buildings contains 10 or more dwelling units; or

125 c) the proposed development generates 30 or more new peak-hour trips.

126 **59-C-15.42. Optional Method.**

127 Optional method development must comply with the general requirements and development standards of the
128 CR zones and must provide public benefits under Section 59-C-15.8 to obtain the full densities and height
129 allowed by the zone. A sketch plan and site plan are required for any development using the optional
130 method. A sketch plan must be filed under the provisions below; a site plan must be filed under Division
131 59-D-3. Any required preliminary subdivision plan must be submitted concurrently with the site plan.

132 a) Contents of a sketch plan:

Comment: Planning Board, ... add after the first sentence "Unless otherwise provided for in this division..."
10/29/09...allow the greater of 10,000 square feet or .5 FAR as standard method

Comment: B. Chen...the public hearing process does not meet state standards for due process

J. Davis, M. Wellington...use the project plan process... require a finding of compatibility with the surrounding community, particularly with increased height

Comment: B. Kominers...more development should be allowed without site plan

R. Harris... delete this provision

Comment: W. Thompson ... The Optional Method should include those requirements for land use that includes the use of Integrated Parklands including the requirements/information/provisions necessary for a public/private partnership along with the incentive definitions.

Comment: J. Davis...insufficient development standards...follow CBD zones

Comment: M. Wellington...go back to project plan

M. Piety...denies residents an opportunity to participate. No public hearing.

Comment: Editorial...add an "a" before site plan

Comment: Planning Staff... 10/29/09 will recommend drafting process for a sketch plan in the zone with public hearing and required Board findings

Comment: B. Kominers...why not require this with a sketch plan...it would determine APF capacity before design money

133 1) justification statement for optional method development addressing the requirements and
134 standards of this Division, how the development will further the objectives of the applicable
135 master or sector plan, and how the development will be more efficient and effective than the
136 standard method of development;
137 2) total FAR, conceptual uses and maximum densities per use;
138 3) building massing, height, public use and other open spaces, and the relationship of proposed
139 buildings to adjacent buildings;
140 4) general vehicular, pedestrian, and cyclist circulation and access;
141 5) table of proposed public benefits and incentive density requested for each benefit; and
142 6) general phasing of structures, uses, public benefits, and site plans.
143 b) Procedure for a sketch plan:
144 1) Before filing a sketch plan application, an applicant must comply with the provisions of
145 Section 4 of the Manual for Development Review Procedures for Montgomery County, as
146 amended, that concern the following procedures:
147 (a) notice;
148 (b) holding a public meeting; and
149 (c) posting the site of the submission.

Comment: Planning Board, B. Sears...delete "conceptual uses" ...end the sentence to read "densities per non-residential and residential use"

Comment: Planning Board ..start sentence with "Conceptual"

150 2) The submittal, review procedure, and fees for a sketch plan are the same as a pre-application
151 submission under Section 50-33A(a), except that there is no requirement to submit a
152 preliminary subdivision plan within 90 days.

Comment: Planning Board, B. Sears would add after 90 days "of sketch plan approval"

153 3) [redacted]
154 [redacted]

Comment: Executive - delegation issue…there are no standards of approval or criteria why some elements would be binding and not others.

155 **59-C-15.5. Land Uses.**

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

157 - *Permitted Uses* are designated by the letter "P" and are permitted subject to all applicable regulations.
158 - *Special Exception Uses* are designated by the letters "SE" and may be authorized as special
159 exceptions under Article 59-G.

160

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

Comment: Civic Fed. and N. Goldberg…need to define which uses are residential and which are non-residential

Policy Option…every use not in the residential cateigory is non-residential

Comment: Takoma Park…make both Auto rental and sales special exceptions

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
Parks and playgrounds, private	P
Private clubs and service organizations	P
Publicly owned or publicly operated uses	P
Religious institutions	P
e) Industrial	
Manufacturing and production, artisan	P
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and projects resulting from biotechnical and biogenetic research and development	P
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment	P
f) Other	
Accessory buildings and uses	P
Bus terminals, no-public	P
Parking garages, automobile	P
Public utility buildings, structures, and underground facilities	P

Comment: W. Thompson... Include the concept of an integrated park system and Public Private Partnerships (incentives, plans, and procedures)

Add ... Parks, Botanical Gardens P
Parks Public/private partnerships SE Parks and playground, public/private SE
Parks publicly owned and privately operated uses SE

Radio and television broadcast studios	P
Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms	P

59-C-15.6. General Requirements.

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

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

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

59-C-15.62. Priority Retail Street Frontages.

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

a) on-street parallel parking, unless specifically denied by the agency maintaining the right-of-way;

b) majority of display windows and entrances arranged between zero and 45 degrees to the sidewalk;

c) shop entrances spaced at minimal distances in order to activate the street;

d) building façade along at least 65 percent of the aggregate length of the front street right-of-way;

e) front building wall no farther than 10 feet from the public right-of-way or 5 feet if no public utility/improvement easement (PUE or PIE) is required; and

f) windows or glass doors on 60 percent of the building façade between 3 and 9 feet above sidewalk grade.

Comment: W. Thompson … skeptical that any of these "requirements" will result in the richness and character expected as a result of its being mandated. Can these be appealed?

Comment: B. Kominers…does this mean the project must be identical to the master plan?

Comment: Planning Board….replace "adopted" with "approved"

Comment: Executive, B. Kominers…delegation issue if not approved by the Council as a regulation.

Comment: B. Kominers … this leaves no flexibility

Comment: Takoma Park…allow flexibility for unique circumstance…

Policy Option…do not require if such parking is not recommended by the master or sector plan.

Comment: Executive..this may conflict with Building Code egress requirements.

B. Kominers…"minimal distance" is subjective - does not provide a standard…and distance might change with tenant need

Comment: N. Goldberg…there are no priority streets in the White Flint Sector Plan… "minimal distances" leaves the Planning Board too much discretion.

Comment: Planning Board…revise to start as follows "at least 65 percent of the front building wall must be parallel to the aggregate length of the front street right of way and setback no farther than …"

Comment: B. Kominers…this could be a security problem and may be difficult for merchandise display

These provisions may be modified or waived by the Planning Board during the review of a site plan if found to be unreasonably burdensome to a proposed development due to conditions such as unusual lot size, topography, limited frontage, or other atypical circumstance.

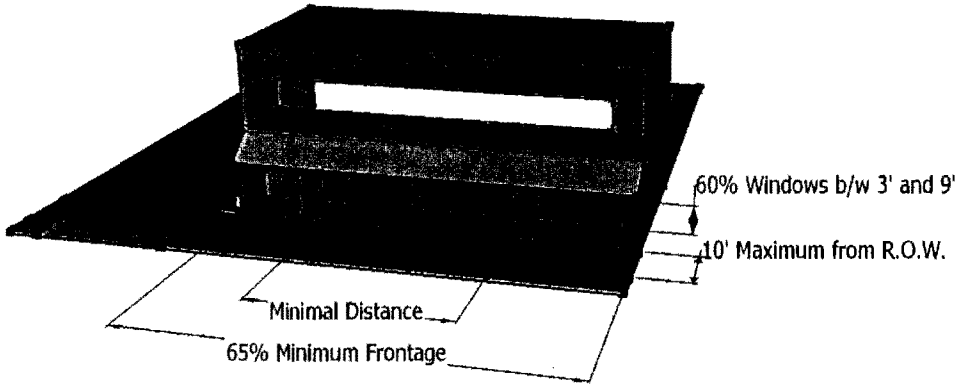
Comment: Planning Board ... delete the phrase "during the review of the site plan"

Comment: Planning Board ...add "provision of public open space" to the list

B. Kominers...delete the list because it is subjective

Comment: Executive, N. Goldberg...these criteria are too loose

Policy Option...to the extent that these are variance standards, it may be something for the Board of Appeals.



Priority Retail Building Requirements Illustrative

184 **59-C-15.63. Streetscape.**

185 Streetscape improvements must be consistent with the recommendations of the applicable master or sector
186 plan.

Comment: Takoma Park...require consistency with design guidelines

187 **59-C-15.64. Bicycle Parking Spaces and Commuter Shower/Change Facility.**

188 a) Bicycle parking facilities must be free of charge, secure, and accessible to all residents or employees
189 of the proposed development.

Comment: Executive ...difficult to enforce over time

Comment: Planning Board, B. Sears...delete "free of charge"...add a second sentence "Exterior bicycle parking must be provided free of charge."

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

Comment: Executive...difficult to enforce over time.

192

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

Comment: N. Goldberg...why should parking for a 9,999 square foot building be 2 spaces but a 10,000 square foot building be 1 space?

In a building with a total non-residential floor area of 100,000 square feet or greater.	One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces. One shower/change facility for each gender.

193 **59-C-15.65. Parking.**

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

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

197

	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
Non-residential: the minimum number of required spaces under Article 59-E multiplied by the following factor:	0.20	0.40	0.60	0.80
Residential: the minimum number of required spaces under Article 59-E multiplied by the following factor:	0.60	0.70	0.80	0.90

198

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

200 1) providing the spaces on site;

201 2) constructing publicly available on-street parking; or

Comment: B. Kominers…this is not true if it is established under subsection B

Comment: Planning Board, B. Sears … add "except that the maximum number of parking spaces allowed for general retail and restaurant use is 4 spaces for every 1,000 square feet of gross leasable area and no parking spaces are required to be provided for restaurant outdoor patron areas.

Comment: N. Goldberg supports this concept

Comment: Planning Board…would add "including on-street parking in the public right-of-way".

N. Goldberg…this should be an operational issue and not decided by the developer

3) entering into an agreement for shared parking spaces in a public or private facility within 1,000 feet of the subject lot, [[provided that]] if the off-site parking facility is not in an agricultural (Division 59-C-9), planned unit development (Division 59-C-7), or residential (Division 59-C-1) zone.

Comment: Editorial

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

Comment: N. Goldberg... why is there a difference between these credits depending upon the use?

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

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

1) a parking facility at or above grade must not be located between the street and the main front wall of the building or the side wall of a building on a corner lot; however, the Planning Board may approve a design if it finds that the alternative design would provide safer and more efficient circulation;

Comment: Planning Board, B. Sears ... delete "however" and revise to read as follows... "unless the Planning Board finds that safe and efficient circulation would be better served by a different arrangement."

Comment: Executive...loose standard for delegation.

B. Kominers..this does not prove a basis for approval.

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

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

220 f) The design of parking facilities with drive-through services must comply with the following;
221 however, the Planning Board may approve a design if it finds that the alternative design would
222 provide safer and more efficient circulation:
223 1) the driveway must not be located between the street and the main front wall of a building or the
224 side wall of a building on a corner lot;
225 2) the drive-through service window must be located on the rear wall of the building; and
226 3) curb cuts to a street must be minimized to one drive aisle of no more than 20 feet in width for
227 two-way traffic or two drive aisles each of no more than 10 feet in width for one-way traffic.
228 g) Landscaping for surface parking facilities must satisfy the following requirements:
229

Comment: WREIT, P. Harris...add more flexibility for drive – throughs

Comment: Takoma Park ... prohibit drive-throughs on priority retail streets.

Comment: B. Kominers...why not "for good cause shown...?

Comment: Executive...loose standard for delegation

Comment: B. Kominers...does this mean the only access to a building is from an alley?

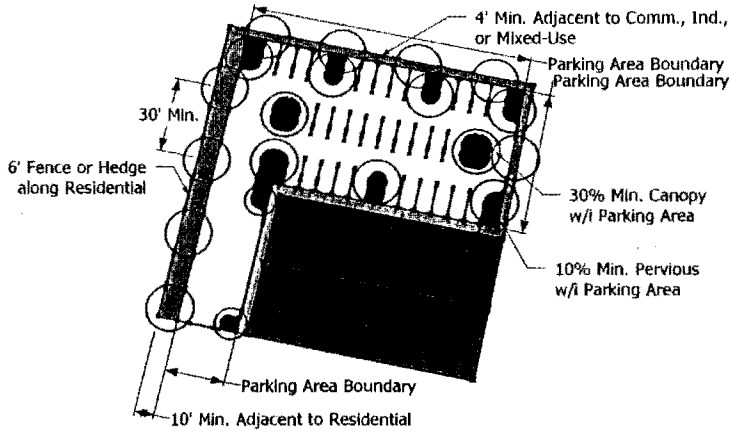
Comment: Planning Board, B. Sears, P. Harris...would revise to read... "rear or side wall of the building, provided that in unusual circumstances such as a a typical lot configuration or steep site, if located on the side wall of the building, the drive-through service window must be permanently screened from any public street, and"

Comment: Takoma Park...exclude minimum landscaping for parcels adjacent to non-residential zones if the project includes a shared driveway

Minimum Landscape Standards for Surface Parking

Subject	Requirement
Right-of-Way Screening	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.
Adjacent to a lot or parcel in any Commercial, Industrial, or Mixed-Use Zone	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.
Adjacent to a lot or parcel in an Agricultural or Residential District	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.

Internal Pervious Area	10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.
Tree Canopy Coverage	30 percent of the parking facility area (at 15 years growth).



Surface Parking Landscape Requirements Illustrative

59-C-15.7. Development Standards.

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

59-C-15.71. Density.

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

Comment: Takoma Park…this is unfair to small sites

B. Kominers…this is too low

Planning Staff 10/29/09…. the greater of 5 FAR or 10,000 square feet of floor area

Comment: Promark…make the standard method a 1.0 FAR and exclude MPDUs and WFH from counting as FAR

240 b) The maximum total density and mix of maximum non-residential and residential density for any
241 project using the optional method of development is specified by the zone. The difference between
242 the standard method density and optional method density is defined as "incentive density" and is
243 allowed under the incentive density provisions of Section 59-C-15.8.

Comment: Planning Board…delete "optional method"…replace with "proposed total"

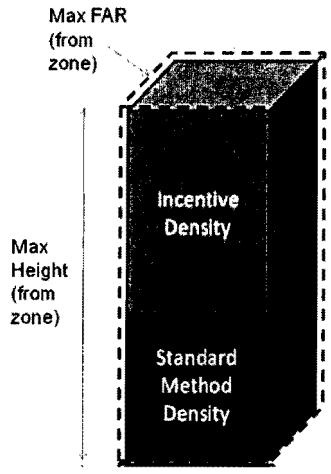
244 **59-C-15.72. Height.**

Comment: W. Thompson… Throughout this document there should be consideration of existing and proposed parks that are adjacencies to, or within, existing or planned communities, buildings, structures or setbacks, or other requirements, standards and guidelines.

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

Comment: B. Kominers…this is too low

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



248
249 *Incentive Density Illustration (with maximum FAR)*

250 **59-C-15.73. Setbacks.**

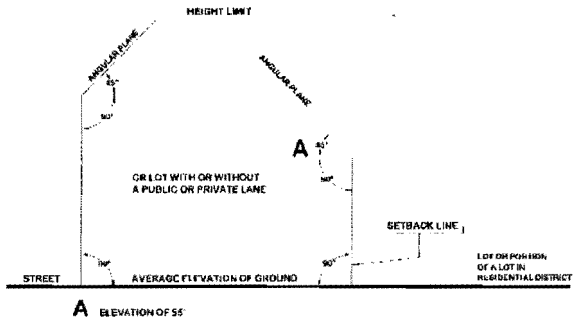
251 A building must not be any closer to a lot line of an agricultural (Division 59-C-9) or residential (Division
252 59-C-1) zone than:
253 a) 25 feet or the setback required by the adjacent lot, whichever is greater; and
254 b) the building must not project beyond a 45 degree angular plane projecting over the lot measured from
255 a height of 55 feet at the setback determined above, with the exception of those features exempt from
256 height and setback restrictions under Section 59-B-1.

Comment: Planning Board…after lot line revise to read.. "shared with a property in an agricultural"…

Development community…exempt the redevelopment of existing buildings

Comment: N. Golberg…does this mean that there is a minimum building width?

CROSS SECTION OF ANGULAR PLANE AND SETBACK RESTRICTION



257
258 *Angular Plan Setback Illustration*
259
260 **59-C-15.74. Public Use Space.**
261 a) The minimum public use space for any standard method project is 10 percent of the net tract area of
262 the site.
263 b) Projects using the optional method of development must provide public use space as follows:

Comment: J. Davis…unacceptably minimal

N. Goldberg …will the space required be adequate?

Public use amenities in the sector plan are not related to public use space.

Comment: Planning Board…delete "tract" and replace with "lot"

Takoma Park…make the table consistent with the text in referring to track, not lot

Policy Option…is it better for each lot to have open space than having it somewhere on the tract?

Comment: Consistency…why should this be higher than optional?...This should not be different than the table

Policy Option…use same requirement for both standard and optional.

Comment: B. Kominers… no flexibility

Minimum Required Public Use Space (% of net lot area)				
Acres (Gross)	Number of Existing and Planned Right-of-Way Frontages			
	1	2	3	4+
< ½	0	0	4%	6%
½ - 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%

Comment: Civic Fed…these numbers are unacceptably low

Comment: Policy…this is unnecessarily complicated for very small differences

Policy Option…have 3 choices 0 – 5 –and 10.

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;

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

5) contain amenities such as seating options, shade, landscaping, or other similar public benefits.

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

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

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

Comment: B. Kominers…no standards for the time of day the area must be accessible

Comment: Planning Board…delete (c) 4)

Comment: B. Kominers…lacks certainty if the Planning Board is not required to accept alternatives

Comment: Civic Fed…opposes alternatives to on-site open space…who makes the decision on the use of the fund?

Comment: Planning Board…revise to read… "improvements of an equal or greater size…"

Comment: B. Kominers…how is market value to be calculated?

Comment: Planning Board….add as a new paragraph "A development on a site greater than 3 acres may only provide off-site public use space in order to provide master planned open space improvements, or a payment per paragraph 2 above, for an area of equal or greater size within the master plan area of the proposed development in accordance with an approved sketch plan."

59-C-15.75. Residential Amenity Space.

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

Comment: Executive…a housing code issue.

281

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

282
283 b) The amenity space is not required for Moderately Priced Dwelling Units (MPDUs) on a site within a
284 metro station policy area or where the Planning Board finds that there is adequate recreation and open
285 space within a ½ mile radius of the subject site.
286 c) The amenity space requirement may be reduced by ½ for Workforce Housing Units (WFHUs) located
287 within a metro station policy area or if the minimum public open space requirement is satisfied on
288 site.

Comment: Civic Fed and N. Goldberg…opposes reducing this requirement based on unit price…these residents need the space as much as market rate residents

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

291 **59-C-15.8. Special Regulations for the Optional Method of Development**

292 **59-C-15.81. Incentive Density Provisions.**

293 This section establishes incentives for optional method projects to provide public benefits in return for
294 increases in density and height, consistent with the applicable master or sector plan, up to the maximum
295 permitted by the zone.
296 a) The incentive density approved for each proposed public benefit is calculated as a percentage of the
297 total incentive density, which is the incremental difference between the standard method maximum
298 FAR (0.5) and the proposed project FAR up to the maximum FAR allowed by the zone.
299 b) The minimum and maximum incentive density percentage increases for each public benefit are
300 established in Section 59-C-15.81(f).
301 c) The Planning Board may accept, reject, or modify a proposed incentive density or modify the
302 requested percentage above the minimum of incentive density established up to the maximum
303 established. Except for those benefits with specific maximum standards, in approving incentive
304 densities above the minimum, the Planning Board must consider:
305 1) the size and configuration of the parcel;
306 2) the policy objectives and priorities of the applicable master or sector plan;
307 3) the applicable design guidelines;
308 4) the relationship of the site to adjacent properties;
309 5) the presence or lack of similar benefits nearby; and
310 6) quantitative and qualitative enhancements provided exceeding the delineated minimum
311 incentive density standards.

Comment: B. Kominers…consistency requirement reduces flexibility.

Comment: B. Sears …revise a) to read "the incentive density approved for each proposed public benefit is calculated as a percentage of the incremental difference between the standard method of development and the maximum FAR allowed by the zone." And delete the Planning Board's new proposed b).

Comment: Planning Board…the first sentence should read " The incentive density approved for each proposed public benefit for single-building development is…"

And add a new b) "Public benefits for one building in a multi- building project must be weighted proportionally to the density of the applicable building compared to the density of the project." A new example would also be added

Policy Option… should be more like the density shifting provision of the LSC zone?

Comment: White Flint Partnership…this should be measured to the maximum of FAR

Comment: B. Kominers, D. Freishtat…this creates a different standard within a zone and may violate uniformity

Comment: Planning Board…this section should read… "The Planning Board may accept or reject the incentive density requested for individual public benefits or modify the requested percentage above the minimum for each public benefit."

Comment: Executive…delegation without standards

Comment: B. Kominers…is this aesthetic zoning…is this an illegal delegation without Council review.

Comment: M. Wellington…require development to be compatible with adjacent properties

Comment: Planning Board…delete everything after the word "enhancements" and add "such as the examples provided in Section 15.83 through 15.86, exceeding the delineated minimum incentive ... [1]

312 d) Public benefits that apply to 1 building in a multi-building project must be weighted proportionally to
313 the density of the applicable building compared to the total density of the project.
314 e) In addition to the public benefits set forth below, an applicant may propose other public benefits that
315 will further the goals and objectives of the applicable master or sector plan for the purpose of
316 obtaining an incentive density increase.
317 f) The Planning Board may grant no more than 30 percent of the total incentive density for a project for
318 the connectivity, design, diversity, or environment incentive categories under (h) below or any public
319 benefit approved under (e) above.

320 *Example*: A development in a zone with a maximum FAR of 5.5 would base all public benefit calculations on the incentive density of
321 5.0 FAR (5.5-0.5). Thus, being on a site adjacent to a metro station would yield an automatic incentive density of 2.5 FAR (5.0 x
322 0.50), and full density would be allowed by providing public benefits equal to an additional 50 percent.

323 g) Provision for inspections, maintenance, and enforcement of public benefits provided in return for
324 incentive density must be established in a Site Plan Enforcement Agreement approved by the
325 Department of Permitting Services and by resolution of the Planning Board before the certification of
326 a site plan.
327
328
329
330

Comment: Consistency...LSC allows more density on one parcel than another

Planning Board recommended changes

Comment: Executive...broad delegation...additional elements should be by ZTA

Comment: B. Kominers...this is restrictive

Comment: Planning Board...after "for" insert the word "each of"

Comment: Planning Board...delete "a development" and replace with... "A single-building development using its entire available incentive density..."

Comment: B. Kominers...what happens if they disagree?

h) Table of density incentives: Incentive Zoning Table			
Public Benefit	**Percent of Incentive Density**		**Section Reference**
	Minimum	**Maximum**	
Transit Proximity	See section reference		15.82
Connectivity & Mobility			
Community Connectivity	10	20	15.831
Community Garden	5	10	15.832
Parking at the Minimum	10	20	15.833
Pedestrian Through-Block Connection	5	10	15.834
Public Parking	20	30	15.835
Transit Access Improvement	10	20	15.836
Diversity			
Adaptive Buildings	15	30	15.841
Affordable Housing: MPDUs	See section reference		15.842
Affordable Housing: WFHUs	See section reference		
Care Center	10	20	15.843
Community Facility	10	20	15.844
Local Retail Preservation	10	20	15.845
Unit Mix and Size	5	10	15.846
Design			
Floor Plate Size	10	20	15.851
Historic Resource Protection	10	20	15.852

Comment: Civic Fed...if the developer should provide an item because it is just sound planning or design....it should not add density.

N. Goldberg...with the density increases as high as they are proposed, the community may not get all that it wants ...particularly if the affordable housing criteria is used...60 to 80 percent of incentive density may be for transportation or environment...incentives are not related to cost.

Comment: M. Wellington...the amenities are insufficient

J. Davis..do not give density for amenities the developer would provide as a matter of course

B. Cope...these limits do not leave room for the community to get 1 big thing like the rec. center in Friendship Heights.

Comment: Promark...incentives allowed should be related to cost

Comment: B. Sears...add a column to describe the method for calculating the density increase...per site, per building, per floor area

add new criteria for providing master plan roads.

Comment: B. Sears...this should be 0.

Parking Below Grade	10	20	15.853
Podium/Tower Setback	5	10	15.854
Public Art	10	20	15.855
Public Plaza/Open Space	5	10	15.856
Streetscape, Off-Site	5	10	15.857
Exceptional Design	10	20	15.858
Environment			
Bio-retention and Stormwater Recharge	5	10	15.861
Conveyed Parkland	10	20	15.862
Dark Skies	5	10	15.863
Energy Efficiency and Generation	10	20	15.864
Green Wall	5	10	15.865
LEED Rating	10	30	15.866
Rainwater Reuse	5	10	15.867
Transferable Development Rights	10	30	15.868
Tree Canopy	10	20	15.869
Vegetated Area	5	10	15.8610
Vegetated Roof	10	20	15.8611

Comment: B. Sears ...would add a new public benefit "Construction of Master Plan on-site roads"

59-C-15.82. Transit Proximity Incentives.

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

Comment: N Goldberg... this should not be an incentive...the developer does nothing to get it.

J. Davis...leaves little reason for other amenities

Comment: N. Goldberg...takes exception to this statement.

Comment: Promark...double the density given for this criteria

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

Comment: Montouri Family Trust…this should be 60 percent

Comment: DANAC…why this relationship between these levels?...studies show that the characteristics of light rail are closer to heavy rail

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.

Comment: B. Kominers…how is this uniform?

Comment: B. Kominers…are BLTs required for space deemed a public benefit?

Comment: Planning Board…add the phrase "at the time of sketch plan application" before the word "and"

Comment: Executive…this changes over time.

Comment: Planning Board…revise to read "maximum gross floor area"

Comment: Planning Board… delete uses...revise to read… "retail bay square footage remain at or below that maximum gross floor area for…"

Comment: N. Goldberg…why should a 4 year promise result in a permanent density increase?

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

Comment: B. Kominers…revise to read "maximum incentive density"

…is this an objective standard

351 **59-C-15.832 Community Garden.**

Comment: N Goldberg…this incentive is already covered by "vegetated area"

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

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

355 1) is located on the subject site or within 500 feet of the subject site;

356 2) provides all garden spaces with at least 12 inches of soil depth and access to water; and

357 3) provides community garden space at a rate equivalent to 1 space per 20 dwelling units. Each
358 space must be at least 16 square feet. At least 1 out of each 10 spaces must be accessible under
359 ADA standards.

Comment: N. Goldberg…this would be a poor garden; more soil is required

Comment: B. Kominers…does rain count? Do you need a water source for each garden?

Comment: Executive…standards cover by code.

Comment: N. Goldberg…why should parking on site create a reason for an increase in density?

Comment: Planning Board…delete and replace with "The incentive density increase is calculated on a sliding scale from no increase for providing the maximum allowable number of spaces on-site to a maximum 20 percent for providing fewer spaces on site."

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

362 **59-C-15.833. Parking at the Minimum.**

Comment: Planning Board…delete and replace with "The incentive density increase is calculated as follows:
1) Numerator= maximum # of spaces allowed – actual # of spaces provided;
2) Denominator= maximum # of space allowed – minimum # of spaces required; and
3) The resulting ratio multiplied by 0.2 is equal to the bonus density.

Example: If a development has a minimum of 50 required spaces and a maximum of 100 allowed spaces and provides 60 spaces: ((100-60)/(100-50))x 0.2+ .16 or 16 percent incentive density increase."

363 a) The minimum incentive density increase requires that sites of 1 acre or more provide on-site only the
364 minimum required number of parking spaces.

365 b) The maximum increase requires that sites of less than 1 acre provide on-site only the minimum
366 required number of parking spaces.

367 **59-C-15.834. Pedestrian Through-Block Connections.**

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

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

371 1) the pedestrian connection must provide direct access between streets;

372 2) the pedestrian connection must be at least 15 feet in width;

373 3) at least 35 percent of the walls facing the interior pedestrian connection below a height of 8
374 feet must have clear, unobstructed windows, unless the Planning Board finds that an alternative
375 design is at least equally safe;

376 4) the pedestrian connection must be open to the public between sunrise and sunset and, where it
377 leads to a transit facility or publicly-accessible parking facility within ½ mile, for the hours of
378 operation of the transit and/or parking facility; and

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

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

383 1) direct connection to parks;

384 2) transit facilities;

385 3) public buildings;

Comment: N. Goldberg…is there a minimum parcel size requirement?

Comment: Policy…Council rejected through block connectors in Silver Spring

Comment: Planning Board …add at the end "and may be provided through the first floor of a building if the property owner grants a public access easement for the walkway;"

Comment: Planning Board…add "unless less is found adequate by the Planning Board due to exceptional circumstances;"

Comment: Executive…delegation with loose standards…. N Goldberg is concerned about this waiver

Comment: Planning Board…add "level 1 or level 2" before transit facility

Comment: B. Kominers…does this include bus?

Comment: B. Kominers…doors are a security issue and loses space for merchant.

Comment: Executive…delegation under loose standards.

Comment: Planning Board…add after parks ", transit facilities, or public buildings

Comment: Planning Board…delete contents of 2) and 3)…recommend including them in 1).

386 4) pedestrian connection with accessible retail uses along a majority of its length;

387 5) connections increased in width; or

388 6) public artworks integrated into the walk.

389 **59-C-15.835. Public Parking.**

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

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

395 **59-C-15.836. Transit Access Improvement.**

396 a) The minimum incentive density increase for transit access improvements requires that the
397 improvements:

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

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

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

404 **59-C-15.84. Diversity Incentives.**

Comment: Planning Board…delete "integrated into the walk"

Comment: J. Davis …there should not be an incentive to provide more parking.

Comment: N. Goldberg…questions this in general as a reason for increased density particularly if it is free.

Comment: Planning Board…delete a) and b)..add the following:
"Applicants are encouraged to provide publicly accessible parking space for free or at a market rate. The incentive density increase is calculated based on the ratio of publicly accessible parking to private parking provided on site using a sliding scale from zero percent for no publicly accessible parking spaces to a maximum of 20 percent."
"Example: For a project with 100 total parking spaces, 40 of which are publicly accessible, the incentive density equals 13 percent ((40/60) x 0.2 =.13 or 13 percent

Comment: N. Goldberg…this overlaps the through block connector at least in part

Comment: Executive…already covered by code.

Comment: B. Kominers…there are no standards here on how much increased density would be allowed for anything.

Comment: B. Sears…would add a new paragraph…"Any increase under the Section may be achieved by the provision of improvements funded by a special taxing district, or other area-wide funding."

405 **59-C-15.841. Adaptive Buildings.**

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

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

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

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

412 b) The maximum increase requires additional benefits such as that:

413 1) the structural system has additive capacity for any available density and height that is not used
414 by the building without demolition of the structure; or

415 2) the internal layout is built to allow changes between residential, retail, and office uses by minor
416 modifications.

417 **59-C-15.842. Affordable Housing.**

418 a) All residential development must comply with the requirements of Chapters 25A and 25B for the
419 provision of Moderately Priced Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs).

420 b) Provision of MPDUs above the minimum required grants an incentive density increase, providing the
421 following standards are met:

422 1) the increase in density is calculated on the incentive density as required by Chapter 25A;

423 2) the MPDUs must be reasonably distributed throughout the project; and

Comment: B. Kominers...this is too tall for upper floors

Comment: Planning Board...revise to read "...at least 15 feet for any floor(s) with access at grade and at least 12 feet for all other floors..."

Comment: M. Piety...this should not add density when the area has lots of affordable housing already.

Comment: White Flint Partner ship, Montouri Family Trust ...density increase should be 50 percent...modifications to Chapter 25A and 25B must be made.

JBG...current WFH requirements have shut down new approvals

Comment: Planning Board...revise to read "the required number of MPDUs is calculated on the total number of dwelling units as required by Chapter 25A and the percent of incentive density increase is based on the proposed incentive density FAR for the entire project; and"

Comment: Planning Board...revise to read "any dwelling units built under this section must be controlled under the MPDU or WFHU provisions for a minimum period of 99 years."

424 3) any dwelling units built under this section must be controlled under the MDPU or WFHU
425 provisions for a minimum period of 99 years.

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

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

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

432 **59-C-15.843. Care Center.**

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

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

439 **59-C-15.844. Community Facility.**

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

442 1) is recommended in the applicable master plan or sector plan; and

Comment: Planning Board... add "that proposes full density"

Comment: N. Goldberg...this is a current requirement...why give density for it?

Comment: B. Sears... add the following as a new paragraph and new subsection d)... "In addition to the FAR incentive density increases allowed for MPDUs and WFHUs, the maximum residential FAR may be increased up to a maximum of 1 FAR above the total permitted FAR under the applicable CR zone by the FAR of MPDUs and WFHUs provided on-site.
d) The total incentive density for the diversity category may exceed 30 percent if the incentive density for Affordable Housing is allowed."

Comment: N. Goldberg...how do you make sure this is selected when it is recommended by a sector plan?

Comment: Commission on Child Care...supports this as an incentive

Comment: Policy Option...relate this to the amount of the floor area increase with this minimum.

Comment: B. Kominers...are these resident users?....there are no standards for the additional benefits

Comment: Executive...changes over time...difficult to enforce.

Comment: N. Goldberg...a drop-off should be required, it should not add more density

Planning Board ...delete "safe"

Comment: Clarification...does this include a place of worship?

443 2) is accepted for operation and use by an appropriate public agency, community association, or
444 nonprofit organization.
445 b) The maximum increase requires further benefits, such as an entrance to the facility directly on the
446 street, location of the building within 10 feet of a public sidewalk, associated outdoor open space, or
447 integration into an area with a residential FAR of at least 2.0 (or at least 30 dwelling units per acre).
448 **59-C-15.845. Local Retail Preservation.**
449 Preservation of locally-owned small businesses on site is eligible for incentive density as follows:
450 a) preservation of up to 2 small businesses: 10 percent; and
451 b) preservation of 3 or more small businesses: 20 percent.
452 Exact terms of lease requirements and rental agreements must be established by the site plan enforcement
453 agreement.
454 **59-C-15.846. Unit Mix and Size.**
455 a) The minimum incentive density increase for creating residential buildings with a minimum mix of
456 dwelling unit types (calculated by rounding to the next higher whole number) requires provision of at
457 least:
458 1) 7.5 percent as efficiency dwelling units;
459 2) 8 percent as one-bedroom dwelling units;
460 3) 8 percent as two-bedroom dwelling units; and
461 4) 5 percent as three -bedroom dwelling units.

Comment: Executive...problem with the constitution's commerce clause

Comment: Takoma Park...this defined as commercial not retail in the difinition section.

Comment: Planning Board...after on site, add "at the time of use and occupancy of the proposed development..."

Comment: B. Kominers what if the local owner sells?

Comment: Clarification...does "by" mean time or included in the content?

Comment: Planning Board...add after 3-bedroom "or larger"

462 b) The maximum increase requires provision of at least (calculated by rounding to the next higher whole
463 number):
464 1) 10 percent as efficiency dwelling units;
465 2) 10 percent as one-bedroom units;
466 3) 10 percent as two-bedroom units; and
467 4) 7.5 percent as three -bedroom units.

Comment: Planning Board…add after 3-bedroom "or larger"

468 **59-C-15.85. Design Incentives.**
469 **59-C-15.851. Floor Plate Size.**

Comment: N. Goldberg…is this a duplication of. "Podium/Tower Setback" under §15.854?

470 a) The minimum incentive density increase for the provision of floor plate restrictions requires that:
471 1) the floor area of any floor above a height of 120 feet does not exceed 10,000 square feet for
472 residential uses or 19,000 square feet for non-residential uses, or 12,000 square feet for mixed-
473 uses (if not more than 60 percent of a mixed-use floor is used for any single use); and
474 2) the exterior of the building facing any street or public open space has at least 60 percent glass
475 on the floors with the reduced floor plate.

Comment: B. Kominers…inflexible

476 b) The maximum increase requires additional benefits, such as providing the reduced floor plates in
477 conjunction with the Exceptional Design factor, providing smaller floor plates, combining this
478 incentive with the tower setback, providing a larger percentage of glass, or integrating sustainable
479 technologies into the architecture.
480 **59-C-15.852. Historic Resource Protection.**

Comment: J. Davis…why give density for doing what is required by law?

Policy… resources are protected by code, increasing density makes it more difficult to preserve.

481 a) The minimum incentive density increase for the preservation of a historic resource designated in the
482 Master Plan for Historic Preservation requires that a preservation strategy for the resource is
483 approved by the Planning Board as part of the site plan enforcement agreement and that a historic
484 area work permit is issued by the Historic Preservation Commission.
485 b) The maximum increase requires that other benefits are provided, such as interpretive signs/exhibits,
486 integration and construction of context-appropriate landscapes and settings, or protection of
487 important viewsheds.
488 **59-C-15.853. Parking Below Grade.**
489 a) The minimum incentive density increase requires that sites of 1 acre or more provide all on-site
490 parking spaces below the average grade of the primary street frontage.
491 b) The maximum increase requires that sites of less than 1 acre provide all on-site parking spaces below
492 the average grade of the primary street frontage.
493 **59-C-15.854. Podium/Tower Setback.**
494 a) The minimum incentive density increase for the provision of a tower setback requires that the tower
495 must be set back from the first floor building frontage at or below 72 feet and the setback must be at
496 least 6 feet.
497 b) The maximum increase requires that the tower setback be at or below 50 feet and that the setback be
498 at least 12 feet.
499 **59-C-15.855. Public Art.**

Comment: B. Kominers…add after historic resource "that has been…"

There are no standards for a "preservation strategy"

Comment: N. Goldberg…this incentive is okay but the total amount of density that can be taken for all the parking incentives should be limited.

Comment: Planning Board…revise to read "Parking in Structure"

Comment: Planning Board…revise to read "The minimum incentive density increase requires that all on-site parking spaces are provided in structured parking with active uses fronting on all priority retail street frontages, when applicable."

Comment: This is a different class of properties than the minimum.

Comment: Planning Board… after spaces add "are provided"

Add a new subsection c)… "A proportion incentive density between the minimum and the 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."

Comment: N. Goldberg…to the extent that credit is given for Floor Plate Size, it should not be given for this.

Comment: J. Davis…vague and subjective standards.

N. Goldberg…what art objectives in a master plan would let anyone know what art is good or bad?

500 Public art is considered a public benefit because it enhances the quality of place and creates a sense of
501 identity in a community.
502 a) The minimum incentive density increase for public art requires that it:
503 1) enhances the general or specific cultural objectives of the applicable master or sector plan; and
504 2) is approved by the Public Arts Trust Steering Committee.
505 b) The maximum increase requires that, in addition to the above requirements, the artwork fulfill at least
506 5 of the following goals as determined by the Public Arts Trust Steering Committee:
507 1) achieve aesthetic excellence;
508 2) ensure an appropriate interaction between the art and the architectural setting in terms of scale,
509 materials, and context;
510 3) ensure public access and invite public participation;
511 4) encourage collaboration between the artist(s) and other project designers early in the design
512 phases;
513 5) ensure long-term durability of permanent works through material selection or a documented
514 maintenance program;
515 6) encourage a rich variety of arts including permanent, temporary (revolving), and event
516 programming;
517 7) increase public understanding and enjoyment of art through interpretive information and/or
518 programmed events; and

Comment: Executive, B. Kominers...illegal delegaton

Planning Board... delete approve and add "reviewed for comment"

Comment: Planning Board... delete "as determined by the Public Arts Trust Steering Committee"

8) achieve a collection of commissioned art that is unique and contributes in a positive way to the identity of the community.

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

1) the minimum fee is calculated on 1 percent of the development's projected cost;

2) the fee is paid to the Public Arts Trust Steering Committee;

3) the fee is used for installation, management, and maintenance of public art at the discretion of the Public Arts Trust Steering Committee, with preference given to the policy area where the proposed development is located; and

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

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

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

a) The minimum incentive density increase for any plaza requires that:

1) the plaza is directly accessible to a street;

2) the plaza must be open to the public at least between sunrise and sunset;

3) no proposed loading or parking facilities should be visible below a height of the fourth floor; and

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

Comment: Planning Board... delete "Plaza/" and delete "the plaza" everywhere in this subsection and replace with "public use space"

Comment: Planning Board...replace with "Public open space is an important public amenity and create interesting spaces and active gathering areas."

Comment: Planning Board...add "and visible"

Comment: Planning Board...add after should be "directly adjoining to or"; after visible add "from the public open space"; delete the remainder.

Comment: Clarification... from where is this measured?

Comment: Planning Board..delete "open" add "public use"

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

539 1) the plaza's width must be at least 50 feet;

540 2) where the plaza is provided as part of a redevelopment, buildings facing the plaza must be

541 designed so that:

542 A) the walls of any non-residential floor area facing the plaza must have windows on at

543 least 60 percent of the façade below a height of 40 feet; and

544 B) the main entry to any dwelling units is from a wall facing the plaza; and

545 3) the plaza should contain seating, trash receptacles, landscaping, and other amenities such as

546 water features, kiosks, and passive recreation areas.

547 **59-C-15.857. Streetscape, Off-Site.**

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

549 spaces.

550 a) The minimum incentive density increase for streetscape improvements requires that the following

551 criteria are met:

552 1) the improvements must be located within 1/2 mile of the subject site; and

553 2) the improvements are equal to 18 percent of the net lot.

554 b) The maximum increase requires that the improvements be equal to at least 36 percent of the net lot

555 area.

556 **59-C-15.858. Exceptional Design.**

Comment: Planning Board...after feet add "for the majority of its length or depth"

Comment: B. Kominers ...after units add fronting on the public open space"

Comment: B, Kominers ...why 18 percent?

Comment: B. Sears...add a new section "Constuction of Master Plan On-Site Roads. The incentive density increase for the construction of master plan on-site roads shall be equal to the area of the road up to a maximum of 25 percent of the incentive density increase."

Comment: Executive ...no authority for this in zoning.

Comment: J. Davis...vague and subjective standards.

Comment: B. Kominers...examples should be provided for each criteria and combinations of criteria,

Comment: Executive ...no authority for this in zoning.

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

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

Comment: B. Kominers...what does "reconciling offset street-walls mean?

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

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

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

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

571 f) integrates environmentally sustainable solutions, for example, by using stormwater management
572 facilities that incorporate best management practices in an apparent and observable way or integrating
573 passive solar features into the visible structure of a building or site.

Comment: Executive...covered or soon to be covered by code

574 **59-C-15.86. Environment Incentives.**

575 **59-C-15.861. Bio-retention and Stormwater Recharge.**

Comment: N. Goldberg...to the extent this a duplication of "rainwater reuse", it should not be allowed.

Policy option delete rainwater reuse but make it a reason to go to maximum density for this criteria.

576 a) The minimum incentive density increase for the use of bio-retention and recharge facilities requires
577 that at least 25 percent of projected stormwater outfall for a 10-year event be contained and recharged
578 on site or within ¼ mile of the site.
579 b) The maximum increase requires that at least 50 percent of projected stormwater for a 10-year event be
580 contained and recharged.

Comment: B. Kominers...would this reduce stormwater management rrequirements?

581 **59-C-15.862. Conveyed Parkland.**
582 a) The minimum incentive density increase for land conveyed to the M-NCPPC for inclusion in or
583 provision of parkland, trail area, or other master-planned Parks' use requires conveyance of at least of
584 15 percent of the gross lot area.
585 b) The maximum increase requires conveyance of at least 30 percent of the gross lot area.

Comment: B. Kominers... after of add "an amount equal to"

Comment: B. Kominers...should this be from the gross TRACT area?

Comment: B. Kominers...after of add "an amount equal to"

586 **59-C-15.863. Dark Skies.**

Comment: Executive...this was considered and not adopted by Council in code.

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

Comment: Executive, B. Kominers...illegal delegation

590 b) The maximum increase requires that the exterior lighting plan be integrated into an energy efficiency
591 plan for the entire project submitted and approved by the Planning Board with a site plan application.
592 **59-C-15.864. Energy Efficiency and Generation.**

593 a) The minimum density incentive increase for the use of on-site renewable energy generation requires
594 that buildings must meet the minimum energy efficiency standards of 17.5 percent for new buildings,
595 10.5 percent for existing buildings, or generate at least 1.5 percent of their energy on-site.
596 b) The maximum increase requires additional benefits such as greater energy efficiency and the
597 generation of at least 2.5 percent of energy on-site.
598 **59-C-15.865. Green Walls**
599 a) The minimum incentive density increase for a green wall requires that it:
600 1) must be designed, installed, and maintained to cover at least 30 percent of the area of a blank
601 wall or parking garage facing a street or plaza; and
602 2) must be found to add to the aesthetic quality and environmental sustainability of the project.
603 b) The maximum increase requires additional benefits such as a greater percent of coverage, southern or
604 western exposure, the use of plants with varying flowering seasons, or integration into an overall
605 energy or environmental site design program.
606 **59-C-15.866. LEED Rating.**
607 A LEED-rated building or equivalent rating system approved under Chapter 8 Article VII is eligible for an
608 incentive density increase if it meets any continuing requirements necessary to maintain that status.
609 (http://www.usgbc.org/Default.aspx) The amount of incentive density increase is equal to the following:
610 a) LEED Silver: 10 percent
611 b) LEED Gold: 20 percent

Comment: Planning Board...add "or from a renewable energy generation facility located on another property within the same master or sector plan area"

Comment: Executive, B. Kominers...changes over time...difficult to enforce

Comment: Planning Board...add "or from a renewable energy generation facility located on another property within the same master or sector plan area"

Comment: Executive...should be covered by code

Comment: Takoma Park...green walls needs a definition

Comment: B. Kominers... after of add "an above grade"...after garage add "wall"

Comment: B. Kominers...subjective...aesthetic zoning

Comment: M. Piety...this is in the developer's interest and should not add density.

N. Goldberg...does not provide more tree canopy or less impervious surface

612 c) LEED Platinum: 30 percent

613 **59-C-15.867. Rainwater Reuse.**

614 a) The minimum incentive density increase for the collection of rainwater for on-site irrigation, grey-
615 water use, or filtration for re-use requires that a minimum of 25 percent of projected rainwater for a
616 10-year event be collected and used on-site or within ¼ mile of the site.

617 b) The maximum increase requires that at least 50 percent of projected rainwater for a 10-year event be
618 collected and used.

619 **59-C-15.868. Transferable Development Rights.**

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

622 a) the purchase must be executed and recorded before approval of a record plat;

623 b) the use of this incentive must be for development on land recommended as a TDR receiving area in
624 the appropriate master or sector plan;

625 c) TDRs must be purchased in increments of 10; and

626 d) the incentive density increase is equal to 10 percent for every 10 TDRs purchased, up to 30 percent.

627 **59-C-15. 869. Tree Canopy.**

628 a) The minimum incentive density increase for the provision of tree canopy requires coverage of at least
629 25 percent of the on-site open space at 15 years growth.

Comment: N. Goldberg...this is in part a duplication of §15.861

Comment: N. Goldberg ....this does not meet the needs of the residents in the sector plan

Comment: B. Kominers... how should the zone or the development be designated as a TDR receiving area?

Comment: B. Kominers...is this a realistic urban standard?

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

632 **59-C-15.8610. Vegetated Area.**

Comment: N. Goldberg...this is a duplication of vegetative area

633 a) The minimum incentive density increase for a vegetated area requires that the following criteria are
634 met:
635 1) the area must be in addition to any required on-site open space or any vegetated roof incentive;
636 2) the area must replace at least 5,000 square feet of impervious area;
637 3) the area provides at least 12 inches of soil depth; and
638 4) the area is planted with well-maintained vegetation.
639 b) The maximum increase requires additional benefits, such as larger area or greater soil depth.

640 **59-C-15.8611. Vegetated Roof.**

641 a) The minimum incentive density increase for a vegetated roof requires that the:
642 1) vegetated roof must cover at least 33 percent of the roof of the building, excluding any space
643 occupied by mechanical equipment; and
644 2) soil or media depth must be at least 4 inches.
645 b) The maximum increase requires coverage of at least 60 percent of the roof area.

Comment: B. Kominers...how much more than 60 percent?

646 **59-C-15.87. Special Regulations for Purchase of Building Lot Termination (BLT) Development**
647 **Rights.**

Comment: B. Kominers...needs a nexus to development and should be an incentive

Comment: White Flint Partnership, JBG, Montouri Family Trust...make this an incentive

Comment: Policy...make this an incentive BUT the first incentive that MUST be used.

648 a) A development under the Optional Method must purchase building lot termination (BLT) easements
649 under Chapter 2B, or a contribution must be made to the Agricultural Land Preservation Fund under
650 Chapter 2B equal to 12.5 percent of the incentive density floor area using the following formula:
651 1) one BLT easement is required for each 9,000 square feet of residential floor area;
652 2) one BLT easement is required for every 7,500 square feet of non-residential floor area.
653 b) When a BLT easement cannot be purchased or the amount of floor area attributed to a building lot
654 termination easement is a fraction of the floor area equivalent, payment must be made to the
655 Agricultural Land Preservation Fund according to the rate set annually by executive regulation.

Comment: Planning Board...would delete subsection a) and b) and would replaced it with attachment A starting on line 688.

Planning Staff ...10/29/09...would make BLT at incentive and give credit as follows:

"The incentive density for the purchase of BLTs is equal to two times the square footage of every BLT purchased up to 20% for sites greater than one acre and up to 50% for sites equal to or less than one acre. BLTs must be purchased in units of two and must be bought in full. BLTs must be bought at a rate of one per 9,000 square feet for residential square footage and 7,500 square feet for non-residential square footage."

656 **59-C-15.9. Existing Approvals.**

Comment: Planning Board...a redraft of this section is under attachment B starting on line 711.

Comment: White Flint Partnership, and LCOR...approve the changes recommended by the Planning Board

P. Harris...OK with Planning Board text but allow new freestanding additions

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

Comment: R. Harris...make this enlarged up to 10 percent or 30,000 square feet

Comment: REI Trust...allow the addition of a pad site..10% or 14,500 square feet

662 b) A project that received an approved development plan under Division 59-D-1 or schematic development
663 plan under Division 59-H-2 before the enactment of the CR zones may proceed under the binding elements
664 of the development plan and will thereafter be treated as a lawfully existing building and may be renovated
665 or reconstructed under Subsection (a) above. Such projects may be amended as allowed under Division 59-
666 D-1 or 59-H-2, under the provisions of the previous zone; however, any increase in the total floor area or

667 building height beyond that allowed by Subsection (a) above requires full compliance with the full
668 provisions of this Division.
669 c) A project which has had a preliminary or site plan approved before the applicable sectional map amendment
670 may be built or altered at any time, subject to either the full provisions of the previous zone or this division,
671 at the option of the owner. If built under the previous approval, it will be treated as a lawfully existing
672 building and may be renovated or reconstructed under Subsection (a) above.
673
674 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.
675
676 This is a correct copy of Council action.
677
678 _____
679 Linda M. Lauer, Clerk of the Council
680
681
682
683
684
685

686 ATTACHMENT A

687 **59-C-15.87. Special Regulations for Purchase of Building Lot Termination (BLT) Development**
688 **Rights.**
689 Except for residential development subject to the requirement of workforce housing under Section 59-A-
690 6.18, the approval of an application for any gross floor area in an optional method of development project
691 must be subject to the following requirements:
692 a) 12.5 percent of any floor area above the maximum allowed under the standard method of
693 development must be supported through the purchase by the applicant of a BLT easement through a
694 contribution to the Agricultural Land Preservation Fund under Chapter 2B for purchase of a BLT
695 easement on real property to preserve agricultural land in the County according to the following
696 formulas:
697 1) one buildable RDT lot must be extinguished for each 9,000 square feet of gross residential
698 floor area;
699 2) one buildable RDT lot must be extinguished for each 7,500 square feet of gross non-residential
700 floor area; and
701 3) the BLT requirement does not apply to residential development in areas subject to the
702 workforce housing program under Section 59-A-6.18 and Chapter 25B.
703 b) If the applicant for optional method of development under the CR zones cannot purchase an easement
704 or the amount of density to be attributed to a BLT easement is a fraction of the applicable floor area
705 equivalent, the Planning Board must require the applicant to pay the Agricultural Land Preservation
706 Fund an amount set annually by Executive Regulation.
707
708 ATTACHMENT B
709
710 **59-C-15.9. Existing Approvals.**
711 a) One or more lawfully existing buildings or structures on a site and the uses therein, which predate the
712 applicable sectional map amendment, are conforming-structures or uses, and may individually or

713 collectively be continued, renovated, repaired, or reconstructed to the same size and configuration or
714 enlarged up to a total of 10 percent above the total existing floor areas of all buildings and structures on a
715 site or 30,000 square feet, whichever is less, and does not require a site plan. Enlargements in excess of the
716 limitations in this subsection will require compliance with the full provisions of this Division.
717 b) A project that received an approved development plan under Division 59-D-1 or schematic development
718 plan under Division 59-H-2 before the enactment of the CR zones may proceed under the binding elements
719 of the development plan and will thereafter be treated as a lawfully existing building and may be renovated
720 or reconstructed under Subsection (a) above. Such development plans or schematic development plans may
721 be amended as allowed under Division 59-D-1 or 59-H-2 under the provisions of the previous zones;
722 however, any incremental increase in the total floor area beyond that allowed by Subsection (a) above or
723 any incremental increase in the building height beyond 15 feet requires, with respect to the incremental
724 increase only, full compliance with the provisions of this Division.
725 c) At the option of the owner, any portion of a project subject to an approved development plan or schematic
726 development plan described in Subsection (b) above may be developed pursuant to the provisions of this
727 Division. The remainder of that project continues to be subject to the approved development plan or the
728 schematic development plan, pursuant to Subsections (a) and (b) above.
729 d) A project which has had a preliminary or site plan approved before the applicable sectional map amendment
730 may be built or altered at any time, subject to either the full provisions of the previous zone or this division,
731 at the option of the owner. If built under the previous approval, it will be treated as a lawfully existing
732 building and may be renovated or reconstructed under Subsection (a) above.
733
734

Line number references are consistent with the PHED Committee packet for November 9, 2009– ZTA 09-08 in landscape format with comments

To: Montgomery County Council

Date: October 29, 2009

Via: Rollin Stanley, Planning Director of Montgomery County Planning Department

From: Joshua Sloan, Planner Coordinator with the Montgomery County Planning Department

RE: Response to oral and written testimony on Zoning Text Amendment 09-08, Establishment of the CR Zones, provided to the County Council on Tuesday, October 27, 2009.

Diverse opinions, suggestions, concerns, and characterizations of the proposed CR zones were provided to the County Council at a public hearing on the evening of October 27, 2009. Planning Department Staff is providing the following outline of our responses and solutions, when applicable, to the testimony. Issues raised have been consolidated into categories for purposes of evaluation and discussion.

Categories of Discussion:

A. Delegation questions.

B. Relationship to other laws and regulations.

C. Relationship to master plans.

D. Environmental concerns.

E. Specific provisions.

Line numbers in this summary of recommendations refer to attached Draft ZTA 09-08 with comments by Council Staff and are based on:

- Planning Board Hearing on October 22, 2009;
- Council Hearing on October 27, 2009; and
- PHED Work Session on November 2, 2009.

A. Delegation questions.

Is the level of delegation to the Planning Board appropriate and subject to sufficient parameters?

Like most other optional method zones, the CR zones set maximum densities and height limits, but the precise density and height are determined with the review and approval of a site plan. Thus, the delegation of authority to the Planning Board is no greater than in other optional method zones.

In the case of the CR zones, any density above the 0.5 FAR standard method is based on the provision of public benefits. Those public benefits, and the amount of density associated with them, are subject to detailed parameters set out in the CR zone. In addition to the parameters contained in the zone, the Planning Board's review of proposed public benefits will be subject to any relevant guidance contained in the applicable master plan about what types of public benefits or amenities are appropriate for a particular site.

One aspect of delegation that has been discussed refers to line #s 301-304 that allows the Board to review proposals for public benefits that are not listed in the table for incentive density. We recommend changing this language to more closely reflect existing legislation in the CBD and TMX zones. As such, Applicants would be able to proffer "public facilities and amenities not listed in the Incentive Density Table that make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted up to the maximum allowed by the zone".

B. Relationship to other laws & regulations.

Consistency with County and State codes.

Section 59-C-15. Line #s per individual items listed below. Questions have been raised by the County agencies regarding various provisions in the CR Zones. These were provided to Planning staff broken out into three "types" and are addressed similarly.

- Type 1: approvable but impossible to enforce:
    - Line #s 80-84 & 448-453. Locally owned business – remove definition and change incentive to reflect language that was approved in Wheaton Retail Preservation Overlay (15-C-18.10).
    - Line #s 85-86. Live/Work units – those commercial uses that are not allowed to co-exist with a residence by the building code would not be allowed; this could be

spelled out in the definition as could the maximum % of the space devoted to a residence to qualify as "secondary or accessory".

- Line #s 90-91 & 166-179. Priority retail street frontage – compliance with this provision is only required for development that requires a site plan and will, thus, always have a certified site plan which will be the enforcement mechanism.
- Line #s 336-339. Community connectivity – again, developments that use this incentive will have a site plan and site plan enforcement agreement that will spell out the enforcement mechanism – whether complaint-driven, tied to request for expansion of floor area, through reporting, or some other mechanism; if long-term enforcement is still seen as untenable, this could become a "snapshot" incentive.
- Line #s 351-361. Community garden – ADA provision could be changed to refer to "Americans with Disabilities Guidelines" but review of these site plans can require approval based on ADA requirements – enforcement would then be of the certified site plan not ADA standards.
- Line #s 432-438564. Care center – we believe a site plan enforcement agreement can set the terms of use by the general public, etc when the incentive is requested.
- Line #s 556-573. Exceptional design – the Planning Board makes the decision on whether a project qualifies to take this incentive; enforcement is only based on the certified site plan that results.
- Line #s 187-191. Bicycle parking – this has changed; a review by MNCPPC Transportation Planning would make the determination regarding the security of bike facilities.

- Type 2: conflicts with building code
  - Line # 160. Day care facilities and centers – this is simply a term to combine several other land uses; not sure how that conflicts with the building code because it does not refer to any construction requirements.
  - Line #160. Live/Work unit – does the more restrictive types of construction required by this use prohibit their allowance as a land use?
  - Line #160. Manufacturing – same question as above.
  - Line #160. Use table – most of these are allowed uses in the TMX, why do they present a particular problem here? Do the general requirements regarding building/parking layout cause the conflict? We could add a general comment

about land uses that requirements of the building code for individual uses trump the requirements of this Division.

- Line #s 177-179. Priority retail setbacks – may be modified or waived in unusual circumstances and goes through site plan review.
- Line #s 351-361. Community garden – the ADA provision refers to access to the garden, as if it were a water fountain or telephone booth; this should be enforceable/reviewable on a case-by-case basis.
- Line #s 367-388. Through-block connections – these are provided and reviewed now with many site plans; same standards would apply.
- Line #s 405-416. Adaptive buildings – there is no suggestion that a building could reconfigure and not comply with the building code; there is no language that prohibits building code authority.
- Section 59-C-15.8 generally. Fire access issues – all incentives are provided by site plans which have fire and rescue review and site plan enforcement agreements.
- Line # 543. Public open space - 50' min width can be changed to 60'.
- Section 59-C-15.8 generally. General building/fire code – a general note that provisions must be followed "unless otherwise prescribed in the Code", or similar, could be added.
- Line #s 640-645. Vegetated roof – we build them now; same standards would apply.

- Type 3: general
  - Line #s 105-116. Transit proximity – agreed that an illustration and/or clarification could be done
  - Section 59-C-15 generally. Illustrations – newer version should be more legible
  - Line #s 323-326. Site plan enforcement agreements would lay out further details for those projects that take advantage of incentives that require more than typical development programs and inspection schedules. Similar to MOUs, covenants, and other agreements entered into by MNCPPC, DOT, DPS and applicants. A template could be created; if it's not necessary, this provision could be dropped.

Relationship to the Maryland Stormwater Management Act of 2007.

Sections 59-C-15.6. General Requirements; 59-C-15.7 Development Standards; and 59-C-15.86. Environmental Standards generally. A review of Maryland's Stormwater Management Act of 2007 has been integral to the analysis and recommendations of the entire zoning rewrite process. The Act has practical (and practicable) impacts on the CR zone, but a wider context and more holistic understanding of sustainability needs to be brought to bear when considering these zones. First, a couple quotes from the Act:

> §4–201.
> The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, all of which have adverse impacts on the water and land resources of Maryland. The General Assembly intends, by enactment of this subtitle, to reduce as nearly as possible the adverse effects of stormwater runoff and to safeguard life, limb, property, and public welfare.
> §4–201.1.
> (b) "Environmental site design" means using small–scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.
> (c) "Environmental site design" includes:
> (1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;
> (2) Minimizing use of impervious surfaces, such as paved surfaces, concrete channels, roofs, and pipes;
> (3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and
> (4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

Second, language from the Model Stormwater Ordinance:

> 1.0 PURPOSE AND AUTHORITY
> The purpose of this Ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures that control the adverse impacts associated with increased stormwater runoff. The goal is to manage stormwater by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, and use appropriate structural best management practices (BMPs) only when necessary. This will restore, enhance, and maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property, and reduce the impacts of land development.

Third, an outline of highlights from Chapter 5: Environmental Site Design of the MD DEP Stormwater Management Manual:

- ESD Process
  - Concept Design: Site & Resource Mapping, Development Layout, & Locating ESD Practices
  - Site Development Plans: SWM Plans & Erosion/Sediment Control
- Performance Standards
  - Predevelopment conditions standard is "woods in good hydrologic condition"
  - ESD should be implemented to the MEP to mimic predevelopment conditions
  - ESD should treat 1" of rainfall on all new developments

        - Runoff should be reduced per tables based on soil types and percent imperviousness
    - Suggested Alternative Surfaces
        - Green Roofs
        - Permeable Pavements
        - Reinforced Turf
    - Nonstructural Practices
        - Disconnection of Rooftop Runoff (rooftop drains to vegetated area rather than storm drain)
        - Disconnection of No-Rooftop Runoff
        - Sheetflow to Conservation Areas
    - Micro-Scale Practices
        - Rainwater Harvesting
        - Submerged Gravel Wetlands
        - Landscape Infiltration
        - Infiltration Berms
        - Dry Wells
        - Micro-Bioretention
        - Rain Gardens
        - Swales
        - Enhanced Filters
    - Redevelopment
        - Defined by sites with more than 40% existing impervious area
        - SWM practices must reduce impervious area by at least 50% or treat at least 50% of the existing impervious area or use a combination of removal/treatment for at least 50% of the existing impervious area
        - Alternatives may be used once ESD measures have been implemented to the MEP – e.g., structural BMPs, or combinations of BMPs and ESD for at least 50% of the existing impervious area

These documents define the framework we are working within. And, to the maximum extent practicable, new development and redevelopment will have to comply with the on-site recharge goals required for all CR development. For large parcels, more suburban parcels with outlots, and lots with the ability to share facilities, the nonstructural and micro-scale practices will be more easily implemented. For infill development, the maximum extent practicable should be evaluated with a lower threshold. Even in highly dense, urban environments, however, disconnected rooftop runoff, green roofs, permeable pavements, rainwater harvesting, dry wells, bioretention, and landscaped areas are effective tools and are all, in fact, public benefits that receive density incentives in the CR zones. The fact that many of these projects will be considered redevelopment means that they would not necessarily have to do any ESD practices, so the incentives are an essential part of the sustainable site strategy. Further, the more stringent landscape requirements for surface parking lots will work hand-in-glove with the recommended micro-scale practices.

That is only part of the sustainability strategy employed by the CR zones, however, because it must be remembered that even if all the existing commercial and mixed-use zones became CR zones in the future, that is less than 2% of the County's land area. The larger picture is based on transit opportunities, pedestrian-orientation, integrated land uses, and smart-growth patterns that reduce the overall carbon footprint of development. A building on a site that recharges all of its water but is built nowhere near transit and is spread out over a larger area is less sustainable globally than one that occupies less space on a site that was a parking lot and that is near transit.

These sites should be thought of in a different way and different environmental benefits and incentives should apply. The CR zones afford this flexibility. If the goal is to protect our larger watershed and resources as a whole, the combined strategies of environmental site design and planning for smart growth through the application of the CR zones is a flexible and effective tool.

C. Relationship to master plans.

Implementing Master Plan Recommendations Through the CR zones.

Line #s 34-35 & 133-136. It has been suggested that there should be a stronger link between the CR zones and master plans. The CR zones are closely allied with master plans. Most master plans use the existing C-1, C-2, C-3, and mixed-use zones because they need a variety of densities, heights, and uses in various areas. And, in many cases, there is not a zone with the most effective and appropriate density, height, and mix of uses so the planners constantly create new zones. The CR zones provide the necessary variety without the need for text amendments: sites are planned, modeled, and measured for the appropriate standards and the zones are set. Variable density, height, and use mix are established by the zones in patterns suited to each master plan. We have heard testimony from and had conversations with property owners, citizens, and local government officials in the several areas with currently pending master plans. Our models for low-density and high-density projects show that development is reasonably feasible, and the generous grandfathering provisions will allow for interim development. In most cases, there has been support from both small and large property owners and in variable contexts. This is because the CR zones have a basic template for good urban form, but allow for flexibility to create low and high density areas; in many cases maximum density will be set at 1.0 or 1.5 FAR, in rare cases the maximum density may be set up to 8.0 FAR. But in all cases, the transitioning to residential areas is preserved by setbacks and solar access requirements. Thus, although the basic template is uniform, the outcome is adaptable for various plans and once mapped provides greater certainty than is typical in most mixed-use zones. Further refinement is provided by design guidelines that are publicly vetted, discussed, and approved by the Planning Board, and like the existing Recreation and Environmental Guidelines become strong planning tools for master plan implementation.

Complexity and Staging.

Sections 59-C-15.1 & 59-C-15.42 generally. The suggestion was made that the CR zones should be simplified and modified to ensure that master plan goals are met through zone. We think the latter concern has been addressed and that few, if any, existing zones could implement master plans better. One reason for the length of the ZTA is that these zones basically stand by

themselves. They are unlike the other zones and needs to be self-contained regarding the incentive provisions, definitions, building location standards, parking requirements, etc. Having said this, it is not so much complex as it is different; it takes a different approach to zoning – what may be called a hybrid zone that addresses both form and standards. When working with the zones during a master planning process, for example, use of the zones becomes quite intuitive in ways that are not immediately apparent in the abstract. Fundamentally, every zone is defined by four elements that determine the building envelope and internal mix of uses; every zone has the same development standards and general requirements; every zone uses the same method and menu of public benefits from which it can build-out to the maximum density.

Staging plans can mean different things and, in this context, there are large and small scale staging plans. Small scale staging plans are required of individual projects in the CR zone and may be tied to certain public facility improvements locally or to development of the site specifically. Large scale staging plans are set by master plans and limit development based on capacity issues. CR zones, as well as any other, do not affect these larger scale staging plans; they must abide by them.

Should CR zones be applied through sectional map amendment or only through a development plan and accompanying local map amendment?

Line #s 34-36. The intent of these zones is that no land be rezoned to the CR zone without going through a sectional map amendment and all of its attendant public hearings, analysis, review, and debate. We agree with Council staff that this language is an adequate protection against rezoning without significant public review and appropriate Council debate and resolution.

D. Environmental concerns.

Are environmental goals appropriately addressed and aligned with the proposed Environmental Site Design standards? Should all infill development provide standardized green space with stormwater recharge?

Section 59-C-15.86 generally. The stormwater management issue has been discussed and the only other point to make is that sustainability means more than a site-by-site approach. It means planning smarter to put density where it will have the least impact (near transit and daily services) and where diverse jobs and housing are in balance. In other words, pick the right site to develop first; then do everything possible to make that development green. And the greenest building is an existing one, which is very difficult to turn into a development with 100% groundwater recharge and lots of green open space and tree canopy. But building on developed

land, i.e., infill redevelopment, saves open space in the suburbs and rural lands that has much more potential for groundwater recharge, habitat creation/preservation, carbon sequestration, food production, etc. Green is a site-specific, local, regional, and global concept. Density and smart growth are aspects that should be balanced with green buildings and sustainable sites.

E. Specific provisions.

Should CCT stops or bus lines be included in transit level 1 and have higher transit incentive density?

Line #s 105-116. There was a request for an increase in the density incentive provided to projects at or near CCT stations supported by the fact that, as proposed, a site ½ mile from metro is granted more density than a site directly adjacent to a CCT station. We do not recommend changing the introduced language. This is supported by the fact that the densities around the proposed CCT stations are not even one-half those proposed near metro stations. If the densities and/or ridership numbers prove to be greater when implemented, this density incentive should be revisited and adjusted accordingly.

Is the base density for standard method projects appropriate?

Line #s 238-243. A "by-right" density of 0.5 FAR for a mixed-use project is an economically viable allowance of use for a property. This was discussed and approved in the TMX zone. Further, the generous grandfathering provisions allow incremental uses up to 30,000 square feet, which may be well over the 0.5 maximum. That said, testimony regarding small parcels suggests that a modification to encourage development of these sites is in order. We suggest that the language beginning on line 310 be revised to say "The maximum density for any standard method project is 10,000 square feet or 0.5 FAR, whichever is greater".

Are real estate appraisals determinable in the CR zones?

Sections 59-C-15.1 & 59-C-15.8 generally. Yes, and the CR zones are no different from CBD or TMX zones in this respect – they actually may be easier to decipher because of the use caps and calculable density incentives.

Are the CR zones appropriate for small properties?

59-C-15.8 generally. It is true that non-proportional incentives would burden smaller projects proportionally more than larger projects. But there are more than enough proportional incentives, such that any project can economically build to their maximum allowable density. For example,

LEED buildings, minimum parking, exceptional design, public art, green wall, adaptive building, public open space are all economically proportional to the size of a site and/or building. Further, in deciding incentive density, the Planning Board must take into account the size and configuration of the site in question. We suggest, however, a change to the BLT provisions to help small sites meet density caps. This is addressed below.

Is the amount of public participation appropriate and does the hearing process allow adjacent property owner to participate?

Line #s 132-154. Some think that only a pre-submittal public meeting is held during sketch plan review, not a hearing. It was further suggested that, unlike the project plan process, which was incorrectly described as part of a rezoning process that goes through a local map amendment process, there is no opportunity to discuss proposals in an adjudicatory process. Other remarks were made to the effect that there is no assurance of what developer is proposing; that developers only need to provide "sketchy" plans; and that no public hearings are required for rezoning to CR zone sectional map amendments. On the other hand, numerous speakers felt that these zones would provide a more transparent process with more assurances.

In the Planning Department's opinion, the CR zones provide greater opportunities for public input regarding the types of environments and public benefits that various areas want and need. The fact that master plans go through such lengthy public processes and, most importantly to this discussion, decide zoning and planning objectives through this debate, provides a great amount of information for individual development applications. Appropriate densities, heights, mix of uses, and public benefits are all laid out in the master plan process. This framework, in turn, sets the foundation of the zoning recommendations and the priorities of the design guidelines and density incentives that then form the basis of the standards and requirements for CR zone applications. The process for an optional method CR zone project then only enhances the public input.

A sketch plan requires discussions with the public and with the Planning Board regarding the fundamentals described above: density, height, mix, public benefits, and other general factors. This allows everyone to grasp the most important and influential factors that are to be detailed by later site plans. Developers will be more willing to work with communities and staff at this stage regarding the benefits and general parameters of development because they have not invested as much in hard-lining and fine-tuning their project. A sketch is the appropriate point to discuss these concepts. Once agreed upon and approved the second round of public debate is held during site plan review. Thus, every project in the CR zones goes through at least three public sessions: the master plan process that sets density, mix, and height maximums and public benefit priorities, the sketch plan process that gives general shape to these standards and commits a project to particular public benefits, and the site plan process that creates the approval for details enforced by the County.

But, to ensure that confusion over this matter is remedied, we are recommending changes to the Optional Method to read in full as follows:

59-C-15.42 Optional Method.

Optional Method development must comply with the general requirements and development standards of the CR zones and must provide public benefits under Section 59-C-15.8 to obtain the densities and height proposed and permitted by the zone. A sketch plan and a site plan are required for any development using the optional method. A sketch plan must be submitted for approval by the Planning Board; a site plan must be filed under the provisions of Division 59-D-3. Any required preliminary plan must be submitted concurrently with a sketch plan or a site plan.

a) A sketch plan application must contain:
   1) A justification statement that addresses how the project meets the requirements and standards of this Division for optional development and describing how the development will further the recommendations of the applicable master plan or sector plan;
   2) An illustrative plan, and/or three-dimensional model that shows the maximum densities for residential and non-residential uses, massing, and heights of buildings, location of public use and other open spaces, and their relationship to other existing and proposed buildings on adjoining tracts;
   3) The general vehicle, pedestrian, and bicycle circulation and access system;
   4) A table of proposed public benefits and the incentive density requested for each; and
   5) The general phasing of structures, uses, public benefits, and site plans.

b) Procedure for a sketch plan.
   1) Before filing a sketch plan application an applicant must comply with the provisions of Section 4 of the Manual for Development Review Procedures for Montgomery County, as amended, that concern the following procedures:
      1. Notice;
      2. Posting the site of the submission and
      3. Holding a pre-submittal meeting.
   2) A public hearing must be held by the Planning Board on each sketch plan application no later than 90 days after the filing of an optional method of development application unless a request to extend this period is requested by the applicant, Planning Board Staff, or other interested parties, provided that such extension is found to be reasonable and not to constitute prejudice or undue hardship on any interested party. A recommendation regarding any request for extension must be acted upon as a consent agenda item by the Planning Board on or before the 90 day filing period expires. Notice of the extension request and

recommendation by Staff must be posted no less than 10 days prior to the item's agenda date.

3) No less than 10 days prior to the public hearing on a sketch plan, Planning Board Staff must submit its analysis of the application including its findings, comments, and recommendations with respect to the requirements and standards of this Division and any other matters which may assist the Planning Board in reaching its decision on the application. This staff report must be submitted in evidence at the public hearing. The public hearing must be conducted by the Planning Board or its designee under such rules as the Planning Board shall, from time to time, establish by resolution and publish.

4) The Planning Board must act within 30 days after the close of the record of the public hearing, by majority vote of those present and voting based upon the evidence and testimony contained in the record, to approve, approve subject to modifications, conditions, or binding elements, or disapprove.

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

1) The plan meets the requirements and standards of this Division, the development will further the objectives of the applicable master or sector plan, and will be provide more efficient and effective development of the site than the standard method of development;

2) The total FAR and densities for non-residential and residential uses proposed are consistent with recommendations of the applicable master or sector plan and are appropriate for the site;

3) The proposed building massing, height, public use and other open spaces are located and scaled to achieve compatible relationships with each other and with existing and proposed buildings adjacent to the site in the planning area and adjoining communities;

4) The general vehicular, pedestrian, and cyclist circulation and access is adequate, safe, and efficient;

5) The table of proposed public benefits and incentive density requested for each benefit will further the achievement of recommendations of the applicable master or sector plan, and will improve the project and its environs; and

6) The general phasing of structures, uses, public benefits, and site plans is feasible and appropriate to the scale and characteristics of the project.

d) The Planning Board may require some elements of a sketch plan to be binding on any subsequent site plans.

e) None of the findings required under Section 59-c-15.4(c) shall preclude the Planning Board from approving changes or different findings with respect to an element of a sketch plan upon review of any subsequent detailed site plan. Any change or modification of a binding element of a sketch plan proposed by the applicant or the

Planning Department must be specifically identified in the notice of the public hearing for the site plan.

Should certain auto-related uses be reclassified as special exceptions?

Line # 160. A number of auto-related uses are currently proposed as "P" – permitted in the CR zones and some municipalities would rather they were special exceptions to ensure a more pedestrian-focused community. The Planning Department has no particular objection to this proposal.

Should connections between parking facilities be allowed?

Line # 211-219. The surface parking facility design standards do not currently provide for connections between lots, which they should. This detail and these standards could be revised to allow for connections between parking lots to allow shared parking and to further minimize curb cuts and breaks in the street wall.

Should some proposed public benefits that receive incentive density be required for all projects in the CR zones?

Section 59-C-15.8 generally. It was suggested that mid-block connections should be required, but we believe they are more appropriate as incentives. In many cases, the public use space requirement will be used to provide such connections and the fact that it is now tied to frontages is exactly the scenario envisioned, but a requirement would tie the hands of the community and the Planning Board. This should not be done given the range of sites on which the CR zones are being proposed.

The general balance between what is required and what is an incentive has been a long and difficult process to reconcile. In the end, we feel that the requirements set the basic framework for better and more sustainable design even for projects that do not require site plan review. But the incentives – which are requirements for additional density – allow the proper amount of flexibility to account for variable master planning objectives, citizen priorities, and market fluctuations.

Should CR zones be applied by local map amendments?

Line #s 34-36. Some have voiced the opinion that we are missing chances to implement the CR zones in other areas of the county without pending master plans before each additional master plan is reviewed. These folks, however, are in favor of the zones in general and feel that they create more desirable and sustainable environments. We agree, but are not sure that others are ready for such an option before they see some areas develop under the CR zone and have, therefore, left the applications of the zones only by SMA. If this option was put back on the

table, a draft of the CR zone was created with a list of particular existing zones that should be considered for rezoning to the CR zones and specific language regarding master plan conformance.

Does application of the CR zones allow for accurate long-range planning?

Line #s 17-33. The concern that the CR zones are too nebulous to allow for long-range planning regarding traffic, transit needs, or adequate public facilities is unwarranted because it is actually easier to forecast than the application of CBD or TMX zones. Maximum commercial and residential densities can easily and more definitely be projected because the mixes are set by the zone and the combination of the mix is greater than the actual total density that could be built. Average unit size can determine the possible number of units when floor area ratios are unsuitable because most residential development in the CR zones will be apartments, townhouses, and condominiums. But other unit types are allowed, so any average multi-family unit count would only overestimate numbers. It should also be noted that when forecasting impacts, we are generally looking at larger master-plan areas that have policy objectives regarding employment/housing opportunities. Property by property, the intended mix may not be realized, but over the carefully delegated mix of uses in the larger area, those objectives will be.

Is the required amount of public use space appropriate?

Line #s 260-265. On this topic, opinions vary from recommendations to remove public use space for properties less than two acres to concerns that the CR zones do not require enough public use space. As proposed, the CR zones base the amount of public use space on the interaction of two physical parameters:

- number of street frontages and
- lot size.

For all properties in the CR zones,

- The fewer the frontages and the smaller the lot, the smaller the requirement for public use space – down to 0% of net lot area;
- The more frontages and the larger the lot, the larger the requirement for public use space – up to 10% of net lot area.

These are the requirements. There are also incentives to provide more public open space for additional density. This flexibility is crucial to provide appropriate amounts of public open space and to provide them in the most appropriate locations. The character of a compact, mixed-use community is defined, to a large extent by its streets and building/open space patterns. It is

not usually the case that open space on each lot creates a better environment; in fact, the opposite is true:

- consolidated open space on larger parcels creates more usable, flexible space, and has a better opportunity to be situated in harmony with environmental parameters such as access to light and views;
- properties with numerous street frontages should use their open space to provide connections between streets especially when those connections lead to transit facilities or other public amenities;
- large open space requirements on small parcels create a disjointed pedestrian environment with underused spaces and inefficient land use; and
- the master plan process, with its inherently more holistic approach, is a more appropriate time to plan open space networks rather than case by case – these plans will be the basis for recommendations on public use space and public open space during sketch plan and site plan review.

Finally, the pay-in-lieu scheme for smaller parcels reinforces the objectives enumerated above by:

- allowing sites to consolidate funds the create larger, appropriately located open space per the master plan's network,
- maintain street walls and active, pedestrian-oriented sidewalks, and
- ensure greater flexibility for building footprints for smaller projects.

The suggestion that any pay-in-lieu option should require direction of those funds to projects in the master plan or project vicinity is a good one and could be addressed by adding the following line to Section 59-C-15.74.d):

"3. Any payment in part or in full to the Public Amenity Fund must (should?) be used on a public amenity project within the same master plan area as the development making the payment."

Are density incentives for all public benefits equitably calculated?

Section 59-C-15.8 generally. A couple of the public benefits that may be chosen for incentive density are almost certainly not proportional by definition according to the minimum standards, e.g., care centers and community facilities. While the language regarding single-building development and multi-building development may assuage some concerns, large facilities and centers may not be adequately addressed. We are debating allowing the calculation of incentive density for such "non-proportional" benefits to be based on maximum FAR allowed by the zone

rather than maximum proposed by the development and are open to Council input and discussion.

Should BLTs be benefits that provide incentive density or requirements?

Line #646-655. We think there is probably a manner by which BLTs could receive an appropriate amount of incentive density in return to offset the cost. This approach would achieve two goals: preservation of agricultural land and development of urban land (and be especially helpful for small property owners). Our current suggestion is to remove the TDR incentive provisions, remove the requirement for BLTs, and add an incentive for BLTs:

> "The incentive density for the purchase of BLTs is equal to two times the square footage of every BLT purchased up to 20% for sites greater than one acre and up to 50% for sites equal to or less than one acre. BLTs must be purchase in units of two and must be bought in full. BLTs must be bought at a rate of one per 9,000 square feet for residential square footage and 7,500 square feet for non-residential square footage."

Are there existing conditions such as setbacks that do not meet CR standards that should be grandfathered?

Line #s 656-672. This proposition has not been analyzed but should be as it makes sense and is probably simple to implement. If an existing building was lawfully approved with a lesser setback than would be required by the CR zones, it is more sustainable to retain the building and ensure the building is a conforming structure than to demolish it. We could modify this language with possible visual mitigation in such cases.

Should the allowed expansion under the proposed grandfathering language include new free-standing buildings?

Line #s 656-672. Only if approved by site plan and in conformance with the general requirements of the zone regarding building/parking/street relationships.

Are the affordable housing recreation/amenity space calculations appropriate?

Line #s 417-429. This concern is valid from a social perspective, but is harder to defend economically. This is due to the established fact that workforce housing and MPDUs are not economically feasible to build without offsets (the decreased rec/amenity space in the proposed zones) or bonuses. If WFHUs and MPDUs were more economic to build, recreation and open space requirements should be commensurate with any other unit types. It should also be remembered that this is a matter of calculation regarding the requirement for space that applies to the entire development. All tenants/owners of a development have access to the same facilities.

Should the CR zones and pending master plans be delayed until the entire rewrite process is completed?

Division generally. While we are thrilled to have a consultant working on our ordinance rewrite team, the CR zones and pending master plans were well under way before even the diagnostic phase of the rewrite was completed. That said, we feel the expertise and experience of the Planning Department staff is more than sufficient to research, analyze, and write a zoning law that can effectively implement the visions of disparate master plans. There are licensed, registered, and certified planners, landscape architects, architects, lawyers, arborists, designers, economists, researchers, engineers, and scientists on staff that have worked on the CR zones. The outside help from our zoning consultant will be invaluable to our general rewrite process, but we cannot help that the funding was not available until it was and do not feel the proposed zones and master plans have suffered as a result.

Can community facilities be provided off-site that meet neighborhood needs?

They can and there is a provision to allow "other" public benefits to receive incentive density. And one of these may be partnerships among several developers to pool resources for a larger community facility. Further, the public amenity fund could fund such projects.

Attachment: Draft ZTA 09-08 with comments from Council Staff