

MEMORANDUM

April 1, 2010

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM:  Marlene Michaelson, Senior Legislative Analyst

SUBJECT: Kensington Sector Plan

This is the Planning, Housing, and Economic Development (PHED) Committee's second worksession on the Kensington Sector Plan. This worksession will discuss the overall land use and zoning strategy for the planning area. Specific properties, environmental issues, and public facility issues will be discussed at a future meeting.

Committee Members should bring a copy of the Sector Plan to the meeting for reference.

The vision for the Kensington Sector Plan is described on page 1 of the Plan: "to promote a mixed-use Town Center with pedestrian-friendly connections to the vibrant neighborhoods that define Kensington." A new mixed-use vision for the planning area is intended to reinvigorate the Town Center while preserving Kensington's scale and historic character. Key Plan recommendations related to four themes of connectivity, design, the environment, and diversity are also described on page 1.

The recommendation to move to a mixed-use land use pattern in the Town Center, with incentives for redevelopment, appears to be universally supported. An Urban Land Institute (ULI) Technical Assistance Panel Report prepared in November 2008 endorsed this approach. (The Executive Summary is attached at © 1 to 4.) Testimony submitted at the Council's public hearing and via correspondence also supported mixed-use development. This change would allow housing in the Town Center.

While all those who submitted comments to the Council supported the concept of mixed-use, there were several comments objecting to the recommended use of the Commercial-Residential (CR) zone and building heights. The Committee chair asked the Planning Department to recommend a potential alternative zone for the Town Center (see © 5). Their response is on © 6 to 13.

CR Zones in Kensington

The CR family of zones was recently approved by the Council and recommended in the White Flint Sector Plan. Highlights of the CR zones are as follows:

- Every CR zone allows the same land uses and requires the same development procedures.
- Each zone has a different total maximum floor area ratio (FAR) ranging from 0.5 to 8.0 and specifies the maximum commercial density, residential density and height (up 300 feet).
- CR zones have a “standard method of development” similar to Central Business District (CBD) zones; however, a maximum standard method density of .5 FAR is the same for all CR zones.
- The optional method of development would establish 6 categories of public benefit under which a project may achieve the zones’ maximum density 1) Master-planned major public facility, 2) Transit proximity 3) Connectivity and mobility, 4) Diversity (affordability, public facilities, and land use), 5) Design, and 6) Environment. Except for master-planned major public facilities and transit proximity, an applicant cannot achieve more than 30 percent of density from any category. Other than transit proximity, which specifies the percentage of density increase in the zone, yet to be developed Planning Board guidelines will provide detailed standards that would allow the approval of increased density above the standard method of development.
- The purchase of BLT easements is required for 5% of the density above a .5 FAR.
- Parking requirements are reduced from each land use’s current requirements; the least number of parking spaces are required for building nearest Metro-rail. The CR zones establish a maximum number of parking spaces that would be less than the current minimum requirements.

The Council received comments from 3 property owners regarding the CR zoning recommendation, all of whom expressed concern. The Executive also expressed doubts about the use of the CR zone. In summary, they believe that the requirements to obtain the full density under the optional method would act as a disincentive to redevelopment for the following reasons:

- Small properties (particularly those located in areas with lower property values and rental rates) will not generate the returns to cover the costs of providing many of the public benefits.
- Kensington property owners cannot take advantage of the same opportunities for cost-free increases in density similar to property owners in White Flint (e.g., a property owner in White Flint can receive a 50% bonus density for being adjacent to Metro and a 30% bonus density if they dedicate right-of-way in advance of development – both occur at no cost to the owner).
- While some public benefits relate to the size of the property, others would only be appropriate for larger properties (e.g., a child or adult day care center).
- For many of the properties, the floor area ratio proposed for the CR zone in Kensington will either be the same or only marginally higher than the existing allowed densities. The potential benefits of mixed-use zoning will not offset the increased cost of providing public benefits under the CR zone.

The following chart compares the maximum densities allowed under existing zoning for town center properties to the maximum densities recommended in the Sector Plan.

Property/Area	<i>Existing Commercial Zones</i>				<i>Proposed CR FAR</i>		
	Size	Zone	Max FAR	Existing FAR	Maximum Residential FAR	Maximum Commercial FAR	Maximum Total FAR
Burka/Core	3.17	C2	1.5	0.31	2.0	2.0	2.5
Levin/Core	1.84	C2	1.5	1.32	2.0	2.0	2.5
Huggins/Core	1.06	C2	1.5	0.04	2.0	2.0	2.5
Bakers Union/Core	1.73	CO	1.5-3.0	1.13	2.0	2.0	2.5
10400 Connecticut/Core	1.13	CO	1.5-3.0	1.49	2.0	2.0	2.5
3700 Plyers Mill Road/Metropolitan	3.59	C2	1.5	1.57	1.5	1.0	2.0
Konterra/Metropolitan	1.93	C2	1.5	0.00	1.5	1.5	1.5
Parkway/Metropolitan	1.57	CT	0.5	0.48	1.5	1.5	1.5
Mizell/Metropolitan	1.30	C2, I1	1.5 (C2)	0.14	1.5	1.5	1.5
Curtis/Conn-Univ S	1.68	C1, OM	1.5 (OM)	0.30	1.5	1.5	2.0
Stubbs/Conn-Univ S	1.21	C1	none	0.37	1.5	1.5	2.0
Calomiris/Near West	1.76	C2	1.5	0.17	0.5	1.0	1.5
Kaiser/Near West	4.70	CT, OM	0.5 (CT), 1.5 (OM)	0.37	0.5	1.5	1.5
West Farragut Office Condos/West	1.67	C2	1.5	0.27	0.5	1.0	1.5
Johnson/Howard East	1.61	C1, I1	none	0.38	1.0	1.0	1.5
TOTAL	29.95						

One property owner concluded that the CR zone and FARs recommended in the Sector Plan “offer little or no economic incentive for the owner to expand or revitalize the buildings on site.” To add to these concerns, ownership in Kensington is fragmented and market demand for redevelopment has not been significant, creating obstacles for redevelopment even without the costs of the CR zone.

The Planning Department has prepared an analysis that suggests that the CR zone will provide greater financial benefits than the existing C-2 zoning (see © 10 to 11). For three specific properties, they have compared certain costs and benefits, assuming full build out of the site. They have assumed that the property owners would choose to reduce parking under the provisions of the CR zone (see discussion regarding parking below) and that they would not provide any public open space (as compared to the 10% that would have been required under the C-2 zone). For reasons described below, Staff questions whether Kensington property owners will be able to take advantage of the CR option for reduced parking and suspects that the zoning ordinance rewrite will recommend reducing parking requirements in commercial and mixed-use zones. The Planning Department model includes the value of the increase in density recommended for these properties (see additional annual income); however, this is not a benefit of the CR zone per se, but would be available from any zone that allows greater density than C-2. They have estimated the cost of the different public benefits required under the CR zone (see ©14, but note that this is a draft work in progress and not a final product), and Staff does not have enough information at this time to judge whether these cost estimates are reasonable (but believes that their

effort to estimate the cost of public benefits is very important for the ongoing use of the CR zone). For example, they have assumed that the cost of trip mitigation would be the equivalent of 1% of the requested square footage at a cost of \$35 per square foot. This may be a very reasonable estimate, but Staff does not have the basis to make that determination at this point.

Nonetheless, there is concern among property owners that the costs of maximizing density under the CR zone are unpredictable, add new upfront costs (such as the purchase of BLTs), and could impact the viability of a project on small properties. Until the CR zone is used in actual developments (and more is known about whether property owners will choose to minimize parking and open space, as well as the actual costs of public benefits), it will be impossible to determine whether the CR zone will provide the net savings estimated by the Planning Department or increased costs as feared by property owners.

The Planning Department Staff concluded in their memorandum that the CR zone is the best zone and did not recommend any alternative zone. Staff believes that the CR zone in its current form would not provide an incentive for redevelopment and could even act as a disincentive. Staff recommends that either the CR zone be amended to require a different set of public benefits for small, less lucrative properties, or another mixed-use zone be used in Kensington. Attached on © 15 to 19 is a letter from William Kominers (who represents a Kensington property owner), suggesting a new Town Mixed Use District Zone that would modify the CR zone for lower density areas. While this idea has merit, Staff is concerned that it may not be possible to create a new zone and adopt the Kensington Sector Plan in time for the Council to meet the legislative requirements for rezoning in an election year. Staff therefore believes that it is preferable for the Sector Plan to recommend the Mixed-Use, Town Center (MXTC) zone, amended to allow greater FARs and reduced parking requirements.

MXTC Zone

To determine what alternative zone might be appropriate for Kensington, Staff considered all mixed-use zones. A chart comparing the basic elements of existing mixed-use zones is attached at © 20 to 23. While several of these zones are clearly inappropriate (e.g., Kensington is not a central business district and should not be designated as one), several could potentially be applied in Kensington. In Staff's opinion, the primary issue the Council needs to consider is whether the greater priority for Kensington is to provide incentives for redevelopment or to maximize the provision of public benefits when redevelopment does occur. If the primary goal is to encourage redevelopment (which Staff believes is the greater priority in Kensington), then the Council should select a zone which allows for mixed-uses while minimizing the cost of redevelopment.

The MXTC was used in Olney and Damascus and would be appropriate for Kensington; a copy of the zone is attached at © 24 to 33. It is a Euclidean zone that allows both residential and commercial uses, has a standard and optional method of development, and does not have a minimum lot size requirement. **Development must comply with the recommendations of the applicable master plan or sector plan.** Although it requires 10 to 20% public use space, "the Planning Board may waive any public use space requirement if expressly recommended in a master or sector plan". Staff's recommendations on parking, which follow, could reduce the parking requirements of the zone. The one problem with the MXTC zone is the limits on density, which are less than recommended in the Kensington Sector Plan. The zone could be amended to increase the density without impacting the two place it has already been applied. (The zone requires compliance with the applicable master plan or sector plan and indicates that the master plan may set a lower density or height than allowed by the zone. The Olney and Damascus Plans include density limits in the Plan and therefore would not be impacted if the zone density is increased.)

With all of these provisions, the zone could provide all the savings attributed to the CR zone in the Planning Department analysis, without the added costs to obtain the full density. The MXTC zone does not require public benefits, but it does have street façade requirements. While it would be ideal to require public benefits of the CR zone, Staff remains concerned that any added costs will serve as a disincentive for redevelopment. Although Staff is a very strong supporter of the BLT program and supports the required purchase of BLTs in the TMX and CR zones, Kensington does not appear to be the right location for this requirement given the other obstacles to redevelopment. Finally, Staff notes that the Sector Plan could still recommend various public benefits, even though there is no specific requirement in the MXTC zone. This has been done in other plans (e.g., the Gaithersburg West plan recommends amenities on Life Science Center (LSC) zoned land even though the LSC zone does not require the provision of amenities. Staff believes property owners would not object to those public benefits that the Planning Department indicate could be accomplished at no cost to the owner.

Parking

The CR zone provides reduced parking rates for property near transit. The MARC station meets the CR requirements for Level 2 Transit, since it is “an existing or planned station or stop along rail or bus line with a dedicated, fixed path”. Since MARC provides only limited service, it is unclear whether any reduction in parking requirements (or bonus density) should be associated with its presence. (If a bus rapid transit (BRT) line is located here in the future, it may provide viable transit service that could reduce the need for parking.) Staff believes that Kensington should be able to continue its practice of encouraging on-street parking and shared parking arrangements. The existing requirements in the zoning ordinance for most zones may not provide sufficient flexibility to use creative options to reduce parking, while the reduced requirements in the CR zone may not provide sufficient parking for an area that is only served by transit in a limited manner.

COMPARISON OF PARKING REQUIREMENTS		
	CR zones minimums (for properties within ¼ mile of MARC)	Non-CR zone minimum and CR zone maximum for South Central Parking Area
Office (per 1,000 Sq. Ft.)	0.54	2.7
Retail (per 1,000 Sq.Ft.)	4.00	5.0
Restaurant (per 1,000 Sq. Ft. of patron space)	4.00	25.0 (4.0 maximum in CR zones)
Multi-family Dwelling (per non-MPDU unit)		
Efficiency	0.60	1.0
One bedroom	0.75	1.25
Two bedroom	0.90	1.5
Three bedroom	1.20	2.0
Spaces for a mixed-use project (80,000 square feet office 15,000 general retail 5,000 restaurant)	124	324

Parking requirements will be amended for all zones in the zoning ordinance re-write. Before the adoption of the CR zones, parking rates were determined by the use, floor area, and urban character (parking areas), not the land's zone. Staff expects the new parking provisions to "right-size" the parking requirements to the extent the current requirements are excessive. If the Council is persuaded that the current standards are excessive, the MXTC zone could be amended appropriately.

Staff is intrigued by the suggestions of William Kominers to create a Town Center Parking District that would allow for reductions in parking up to 100% (see © 17).¹ As noted by Mr. Kominers, "This will facilitate reducing the necessity for parking on individual sites, thereby making more of the land available for actual development on the smaller lots in Kensington, and, at the same time, support the ongoing characteristic of the Town as a 'walking' commercial district – where people park either on the street or in an off-street lot and walk to a variety of destinations." Use of the Parking District would replace zoning ordinance parking requirements. There are a number of questions that need to be explored further, most notably the role of the County versus the Town of Kensington in creating and operating any type of parking entity. Staff recommends that this concept be explored further, regardless of which zone the Committee recommends.

Heights and Floor Area Ratio

The Council received some testimony questioning the Sector Plan's recommendation for a 75 foot height limit at the core area. (ULI had recommended a 65 foot height limit in its report.) The highest existing building is approximately 65 feet, and Staff believes that a height of up to 75 feet at the core would be appropriate. The MXTC zone has a height limit of 70 feet, and staff believes this would be sufficient to meet the Sector Plan objectives.

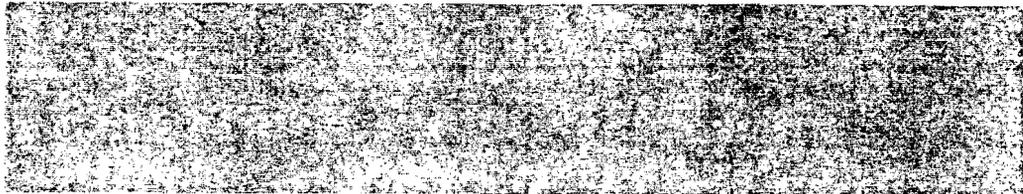
The highest floor area ratios (FAR) recommended in the core are 2.5 FAR. To staff's knowledge, there are no areas in the County recommended for a density this high that are not near Metro (but there are some older office buildings in the Commercial-Office (CO) zone built before there was a maximum allowable density). While this may be high for an area not served by transit (except MARC and bus service), Staff understands that the Planning Board's intent was to provide a sufficient increase in density that would be an incentive for redevelopment. While Staff is somewhat concerned by the proposed densities, Staff does not recommend a change in the total maximum FAR. Instead, Staff recommends adding language to the Sector Plan encouraging the Planning Board to determine at the time of development whether a lower FAR would be preferable to ensure compatibility with the existing uses and historic character.

¹ The term "parking district" usually implies a county entity with taxing authority, but it is not clear who would operate the district and whether a tax would be necessary.



**Urban Land
Institute**

Washington



A Technical Assistance Panel Report

Developing a Revitalization Strategy for the Town of Kensington

Sponsored by:
Town of Kensington, MD

November 12 - 13, 2008

Executive Summary: The Panel's Recommendations

Although the panel's insights and recommendations are all largely directed towards the long term, the panel is pleased to be able to provide its thoughts in advance of the Sector Plan Amendment for Kensington and the area surrounding it. It is the panel's hope that it can provide the town's citizens and officials with a market-based "outsider's perspective"—albeit one informed by both presentations and numerous one-on-one discussions with town residents, elected officials, and stakeholders—of the types of redevelopment that may be fostered by the new Sector Plan, in order to attract new businesses and revenue, and to create a vibrant, mixed-use community for residents and visitors. Moreover, the panel has attempted to demonstrate which sites present the best opportunities for such redevelopment, in order to allow the community to focus its efforts on achievable goals.

Market Potential

The panel concluded that there are already many strong elements in place within the town of Kensington. There are also, however, several challenges, including the lack of a critical mass of business and economic elements, and of connectivity among assets, which would create the cohesive whole desired by the residents. The panel did find the existence of unmet market demand, by both residents and commuters, with the following market potential:

- 50,000-75,000 square feet of smaller scale retail;
- 60,000-80,000 square feet of professional or medical office;
- Small (100-125 room) limited service hotel; and,
- 1,600 additional multi-family units.

Note: This figure assumes the current and projected population, and that the town, over a long-term period (e.g., twenty years) will gradually transition from a 97/3 ratio of single-family residential to multi-family residential, to an 80/20 ratio.

Development Strategies

To this end, the panel sought to identify those sites that offer the best opportunities for redevelopment to satisfy this unmet market demand, developed in a mixed-use manner whenever possible. By focusing initially on identifying the best opportunities for redevelopment, the panel sought to assist the town and its partners in deciding where they could most effectively allocate resources for streetscape and other design improvements that could facilitate such development, and also focus on where other incentives and regulatory changes should be targeted.

In order to fulfill the market potential detailed above, and do so with a mix of uses and in a manner that provides a connected, walkable, lively, and coherent Kensington identity and experience, the panel focused on three separate sites. The panel did not attempt to dictate the uses for the sites, given the difficulty in predicting market conditions at the time of redevelopment. Moreover, the panel recognized that in many instances other uses currently exist on these sites, and that they may continue to do so for quite some time. Thus, the panel's recommendations reflect a long-term vision.

Given these caveats, the panel attempted to identify the sites (or collection of sites) that had the location, visibility, block depth, orientation, and uniformity of ownership that will present the best opportunities for redevelopment when dictated by market demand and real estate development economics. Weighing these factors, the panel determined that the best opportunities are provided by the sites currently occupied by Hardware City Shopping Center on the western side of Connecticut Avenue; the Konterra Cement Plant and Mizzell Lumber tracts on Metropolitan Avenue; and the fire station and surrounding parcels on Connecticut Avenue at Plyers Mill Road. The panel developed block studies for each of these sites, demonstrating possible configurations.

Planning and Design

The greatest opportunities as well as the greatest challenges for the town of Kensington are presented by its street network, which carries a large number of commuters through the town. The network provides accessibility to both commuters and residents, but is also somewhat confusing to navigate, frequently overcrowded, and places primacy on automobiles and their users—particularly commuters—rather than pedestrians, and/or town residents. The panel recommended an integrated approach of infrastructure improvements and redevelopment along the town's main thoroughfare, Connecticut Avenue, and, just as importantly, along its secondary and tertiary streets.

The "branding" of a community is physically manifested in its streetscapes and built environment. As such, the panel called for both streetscape improvements and for creating opportunities for the types of development that provide residences, lodging, offices, retail, and entertainment venues, which add to the streetscape through their built form and through the residents, patrons, and visitors that will use those streetscapes and activate them. This complementary approach, however, leads one to the inevitable question: Which comes first? The streetscape improvements, or the new development? It is the panel's position that the improvements must come first, in order to create the environment that will more likely attract private investment. To that end, the panel made a number of detailed short- and long-term recommendations regarding potential improvements to Connecticut Avenue, as well as to secondary and tertiary streets within the town.

Implementation

The panel noted that Kensington's current environment is reflective of several factors, including:

- The 1978 Kensington and Vicinity Sector Plan;
- The current zoning categories on the parcels;
- Small parcel sizes;
- Fragmented Ownership; and,
- Low-Density Commercial Uses;

Thus, at the outset of the new Sector Plan process, the panel recommends that the town seek far more flexible zoning standards, which would allow for the following types of development, particularly on the opportunity sites discussed in this report:

- Mixed-Use zones with ground floor retail- office and/or residential above;
- A wide range of retail uses permitted;
- Minimum lot size to encourage assemblage;
- Floor Area Ratio (FAR) of 1.0 to 1.5 (Hardware City Shopping Center at 1.5; Metropolitan Avenue at 1.0; Fire Station at 1.0);
- Maximum Height 65 feet allowed;
- Build-to Line to define street edge;
- Eliminate gas stations as special exception uses;
- Create a street and block plan that allows for proper dimensions for development;
- Create a parking strategy for the redevelopment area, with flexible parking standards; and
- Define the limits of the town's core.

MEMORANDUM

March 15, 2010

TO: Dr. Royce Hanson, Chair, Montgomery County Planning Board
Rollin Stanley, Planning Director

FROM: The Planning Housing and Economic Development Committee

SUBJECT: Kensington Master Plan

The PHED Committee and our staff are beginning their in-depth work on the Kensington Master Plan. This plan will be the third Master Plan to employ the CR Zone.

Unlike the major employment/residential areas envisioned in the White Flint Sector Plan and the Gaithersburg West Master Plan, Kensington is a smaller, more suburban community, albeit located along side a major state road, Connecticut Avenue.

The Planning Board has recommended the CR Zone for some properties in the Kensington Master Plan, and that recommendation may ultimately be supported. However, during the public hearing on the Plan on February 4th, there was some discussion as to whether the CR Zone was the most appropriate zone for an area that may not have the high land values and type of development that can afford the density bonuses requirements in the CR Zone. Councilmembers asked at the time for a Planning Department analysis of alternative zones that might be appropriate for Kensington.

The first meeting on the Master Plan is on March 17th meeting focusing on the transportation needs in the area. The Committee will hold its first land use work session on March 24th and I wanted to be sure we would have the requested analysis in time for it to be included the staff packet (by March 19).

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MEMORANDUM

Date: April 1, 2010
To: Montgomery County Council PHED Committee
From: Montgomery County Planning Department
Re: CR Zones in the Kensington and Vicinity Sector Plan Area

In response to your memorandum of March 15, 2010, we have undertaken an analysis of alternative zones and the viability of the CR zones in the Kensington area. This memo covers several subjects:

- Overview of current zoning in Kensington and master plan vision;
- Reasons the Planning Department has recommended the CR zones for Kensington;
- Analysis of alternative zones for Kensington;
- Comparative models of three properties in Kensington; and
- Analysis of public benefits provided by these models.

I. Summary

For the reasons outlined below, the Planning Department remains satisfied that the CR zones, without amendment, are the best option available for Kensington.

1. The Kensington master plan specifically calls for a mixed-use community with a particular set of public benefits that will enhance its character.
2. The CR zones address the inability of the existing zones to achieve mixed uses on a range of sites and provide a fine-grained approach to height and density to allow for sensitive transitions to adjacent neighborhoods.
3. The proposed zoning has been vetted by the community through a lengthy public process and has been tailored to meet the expectations of the residents and property owners.
4. Implementation guidelines will ensure a public review of projects to insure that public benefits are not only economically viable but also conform to the objectives of the master plan.
5. The CR zones provide the best option for property owners who decide to develop above the standard method with a great amount of use and design flexibility, lower parking requirements,

and appropriate open space requirements in exchange for public benefits that will create the places envisioned by the master plan.

II. Background

The existing zoning pattern in Kensington, predominantly C2, has failed to achieve the objectives of the master plan or to fulfill the potential of the town center for the community.

1. Very few properties have built to the permissible density of the C2 zone because of a lack of an office market and no allowance for residential uses.
2. The successful elements within Kensington have hit a development ceiling because of the lack of mixed-use and public amenities that work hand-in-glove with thriving commercial centers.

For this reason, the pending Kensington master plan has recommended that the zoning be changed to further several objectives:

1. Create pathways for townspeople to move car free throughout the Town, enjoying a healthier, more sustainable community.
2. Redefine public space for people and create activity along sidewalks through smart design of buildings and the spaces around them.
3. Define new public spaces that will exemplify the unique scale and character of Kensington.
4. Promote sustainable infill and reuse and implement effective environmental practices.
5. Create an active Town Center with new residential uses.
6. Promote the community's heritage through its buildings, spaces, and people.

The question is, of course, what zoning tool will allow for these objectives to be realized. Place-making cannot be a completely laissez-faire proposal; it takes guidance. The realization of the type of place Kensington can be depends on two factors:

- Redevelopment with a mix of uses and
- The assurance that redevelopment is built in a way that implements this vision.

The Planning Department has recommended the CR zones because the zones encourage redevelopment through a careful balance between increasing use flexibility, decreasing parking and open space requirements, and requiring public benefits in exchange for the increased revenue and savings. For any zone to be an effective implementation tool, it must balance these factors.

III. Possible Alternative Zones

There are few alternative zones in the ordinance that provide either or both the density and mix of uses for viable urban areas that have lower levels of transit access and smaller properties. The CR zones do not require any property owner to build above the base density, which is the greater of 0.5 FAR or 10,000

square feet. But if they choose to, it is important to note in the tables below that the broader range of uses, generally greater floor area, and lower parking and open space requirements are available to more than offset any costs associated with the public benefits required of optional method development. This economic benefit is then further augmented by the better public realm created by the benefits and amenities for the community.

Alternative Zone Comparison: Part I						
Zone	Mix of Uses	Conceptual Plan Review	Site Plan Review	Viable Density	Lot Size	BLT Costs
CR	Yes	Yes	Optional and some Standard Method	Yes	No minimum	Affordable (5%)
C2	No	No	No	Cannot take advantage (no mixed use)	No minimum	None
TMX2	Yes	Yes	Yes	Limited	Development over 0.5 FAR limited to lots >18,000 sf	Not Affordable (12.5%)
CBD	Yes (allowed but not always efficient)	Yes	Optional Method	Yes	Development over 0.5 FAR limited to lots >18,000 sf	None
Transit-Station	Yes	Rezoning	Yes	Limited	Restricted	None
TOMX	Yes	Rezoning	Yes	Limited	Restricted	None
MXN/MXPD	Yes	Rezoning	Yes	Limited	Restricted	None
MXTC	Yes	Rezoning	Yes	No	Restricted	None
“Kensington Alternative”	Yes	Yes?	Yes?	Yes	No minimum?	None

This first set of comparisons shows a number of things:

- The zones with appropriate densities, have restrictions on lot size that make them inappropriate for small lots.
- Restrictions on uses, such as no residential or potential density penalties that limit use-mixing, make many other zones inappropriate for any area hoping to create a balance of jobs to housing.
- Those zones with the greatest flexibility tend to be planned development zones with extremely restricted area requirements and numerous cumbersome rezoning findings.
- The zone that best achieves the policy goal of the BLT program is the CR zone. It is limited to a 5% requirement, which is economically feasible for small lots (adding \$2 - \$3 per square foot).

Alternative Zone Comparison: Part II

Zone	Open Space	Parking	Public Benefits	Building & Parking Layout	Conclusion
CR	Only required on large lots, encouraged where appropriate	Minimized for all uses	Economically viable; diverse; tied to master plan goals	More flexibility, parking behind	Balances viable mix of uses and density with public benefits to implement master plan objectives on any lot size.
C2	10% can be restrictive on building siting	Restrictively large	None	Little flexibility = taller buildings in large parking lots	No mix of uses, public benefits, or review process to implement master plan objectives.
TMX2	20% is overly restrictive	Restrictively large for office and residential	No direction provided; complete discretion to Board	Flexibility, parking unrestricted	Parking, open space, minimum lot size, and BLT requirements limit appropriate application.
CBD	20% is overly restrictive	Restrictively large	No direction provided; complete discretion to Board	Flexibility, parking unrestricted	Parking, open space, minimum lot size, and inefficient use calculations limit appropriate application.
Transit-Station	10% can be restrictive on building siting	Restrictively large	If required by master plan	Flexibility, parking unrestricted	Not applicable outside of Transit Station Development Areas; open space, density, and parking requirements are also limiting.
TOMX	20% is overly restrictive	Restrictively large	No direction provided; complete discretion to Board	Flexibility, parking unrestricted	Not applicable outside of Transit Station Development Areas; open space, density, and parking requirements are also limiting.
MXN/ MXP	Overly restrictive	Restrictively large	No direction provided; complete discretion to Board	Flexibility, parking unrestricted	Parking, open space, minimum areas, and densities limit appropriate application.
MXTC	Overly restrictive	Some flexibility	No direction provided; complete discretion to Board	More flexibility, parking behind	Minimum lot size, open space, and parking requirements limit appropriate application.
“Kensington Alternative”	Same as CR?	Provided by Municipality	Minimal and no review by citizens or Board	Total flexibility, no parking	Unbalanced provision of density without parking and public benefit assurances to implement master plan objectives.

This second set of comparisons provides the final reasons why alternative zones were rejected in Kensington:

- Universal requirements for all properties to provide 10 or 20% open space restrict building flexibility on small lots, does not allow for pedestrian-oriented sidewalks, creates small, fragmented open space, and costs a lot of money.
- Current parking requirements require large expenditures of area and/or money to create immense parking fields (squeezing building footprints and pushing them higher on small lots at higher costs), restrict density achievable because many projects run out of room for parking before they hit any density limits, and create auto-oriented development focused on car circulation and storage.
- Public benefits that “balance” development density with a viable public realm are predominantly indeterminate and open to too much negotiation with little certainty. On the opposite side of the spectrum are the zones that provide no public benefits or very few non-negotiable ones that will never achieve the objectives of a master plan. The only zone that provides some certainty of a diversity of benefits tied to master plan objectives and an appropriate amount of negotiation is the CR zone.

IV. Models

Because we have created the CR zones to fit a variety of contexts, circumstances, and densities, we expect them to work well in practice in Kensington. Models of the costs, savings, and additional revenue allowed by the proposed zoning strategy for Kensington demonstrate three key findings:

- The required public benefits will generally necessitate additional expenditures between 2-5% to the entire development cost for any project;
- Savings realized through decreased parking, open space, and – in some cases – BLT provisions result in a net decrease in development costs; and
- Increased residential uses and density results in increased development flexibility for building and site design and increased annual income.

These results are based on the fact that the CR zones create a more fine-tuned balance regarding public benefits and flexibility of uses and density. Three properties of significantly different size were modeled and tested against the various benefits they must provide and those provisions that other zones require.

Site 1: 1,122 sf lot in the CR2, C2, R0.5, H50 zone

- Parking & Open Space Savings: \$27,854 savings
- Investment for Public Benefits: \$0 (development is under 10,000 sf – standard method)
- Additional Annual Income: \$13,464 additional income versus existing C2 zone

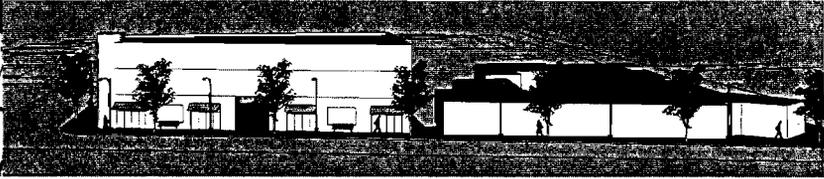


Site 2: 29,808 sf lot in the CR2, C2, R0.5, H50 zone

- Parking & Open Space Savings: \$3,948,656 savings
- Investment for Public Benefits: \$355,907 (2%)
- Additional Annual Income: \$298,080 additional income versus existing C2 zone



Existing: C2 zone



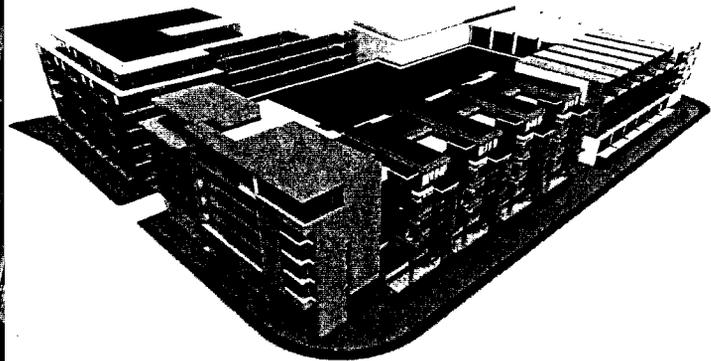
Model: CR2, C2, R0.5, H50 zone

Site 3: 123,086 sf lot in the CR2.5, C2, R2, H75 zone

- Parking & Open Space Savings: \$8,001,602 savings
- Investment for Public Benefits: \$4,631,111 (5%)
- Additional Annual Income: \$2,461,720 additional income versus existing zone



Existing: C2 zone



Model: CR2.5, C2, R2, H75 zone

Summary

1. Properties under 5,000 square feet in most of Kensington will be able to develop under the standard method of development with a significant development savings because of the reduced parking and open space restrictions and the additional income and great benefit of more flexibility in use.
2. Larger properties in the CR zones will have an additional investment cost of 2-5% for the required public benefits.
3. Savings realized by decreased parking and open space provisions more than offset the investment in public benefits.
4. Additional annual income for the increased residential density will further enhance the return on investment for optional method projects.
5. The provision of public benefits in a manner proportional to development is necessary to implement the vision of the master plan in which increased densities and uses are proposed. The trade-off is equitable and provides a solution that is “win-win” for the property owners and the community at large.

Visually, the siting of the building and parking creates better urban form at the outset. And this is only enhanced by the greater flexibility due to decreased open space and the provision of a diversity of public benefits.

V. Public Benefits

The second aspect of the CR zones is the impact on the areas on which they are applied. In this case, the public benefits and amenities far outweigh the C2 zone, which provides no benefits, and also perform better than the TMX zones that do not provide such a diversity of public benefits.

Summary of Public Benefits Provided by the Medium & Large Examples:

Medium Lot		Large Lot	
<i>Benefit</i>	<i>% of Density</i>	<i>Benefit</i>	<i>% of Density</i>
Transit Proximity to MARC	25%	Transit Proximity to MARC	20%
Neighborhood Services	10%	Minimum Parking	20%
Minimum Parking	20%	Through-Block Connection	10%
Small Business Retention	10%	Small Business Retention	10%
Enhanced Access for the Disabled	7%	Structured Parking	10%
Historic Resource Protection	5%	Tower Setback	5%
Public Art	5%	BLTs	5%
Public Open Space	5%	Vegetated Roof	20%
BLTs	5%		
Green Wall	10%		
Total	102%	Total	100%

This is the key balancing feature of the CR zones that ties development to master plan objectives in exchange for the economic benefits realized by developers. In the case of the larger lot, for example, the developer could have used the neighborhood services benefit to achieve the same density incentive, but it is desirable for large properties that fill most of a block to provide through-block connection between streets. As the master plan or design guidelines would most likely require or recommend such a connection, it would be recommended by Staff prior to approval. But, as better public realms are created with a variety of such amenities, diverse uses, and viable density, the cost/benefit ratio of development will only be improved through better lease rates.

1. The CR zones provide economic incentives to redevelop through:
 - A greater flexibility of uses,
 - Decreases in parking and open space requirements, and
 - Rewards for implementing energy/cost-saving sustainability measures.
2. The CR zones provide property owners an economically viable tool to develop their sites through savings and increased annual revenue from the expanded use table.
3. The provisions of the optional method will provide the necessary benefits and amenities to:
 - Make the envisioned areas enjoyable, sustainable environments for the entire public,
 - Implement the objectives of the master plan, and
 - Shape the built environment in accord with the character of an area through appropriate public participation and review.
4. The Planning Department Staff remain convinced that the CR zones are the most appropriate zoning tool to implement mixed-use development on small, medium, and large lots with any range of density.

CR Zone Incentive Density Worksheet

Step 1: enter required data (in red)

Zone CR2.5, C2, R2, H75	Transit Proximity Factor*	0 non-res	
Max CR Density	0 FAR	0 res	
Gross Tract Size	0 sf	Office Density	0 sf
Allowed Incentive Density	0 sf	Retail Density	0 sf
Proposed Incentive Density*	0 sf	Residential Density	0 sf
Max Total Density	0 sf	Approx. CR Parking Required	0 spaces
Base Development Cost (\$300/sf)	\$0	Approx. Standard Parking Required	0 spaces
Master-Planned Facility Cost	\$0	Structured Parking	0 0=n, 1=y
Through-Block Connection Area	0 sf	Public Spaces Provided	0 spaces
Public Open Space	0 sf	Off-Site Streetscape	0 sf
Base MPDU Requirement	0 units	Average Res Lease Rate/SF	\$24 annual
Additional MPDUs Provided	0 units	WFHUs Provided	0 units

*Enter if different than allowed density.

*Enter factor from CR zone section 59-C-15.65.

Step 2: enter % incentive density requested (in red)

Category	Benefit	Min	Max	% Requested	SF Requested	\$ per/sf premium	notes
Master-Planned Facility		10	70	0%	0	\$0.00	
Transit Proximity		15	50	0%	0	\$0.00	
Connectivity & Mobility							
	Neighborhood Services	10	20	0%	0	\$0.00	
	Minimum Parking	1	20	0%	0	\$0.00	
	Through-Block Connection	5	10	0%	0	\$0.00	add net area required above
	Public Parking	15	25	0%	0	\$0.00	\$20,000 per space
	Transit Access Improvement	10	20	0%	0	\$0.00	\$35/sf improvements
	Trip Mitigation	15	25	0%	0	\$0.00	1% of sf requested at \$35/sf
Diversity							
	Affordable Housing: MPDUs	1	22	0%	0	\$0.00	enter units required per 25A
	Affordable Housing: WFHUs	2	30	0%	0	\$0.00	units calculated assumes 1,000sf
	Adaptive Buildings	10	20	0%	0	\$0.00	1% if over minimum
	Care Center	10	20	0%	0	\$0.00	\$24/sf
	Small Business Retention	10	20	0%	0	\$0.00	
	Dwelling Unit Mix	5	10	0%	0	\$0.00	
	Enhanced Disabled Accessibility	1	20	0%	0	\$0.00	add 10%/sf for units
Design							
	Historic Resource Protection	5	20	0%	0	\$0.00	add 1% per % requested
	Structured Parking	10	20	0%	0	\$0.00	enter "1" above
	Tower Setback	5	10	0%	0	\$0.00	
	Public Art	5	10	0%	0	\$0.00	0.5% to 1.0% over base
	Public Open Space	5	10	0%	0	\$0.00	\$35/sf improvements
	Streetscape, Off-Site	5	10	0%	0	\$0.00	\$35/sf improvements
	Exceptional Design	10	20	0%	0	\$0.00	1% to 2% over base
Environment							
	BLTs	5	30	0%	0	\$0.00	\$200,000/BLT
	Energy Efficiency & Generation	10	20	0%	0	\$0.00	1% to 2% over base
	Green Wall	5	10	0%	0	\$0.00	up to 0.5% over base
	Tree Canopy	10	20	0%	0	\$0.00	10% of open space over base
	Vegetated Area	5	10	0%	0	\$0.00	10% of open space over base
	Vegetated Roof	10	20	0%	0	\$0.00	\$15-\$25/sf
Advanced Dedication of ROW							
		10	30	0%	0	\$0.00	
				Totals	0	\$0.00	
					Final Dev \$	\$0	
					Delta	\$0	

Step 3: review cost/savings + additional revenue figures

Savings/Cost versus C2 & TMX2	Item #	cost per unit	savings	notes
	Reduced Parking	0.00	\$10,000 space	\$0 immediate savings
	Public Use Space	0	35 sf	\$0 immediate savings
	Energy Efficiency (baseline average 1.43/sf)	\$0	\$0.00 sf savings	\$0 annual savings
	MPDU housing lease costs (1,000 sf/unit)	0	54% lease rate	\$0 annual costs
	WFHU housing lease costs (1,000 sf/unit)	0	76% lease rate	\$0 annual costs
	Net Development Difference			\$0 less

Additional Leasable Area	Item #	cost per unit	income	notes
Additional Leasable Area (vs C2)	0	\$24 sf income		\$0 additional annually
		or		
Additional Leasable Area (vs TMX)	0	\$24 sf income		\$0 additional annually

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March 29, 2010

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william.kominers@hklaw.com

VIA HAND DELIVERY

The Honorable Mike Knapp, Chairman
Public, Housing & Economic Development Committee
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Kensington Sector Plan -- Zoning Alternative (Correction)

Dear Chairman Knapp:

The purpose of this letter is to provide you with a corrected draft of the proposed Town Mixed Use District Zone that was attached to my March 26, 2010 letter. In reviewing the draft that I had provided to you, I found a consistency error and therefore provide this Revised Draft in place of the original.

Please note that this Revised Draft is identified as "Revised Draft -- March 29, 2010" under the title, so as to distinguish it from the earlier version.

Please replace the document attached to my March 26, 2010 letter with this new Revised Draft for use in your evaluation of the Town Mixed Use District Zone proposal.

I apologize for any confusion.

Thank you for your consideration of this matter.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

Enclosure

cc: The Honorable Nancy Floreen
The Honorable Marc Elrich
Ms. Marlene Michaelson
Mr. Fred Boyd
Mr. William Barron
Susan M. Reutershan, Esquire

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Town Mixed Use District Zone
(Proposal for a Modified CR Zone for Lower Density Areas)
 (Revised Draft -- March 29, 2010)

1. Incentive density is to be based on: (a) transit proximity, and (b) other incentives from CR Zone.

2. Based upon transit proximity, applicants must also implement a certain number of Incentive Elements from a certain number of the General Categories from the CR Zone. The General Categories are the same as set forth in Section 59-C-15.81(a)(1) through (7) of the CR Zone. The Incentive Elements are set forth in Sections 59-C-15.82 through 59-C-15.88, excluding 59-C-15.87(a). These are listed in paragraphs 10 and 11 below.

3. Based upon transit proximity, an applicant must seek the following number of Incentive Elements (Line E) from the number of General Categories (Line D) noted in the chart below:

A		Adjacent/ Confronting	Within ¼ Mile		Within ¼ to ½ Mile	Within ½ to 1 Mile			
B	Level 1 Transit	50%	40%		30%	20%			
C	Level 2 Transit	25%	20%		15%	10%			
D	Number of additional General Categories from which Incentive Elements must be provided under Line E below in order to reach maximum density	1	1	or	2	2	2	or	3
E	Number of Incentive Elements that must be provided from each General Category required in Line D above	1	2		1	2	3		2

4. The number of Incentive Elements selected in accordance with the chart above will support the entire amount of density (100%) as requested by the applicant, up to and including the maximum allowed by the Zone. In this way, there is no requirement nor need, to allocate to each individual Incentive Element a particular specific percentage. This reduces complexity, need for negotiation, and potential arbitrary decisions. The number of elements in Line E of the chart will be deemed to meet the

entire requirement for the total necessary incentive density that is sought by an applicant. The standards in the CR Zone Guidelines for the minimum incentive will apply to all elements in this zone.

5. If fewer than the full number of Incentive Elements required by Line E of the chart are provided, the only allowable incentive density will be the amount supported by the percentage increase associated with transit proximity.

6. Incentive Density Example. An example of the use of incentive density is as follows:

a. Site located "within ¼ mile" of a Level Two transit facility. Transit proximity provides 25% of the required incentive density. To reach the maximum density of the zone, the remaining 75% of the incentive density comes by doing either of the following:

i. Providing two Incentive Elements from any one General Category (such as: Connectivity and Mobility Category: provide (1) through-block connections, and (2) neighborhood services); or

ii. Providing one Incentive Element from each of two General Categories (such as: (1) Connectivity and Mobility Category: provide through-block connections, and (2) Quality Building and Site Design Category: provide historic resource protection).

7. Parking.

a. The Kensington Sector Plan will establish the boundaries of a "Town Center Parking District," within which the Town will make available public parking, both in off-street lots and through on-street parking.

b. Any development located within the geographic boundaries of the Town Center Parking District may reduce parking from the amount otherwise required by the Code, by any percentage up to and including 100%. This will facilitate reducing the necessity for parking on individual sites, thereby making more of the land available for actual development on the smaller lots in Kensington, and, at the same time, support the ongoing characteristic of the Town as a "walking" commercial district -- where people park either on the street or in an off-street lot and walk to a variety of destinations.

8. Use of the Town Center Parking District to satisfy parking requirements will require approval by the Town. Mixed use shared parking adjustments may be applied comprehensively by the Town to all such spaces. Distance to off-site parking under Section 59-E-1.3 does not apply with respect to the Town Center Parking District, because of the small size of the Town commercial district and the public policy of encouraging walking within the commercial district.

9. Before some or all of the parking spaces in a parking facility can be used as a part of the resources of the Town Center Parking District, the Town must obtain written authorization from the owner of such parking spaces, including any time restrictions on use.

10. The General Categories are the same as the CR Zone (Section 59-C-15.81(a)):

- (a) Master planned major public facilities
- (b) Transit proximity for residents, workers and patrons
- (c) Connectivity between uses and activities and mobility options
- (d) Diversity of uses and activities
- (e) Quality of buildings and site design
- (f) Protection and enhancement of the natural environment, and
- (g) Advanced dedication of right-of-way

11. General Categories and Incentive Elements (from CR Zone -- Sections 59-C-15.82 through 59-C-15.88, excluding Section 59-C-15.87(a)):

- (a) General Category: Master-Planned Major Public Facilities
- (b) General Category: Transit Proximity
- (c) General Category: Connectivity and Mobility
Incentive Elements:
 - (1) Neighborhood Services
 - (2) Minimum Parking
 - (3) Through-Block Connections
 - (4) Public Parking
 - (5) Transit Access
 - (6) Trip Mitigation
- (d) General Category: Diversity of Uses and Activities
Incentive Elements:
 - (1) Affordable Housing
 - (2) Adaptive Buildings
 - (3) Care Centers
 - (4) Small Business Retention
 - (5) Dwelling Unit Mix
 - (6) Enhanced Accessibility for the Disabled
- (e) General Category: Quality Building and Site Design
Incentive Elements:
 - (1) Historic Resource Protection
 - (2) Structured Parking
 - (3) Tower Setback

- (4) Public Art
 - (5) Public Open Space
 - (6) Streetscape
 - (7) Exceptional Design
- (f) General Category: Protection and Enhancement of the Natural Environment
Incentive Elements:
- (1) Energy Conservation and Generation
 - (2) Green Wall
 - (3) Tree Canopy
 - (4) Vegetated Area
 - (5) Vegetated Roof
- (g) General Category: Advanced dedication of right-of-way

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Zone	Min. Size for Zone	Maximum Density	Req. to Achieve Max Density	Limit on Mix	Building Height limit	BLT/TDR	Min. open space req.
CBD Zones (Euclidean with standard and optional method of development)	No minimum for standard method; 18,000 for optional method	Standard CBD 0.5 – 1.0 FAR CBD R1– 1.0 FAR CBD 1 – 2.0 FAR CBD 2 – 3.0 FAR CBD 3 – 4.0 FAR CBD R2 – 1.0 FAR Optional CBD 0.5 – 1.5 FAR or 100 units per acre CBD R1– 3.0 FAR or 125 units per acre CBD 1 – 3.0 FAR or 125 units per acre CBD 2 – 5.0 FAR or 200 units per acre CBD 3 – 8.0 FAR or 200 units per acre CBD R2 – 5.0 FAR or 200 units per acre	Must provide public facilities and amenities and increased public use space	Limit on number of residential units and non-residential FAR set for each zone	Standard CBD 0.5 – 45 feet CBD R1– 60 feet CBD 1 – 60 feet CBD 2 – 60 feet CBD 3 – 72 feet CBD R2 – 60 feet Optional (max) CBD 0.5 – 60 feet CBD R1– 143 feet CBD 1 – 90 feet CBD 2 – 200 feet CBD 3 – 200 feet CBD R2 – 200 feet	None required	10% public use space in standard; 20% in optional.
CR Zones (Euclidean with standard and optional method of development)	None	Standard 0.5 FAR Optional 8.0 FAR	Must choose from a list of public benefits; purchasing BLTs is required	As set in the specific CR zone	Standard method= 40 feet. Optional method is set by the specific CR zone up to 300 feet	For floor area in excess of .5 FAR - 1 BLT for every 400,000 square feet of floor area	0 to 10%

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Zone	Min. Size for Zone	Maximum Density	Req. to Achieve Max Density	Limit on Mix	Building Height limit	BLT/TDR	Min. open space req.
MXN (Euclidean)	Min. Area: 20 acres unless contiguous to other MXN land or recommended by a master plan	0.3 FAR	None	As recommended by master plan but at least 25% residential	Height limited than its setback from the tract boundary, if the adjoining land is existing or planned one-family detached residential zoning and use.	None	50%
MXPD (Floating)	Min 20 acres	Commercial/industrial: 0.75 FAR or less if recommended in a master plan Residential: 75 units per acre or as limited by master plan		Minimum % of commercial depending on acreage. Assumes separate residential and commercial areas with limits on residential development in commercial area.	No building shall be constructed to a height greater than its distance from any adjoining property recommended for residential zoning unless the District Council waives this provision.	None required	40% green area in commercial 50 % green area in residential area
MXTC and MXTC/ TDR (Euclidean with standard and optional method of development)	None	Non-residential: 0.35 - 1 FAR or as limited in master plan Max. res. Density: 8 - 20 units per acre or as limited in the master plan	Street façade and comply with master plan	As specified in maximum density or as limited in master plan	Standard = 42 ft Optional = 70 ft but may be limited by a master plan	Required for optional method development in the MXTC/ TDR zone	Standard – 10%; Optional – 10 to 20%

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Zone	Min. Size for Zone	Maximum Density	Req. to Achieve Max Density	Limit on Mix	Building Height limit	BLT/TDR	Min. open space req.
RMX zones (Euclidean)	None	Max commercial density; 0.35 - 0.5 FAR or as recommended in the master plan. Minimum number of dwellings on any site over 30 acres is 150 units (not to exceed 40 units per acre). Maximum commercial gross leasable floor area ranges from 200,000 to 1,300,000 sq. ft.	Public facilities and amenities required for optional method of development.	See density column	Limits under standard method depending on zone. Optional method - must conform to master plan.	TDRs required for maximum density in RMX TDR zones	10-20% for the commercial area; 20-50% for the residential area
Town Sector (floating)	Min 1,500 acres	May not exceed 15 persons per acre	None	No more than 10% = commercial No more than 6% = industrial	Must be "consistent with the limitations set in other zoning classifications for areas of similar density or similar use".	None required	Not less than 10%
TMX-2 (Euclidean with standard and optional method of development)	Minimum area required for development - 18,000 sq ft	Standard 0.5 Optional 2.0 FAR or as set in the master plan	Must provide public facilities and amenities and purchase BLTs	Must be consistent with master plan	Standard – 42 ft Optional – determined at project plan review; must conform to master plan	For density above .5 FAR – 1 BLT for every 72,000 square feet of residential floor area – 1 per 60,000 for non-residential	Standard – 10%; Optional – 20%

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Zone	Min. Size for Zone	Maximum Density	Req. to Achieve Max Density	Limit on Mix	Building Height limit	BLT/TDR	Min. open space req.
TOMX (Euclidean with standard and optional method of development)	No minimum for standard method; 18,000 for optional method	Standard 0.5 Optional 2.0 FAR or as set in the master plan	Must provide public facilities and amenities	Must be consistent with master plan	Standard – 50 ft Optional – determined at project plan review; must conform to master plan	Residential FAR may be increased by a maximum of 20% with the use of TDRs in the TOMX/TDR zone.	Standard – 10%; Optional – 20%
TS-R (Floating)	18,000 square feet - but maybe less under certain circumstances	2.5 FAR and 150 dwelling units per acre	Must provide facilities and amenities recommended in the master plan	All development must be in accordance with a plan of development meeting the requirements of the division.	Established during site plan review for residential;	None	30%
TS-M (Floating)	40,000 square feet - but maybe less under certain circumstances	3.0 FAR	Must provide facilities and amenities recommended in the master plan		None	None	10%

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§ 59-C-11.1

DIVISION 59-C-11. MIXED-USE TOWN CENTER ZONE (MXTC).*

Sec. 59-C-11.1. Where Applicable.

No land may be classified in the MXTC zone or MXTC/TDR zone unless recommended in an approved and adopted master or sector plan.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-83, § 1.)

Sec. 59-C-11.2. New construction, re-use of existing building, remodeling and reconstruction.

Any lawful structure or building that existed before the applicable Sectional Map Amendment adoption date, is a conforming structure and may be continued, structurally altered, repaired, renovated or enlarged up to 10 percent of the gross building floor area or 10,000 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 10,000 square feet, or construction of a new building must comply with the standards of the MXTC zone or MXTC/TDR zone as applicable.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-83, § 1.)

*Editor's note—Former Division 59-C-11, "Rural Density Transfer Zone," §§ 59-C-11.1 — 59-C-11.5, was repealed by Ord. No. 10-69, § 6. Those provisions were incorporated in new Division 59-C-9. Former Division 59-C-11, "Rural Density Transfer Zone," was derived from Ord. Nos. 9-18, § 1; 9-31, § 2; 9-47, § 2; 9-53, § 2; 9-74, § 10; 10-63, § 3; 10-13, § 10; 10-31, § 7; 10-62, § 2; 10-64, § 2; and 10-66, § 3.

Former Section [Division] 59-C-11, "Rural Density Transfer Zone", is interpreted in West Montgomery County Citizens Association v. Maryland-National Capital Park and Planning Commission 309 Md. 183, 522 A.2d 1328 (1987). The provision in the Zoning Ordinance delineating the creation of transfer of development rights (TDRs) was analyzed by the Court of Appeals and found to involve an invalid exercise of legislative authority. The provision did not establish the maximum density for the affected properties and violated the division between zoning and planning procedurally and substantively. The Court of Appeals invalidated the zoning decision concerning density of residential development because that decision was made by the District Council through the planning process, rather than through the zoning process mandated by State law.

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Sec. 59-C-11.3. Methods of Development.

Two methods of development are available under the MXTC zone or MXTC/TDR zone.

(a) Standard Method.

A standard method project must comply with the applicable development requirements of 59-C-11.5 and the recommendations of the applicable master or sector plan. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

(b) Optional Method.

Under the optional method of development, building height, and density levels greater than allowed under the standard method of development may be achieved for increased public use space. An optional method development must comply with the applicable development requirements of 59-C-11.5 and the recommendations of the applicable master or sector plan. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on site.

In the MXTC/TDR zone, residential density above that allowed under the standard method must use transferred development rights and must follow the special regulations of 59-C-11.5.2.

59-C-11.3.1. Site Plan Approval.

For the MXTC zone and the MXTC/TDR zone, site plan approval is required for:

1. A standard method development project that includes:
 - a. a net lot area of five acres or more;
 - b. certain uses with more than 20,000 square feet for each establishment as specified in Sec. 59-C-11.4;
 - c. a modification of the maximum front setback or the street facade requirements;
or
 - d. a recommendation for site plan review in the applicable master or sector plan.

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§ 59-C-11.3

2. All optional method development projects. For an optional method development project, the Board must find that the proposed development:
- a. conforms to recommendations of the applicable approved and adopted master or sector plan;
 - b. is not detrimental to any existing development due to the size, intensity, design, scale and operational characteristics of its uses;
 - c. satisfies the public use space requirements of the zone;
 - d. takes maximum advantage of the topography, vistas, facade articulation, and other urban design elements to create an attractive physical environment;
 - e. provides adequate linkages among different functions or structures, open areas, public amenities, parking, and adjoining properties and streets; and
 - f. provides adequate parking and loading service areas with appropriate landscaping, screening, and lighting that will not adversely affect adjoining neighborhoods.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-72, § 1; Ord. No. 15-83, § 1.)

Sec. 59-C-11.4. Permitted uses.

No use is allowed except as indicated in the following table:

- **Permitted Uses.** Uses designated by the letter “P” are permitted on any lot in the zone indicated, subject to all applicable regulations.
- **Special Exception Uses.** Uses designated by the letters “SE” may be authorized as special exceptions, in accordance with the provisions of Article 59-G.

	MXTC	MXTC/ TDR
(a) Residential²:		
Dwellings	P	P
Group home, small	P	P
Group home, large	P	P

MONTGOMERY COUNTY CODE
 ZONING ORDINANCE
 Chapter 59

	MXTC	MXTC/ TDR
Hotel or Motel	P	
Housing and related facilities for the elderly or handicapped	P	P
Life care facility	P	P
Personal living quarters	P	P
(b) Transportation, Communication and Utilities:		
Parking of motor vehicles, off-street, in connection with any use permitted	P	P
Public utility buildings and structures, telecommunications facilities	SE	SE
Radio and television broadcasting studio	SE	SE
Rooftop mounted antennas and related unmanned equipment building, equipment cabinet or equipment room	P ⁶	P ⁶
Taxicab stand	P	P
(c) Commercial²:		
Antique stores, handicrafts or art sales	P ¹	P ¹
Book store	P ¹	P ¹
Delicatessen	P	P
Drug store	P ¹	P ¹
Eating and drinking establishment, excluding drive-in	P	P
Eating and drinking establishment, drive-in	SE	SE
Florist shop	P	P
Furniture store, carpet or related furnishing sales or service	P ¹	P ¹
Garden supply shop	P ¹	P ¹
Gift shop	P	P
Grocery store	P ¹	P ¹
Hardware store	P ¹	P ¹
Jewelry store	P	P

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	MXTC	MXTC/ TDR
Newsstand	P	P
Office supply store	P ¹	P ¹
Photographic supply store	P	P
Pet sales and supply store	P ¹	P ¹
Specialty shop	P ¹	P ¹
Variety and dry goods store	P ¹	P ¹
(d) Services:		
Adult foster care home	P	P
Ambulance or rescue squad	P	P
Animal boarding place	SE	SE
Appliance repair shop	P ¹	P ¹
Art, music and photographic studio	P ¹	P ¹
Automobile filling station	SE ³	SE ³
Automobile fluid maintenance station	SE ⁴	SE ⁴
Automobile rental services, excluding automobile storage	P ⁵	P/SE ⁵
Automobile repair and service	SE ⁴	SE ⁴
Barber and beauty shop	P	P
Bank and other financial institution	P/SE ⁸	P/SE ⁸
Car wash	SE	SE
Charitable and philanthropic institution	P	P
Clinic	P	P
Child daycare facilities:		
— Family day care home	P	P
— Group day care home	P	P
— Child day care center	P	P

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	MXTC	MXTC/ TDR
Daycare facility for not more than 4 senior adults and persons with disabilities	P	P
Domiciliary care home for more than 16 residents	P	P
Dry cleaning and laundry establishment, consisting of no more than 3,000 square feet of gross floor area	P	P ¹
Dry cleaning and laundry pick-up station	P ¹	P ¹
Duplicating services	P ¹	P ¹
Educational institution	SE	SE
Home occupation, no impact	P	P
Home occupation, registered	P	P
Home occupation, major	SE	SE
Hospice care facility	P	P
Hospitals, veterinary	SE	SE
Laundromat, self-service	P ¹	P ¹
Office, general	P ¹	P ¹
Office, professional	P ¹	P ¹
Place of worship	P	P
Publicly owned or publicly operated uses	P	P
Shoe repair shop	P	P
Tailoring or dressmaking shop	P	P
Research, development and related activities	P ¹	P ¹
(e) Cultural, Entertainment and Recreational:		
Billiard parlor	P ¹	P ¹
Bowling alley	P ¹	P ¹
Health clubs and gyms	P ¹	P ¹
Libraries and museums	P	P

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	MXTC	MXTC/ TDR
Private clubs and service organizations	SE	SE
Recreational or entertainment establishments, commercial	P ¹	P ¹
Theaters, indoor	P ¹	P ¹
(f) Miscellaneous Uses		
Accessory buildings and uses	P ¹	P ¹
Signs in accordance with Article 59-F	P	P
(g) Uses of a light industrial nature⁷		
Manufacturing of electronic components, instruments and devices	P	P
Manufacturing of medical, scientific or technical instruments, devices and equipment.	P	P
Manufacturing and assembly of semi-conductors, microchips, circuits and circuit boards.	P	P
Printing and publishing.	P	P
Research, development and related activities.	P	P
Sign making shop.	P	P
Warehousing and storage services:		
— Industrial and commercial users.	P	P
— Self-storage facilities.	P	P

- ¹ Any non-residential use with more than 20,000 square feet per floor requires approval of a site plan under Division 59-D-3.
- ² A commercial use other than a grocery store, is limited to a maximum of 40,000 square feet of gross floor area.
- ³ A car wash with up to 2 bays may be allowed as an accessory use to an automobile filling station.
- ⁴ Not abutting or confronting any lot which is in a residential zone and is not recommended for commercial or industrial use on a master plan; and not within 300 feet of an entrance to a school, park, playground, or hospital.
- ⁵ Up to 10 cars may be stored on site.
- ⁶ Refer to section 50-A-6.14.
- ⁷ Allowed only if recommended in a master or sector plan.
- ⁸ A drive up bank or a bank with a drive in window must be approved by special exception subject to the general requirements of Section 59-G-1.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-72, § 1; Ord. No. 15-83, § 1.)

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Sec. 59-C-11.5. Development standards.

Development standards applicable to the standard and optional method development for the MXTC zone and the MXTC/TDR zone are indicated by the letters “S” and “O”.

		S	O
1	Maximum residential density (units/acre)	8	20 ¹
2	Maximum non-residential FAR	0.35	1.0 ¹
3	Maximum Building height	42 feet	70 feet ¹
4	Minimum public use space		
	— For lots of up to 40,000 sf:	10% ³	10% ³
	— For lots of more than 40,000 sf:	10% ³	20% ³
5	Building setbacks: ⁴		
	— Minimum front setback (feet)	0	0
	— Maximum front setback (feet) from a street line	10 ²	10 ²
	— Minimum side or rear setback from another lot in the same zone, or from an adjacent commercial zone (feet)	0	0
	— Minimum side or rear setback from an adjacent residential zone (feet)	20	20

¹ A master or sector plan may recommend a building height or density limit up to the maximum of the zone, and the appropriate mix of commercial, residential, and light industrial uses. Notwithstanding any building height limitation recommended in a master plan or sector plan, the Planning Board may further limit the maximum allowable building height to achieve compatibility with surrounding land uses. However, the Planning Board may waive any height limit established in a master or sector plan, up to the maximum allowed in the zone, if expressly recommended in the applicable master or sector plan. In the MXTC/TDR zone, residential density above the standard method must use transferred development rights and follow the special regulations in 59-C-11.5.2.

² The Planning Board may allow a front setback from the public right-of-way greater than 10 feet subject to site plan review and the street facade controls of MXTC zone. Setbacks from the curb must be of sufficient width to provide for streetscape and adequate sidewalk space for pedestrians.

³ Public use space may be provided indoors or outdoors and must conform to master or sector plan recommendations. Development on lots of up to 40,000 square feet may provide a portion or all of the required public use space as green area. Development on lots of more than 40,000 square feet must not provide all of the required public use space as green area. However, the Planning Board may waive any public use space requirement if expressly recommended in a master or sector plan.

⁴ The Planning Board may waive setback requirements if expressly recommended in a master or sector plan.

59-C-11.5.1. Street facade requirements.

1. Any development must provide at least one street facade for a minimum of 75 percent of the lot frontage along a street or other publicly accessible sidewalk, way or space. The street facade must be located within 10 feet of: 1) the front lot line or; 2) the public use space along a street or other publicly accessible sidewalk, way or space.
2. The ground floor portion of any street facade in a non-residential development must have windows and principal entrances to stores and retail establishments from the adjoining sidewalk or public use space. Off-street parking structures, if located along required street facades, must have retail or other pedestrian-oriented uses at the ground floor level fronting the street with direct access to the sidewalk or a public use space.
3. The Planning Board may modify a street facade requirement including the location or the minimum length of a required street facade during site plan review to achieve the objectives of the applicable master or sector plan. For lots with more than one street frontage, the Planning Board may establish which side would be subject to the street facade requirements during site plan review based on a layout that best achieves pedestrian oriented streets.

59-C-11.5.2. Special regulations for development using transferable development rights in the MXTC/TDR zone.

59-C-11.5.21 Applicability. The following procedures and regulations apply to the transfer of development rights to land classified in a MXTC/TDR zone. The Planning Board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable MXTC/TDR zone and conforming to the guidelines contained in the applicable master or sector plan. Any increase in dwelling units per acre allowed under the standard method of development of 59-C-11.5 must be based on a ratio of one single-family dwelling unit for each TDR, and 2 multi-family dwelling units for each TDR.

59-C-11.5.22 General provisions.

- (a) A development right must be created, transferred and extinguished only by means of documents in a recordable form approved by the Planning Board, including an easement and appropriate releases. The easement must limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property.

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- (b) The transfer of development rights must be recorded among the land records of Montgomery County, Maryland.
- (c) A property developed under a MXTC/TDR zone must conform to the requirements of Chapter 25A requiring MPDU's.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-72, § 1; Ord. No. 15-83, § 1.)

Sec. 59-C-11.6. Off-Street Parking for the MXTC zone and MXTC/TDR zone.

- (a) Required off-street parking must be provided pursuant to Article 59-E and off-street parking spaces for mixed-use projects must be provided pursuant to Sec. 59-E-3.1.
- (b) Off-street parking for two or more properties may be grouped to serve more than one lot or establishment pursuant to Section 59-E-3.4 and may be eligible for reduction in required number of spaces pursuant to Section 50-E-3.1.

59-C-11.6.1. Internal connection between parking lots for the MXTC zone and MXTC/TDR zone.

Any new developments pursuant to this zone must provide for a pedestrian and vehicular connection to existing and proposed parking areas on at least one adjoining lot where feasible. The Planning Board may modify this requirement during site plan review if the applicant demonstrates that compliance with this requirement is not feasible or that compliance with the requirement would preclude the lot from meeting the off-street parking requirements on site. The Director may modify this requirement for projects not subject to site plan review.

(Legislative History: Ord. No. 15-45, § 2; Ord. No. 15-83, § 1.)