

PLEASE KEEP THIS MEMORANDUM FOR USE AT ALL WORKSESSIONS CONCERNING ZTA 11-01

MEMORANDUM

June 9, 2011

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney  
SUBJECT: Zoning Text Amendment 11-01,  
Commercial/Residential Zones – Neighborhood and Town Zones

Zoning Text Amendment (ZTA) 11-01, sponsored by Council President Ervin at the request of the Planning Board, was introduced on April 12, 2011. A public hearing on ZTA 11-01 was held on May 17, 2011 at 7:30 p.m.

On June 13, the Committee will give the Planning Board Chair and Planning Staff the opportunity to present an overview of ZTA 11-01 to the Committee. The Committee has tentatively scheduled future ZTA 11-01 worksessions on June 22, June 23, and June 27.

This memorandum addresses every aspect of ZTA 11-01. Staff intends to use this memorandum at all ZTA 11-01 worksessions. The memorandum summarizes:

- \*all proposed changes to the Zoning Ordinance;
- \*testimony on each provision; and
- \*staff recommendations and options for the Committee's consideration as appropriate.

Staff Recommendations – Approve ZTA 11-01 with the following changes:

- 1) Allow density averaging only on projects covered by a single sketch plan for CR and CRT zones; allow CRN zoned projects to show density averaging on site plans.
- 2) Allow applicants to file a preliminary plan before the Planning Board approves a sketch plan.
- 3) Clarify that site plan approval applies if the cumulative size of new buildings exceeds 10,000 square feet of gross floor area.
- 4) Change the sketch plan amendment provision as recommended by the Planning Board 5/13/11.
- 5) Clarify transit proximity as recommended by the Planning Board 5/13/11.
- 6) Reduce the required bicycle parking for buildings with fewer than 200 units.
- 7) Amend the provisions for artisan manufacturing or prohibit the use in the CRN zones.
- 8) Limit uses in the CRN zones if the Council does not believe that the site plan process offers enough protection to single-family detached neighborhoods.

- 9) Amend the parking requirements as recommended by the Planning Board 5/13/11.
- 10) Impose a maximum point limit for each public benefit.
- 11) Delete the proposed recycling facility benefit.
- 12) Retain the current requirement for public use space to be within ¼ mile of the subject property.

### **THE BIG PICTURE ISSUES (ZTA 11-01 issues from 1,000 feet away)**

*Should the Council adopt any major changes before the Zoning Ordinance Rewrite?*

ZTA 11-01 is an effort to establish new zones in the CR family. The Planning Board intends to recommend applying CRT zones to areas where mixed-use is desired but the requirements in the CR zones may be too burdensome. The Planning Board intends to recommend applying CRN zones to land near single-family detached homes. The Council's approval of ZTA 11-01 would not remove other low-density commercial zones such as CT and C-1 from the Zoning Ordinance. The Planning Board may, however, ask the Council to remove those zones in the Zoning Ordinance Rewrite process.

*Do the CRN zones provide appropriate protection to one-family dwellings?*

Besides building setbacks, drive-through setbacks, and building height limits, ZTA 11-01 requires site plan approval for some standard method of development projects. Those projects with specified land uses, buildings taller than 40 feet, and more than 10,000 square feet of floor area would trigger site plan approval. The Committee's review of detailed development standards, land uses, and the approval procedures will allow it to decide if the new zones are suitable for their intended purpose.

*What changes to the current CR zones, if any, are appropriate?*

ZTA 11-01 would change provisions applicable to properties currently zoned CR. The Council must balance the need for changing the newly-minted CR zones with the Council's desire to avoid re-debating settled issues. The Planning Board approved 3 sketch plan applications under the current CR zones. It is possible to add 2 new series of zones for CRT and CRN without any changes to the CR zones. It requires more words, and it may require reconciling the zones in the Zoning Ordinance Re-write process, but it is possible.

ZTA 11-01 includes significant changes to the CR zones. ZTA 11-01 proposes a new point system to determine if the public benefits are sufficient for the approval of a project. The proposed point system is different: 1) the mechanics of requiring a diversity of public benefits no longer has minimums; 2) some benefits have changed benefit categories; and 3) there are additional public benefits. The Planning Board recommends allowing it more discretion on when a site plan and major public facilities must conform to a master plan. The Planning Board's design guidelines would be more binding.

#### Public testimony summary

As a generalization, developers (White Flint Partnership, the Takoma/Langley Coalition) and municipalities (Takoma Park and Kensington) favored the adoption of ZTA 11-01 with minor amendments. Some residents and civic organizations opposed its adoption (Citizens Coordinating Committee on Friendship Heights). Other groups oppose its adoption without significant changes (Sligo-Branview, Chevy Chase West, and Kensington View Civic Association). Testimony opposed the Council's consideration of ZTA 11-01 outside of the context of the Zoning Ordinance Rewrite process. Some people believe that ZTA 11-01 would undermine the current protections afforded single-family neighborhoods by abandoning the local map amendment process for zoning between single-family and non-residential uses. Some people testified in opposition to where the Planning Board recommended applying CRN and CRT zones in draft sector plans.

## Council's range of options

The Council can disapprove, modify, or approve ZTA 11-01 as introduced. It cannot change the recommendations of draft sector plans with respect to where the zones are applied. If the Committee wants to recommend disapproving ZTA 11-01 based on the May 17 public hearing, there is no need to review and discuss the detail in this memorandum. There would, however, be a need to discuss the master plan schedule. Staff recommends that the Council adopt ZTA 11-01 with amendments.

## OVERVIEW OF MAJOR PROVISIONS (ZTA 11-01 from 10 feet away)

The Planning Board noted the 3 functions of ZTA 11-01:

- (1) establish new Commercial/Residential Neighborhood (CRN) zones;
- (2) establish new Commercial/Residential Town (CRT) zones; and
- (3) enact various amendments to the Commercial/Residential (CR) zones, some related to integrating the new CRN and CRT zones and some representing improvements and clarifications resulting from experience with the CR zones since their adoption.

## Differences between CRN, CRT, and CR

	CRN	CRT	CR
<b>Maximum standard method (FAR)</b>	1.5	1.0	.5
<b>Maximum optional method (FAR)</b>	NA (No Optional)	4.0	8.0
<b>Public Benefit Points required for optional method projects</b>	NA	50 – no BLT purchase requirement	100 – 5 points must be from BLT purchase
<b>Maximum Building Height (Feet)</b>	65	150	300
<b>Permitted Land uses</b>	Least permissive of the CR zones	More restricted than CR zones, less restricted than CRN	Most permissive of the CR zones – No “Limited” uses
<b>Maximum Number of Parking Spaces</b>	No residential maximum – Non-residential near transit; current minimum	Only for sites within ½ mile of transit – current minimum	Only for sites within ½ mile of transit – current minimum
<b>Minimum Number of Parking Spaces</b>	Nearest current requirements	More than CRN, less than CR	Least of all CR zones

## Applicability of ZTA 11-01

ZTA 11-01 is a comprehensive revision to the current CR zones and adds provisions to establish the CRN and CRT zones. The amendment affects all properties located in CR zones.

## Master Plan Consistency

Master plan conformance was a significant theme when the Council established the CR zones:

- 1) the Council could only map CR zones when a master or sector plan recommends the zones;

- 2) up to 70 percent of the public benefits requirement could be accounted for by a major facility recommended by a master plan; and
- 3) site plan approval required consistency with master plan recommendations.

ZTA 11-01 would be a small step back from keeping master plans as a preeminent document. In the case of major public facilities, the Council would allow the Planning Board to find them at least as beneficial as master plan recommended facilities. The Board would also be able to approve a site plan that was inconsistent with a master plan if, in the Planning Board's sole judgment, the master plan was no longer applicable. These 2 changes are the basis for the testimony that ZTA 11-01 is undercutting master plans.

ZTA 11-01 would continue to prohibit the Council from applying a Commercial/Residential zone without a master plan recommendation to do so. Testimony claimed that ZTA 11-01 would be "planning by zoning rather than master plan".<sup>1</sup> The Council's approval of ZTA 11-01 would not apply the zone to any property.<sup>2</sup> It would allow master plans to recommend the CR, CRT, or CRN when the zones could implement the vision of the plan.

#### New conditionally permitted use

Whenever the Council establishes zones, permitted land uses are established. The Planning Board recommended uses for the new zones. Part of the Board's recommendation was to introduce Limited uses. This category of permitted use would be allowed as of right under some circumstances and requires site plan approval under other circumstances. This new permitted land use category reduces the number of uses that might otherwise be allowed only by special exception.

#### The planning review process

Testimony opposed ZTA 11-01 in part because it was viewed as shortcutting the planning review process. CRN zones, applied only after a master plan recommends them, would not allow for optional method of development projects. A sketch plan would not be required. A Limited use classification is recommended for uses that might otherwise be considered appropriate for special exception approval. Site plan approval would be required for Limited uses (restaurants and most retail establishments) near single-family zoned land without regard to the size of the project. Site plan approval will be required under many circumstances in all Commercial/Residential zones (CR, CRT, and CRN).<sup>3</sup>

The new CRN and CRT zones are Euclidian zones; the zones will be applied by a sectional map amendment. Some testimony favored the local zoning map amendment process to apply zoning. This process is required for the TSR, TSM, and CT zones. If the Council approved ZTA 11-01 and the application of the CRN, CRT, and CR zones after a master plan is approved, those actions will reduce the number of local zoning map amendment applications in the area rezoned.

Currently, the CR zones allow standard method of development projects up to a floor area ratio (FAR) of .5. ZTA 11-01 would allow for larger standard method of development projects (up to 1.5 FAR in CRN zones and 1.0 FAR in CRT zones); however, the site plan requirements apply to larger projects. To the extent that the CR family of zones will replace C-1 and C-2 zones (in which site plan approval is the exception rather than the rule), the CR family of zones will allow for increased public participation.

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<sup>1</sup> The ZTA does not regulate the deliberative master plan approval process. Zoning is intended to implement the master plan.

<sup>2</sup> The requirement for a master plan recommendation to apply any commercial/residential zone will prevent these zones from replacing current commercial and mixed-use zones in the Zoning Ordinance Rewrite unless this provision is changed in the Rewrite itself.

<sup>3</sup> Site plan approval would be required if the following additional circumstances occur: a project over 40 feet in height and a project that includes a limited use near one-family zoned land.

## Public benefits

ZTA 11-01 would change the way the Planning Board determines if a project has sufficient public benefits. Currently, public benefits are evaluated as a percentage of the optional method of development density. Under ZTA 11-01, this would be changed to a point system. This allows for fewer public benefits for optional method of development projects in the CRT zones. ZTA 11-01 would add 4 new public benefit categories.

## **DETAILED PROVISIONS (ZTA 11-01 at ground level – flowers and weeds)<sup>4</sup>**

ZTA 11-01 includes many amended provisions. The Planning Board's transmittal letter, dated March 11, 2011, did an excellent job of detailing the substantive changes in ZTA 11-01 and explaining the Planning Board's rationale for the proposed changes. The following section-by-section summary of proposed changes uses material from that letter and the Planning Board's May 13 letter. Each major section includes: 1) a review of the provision in ZTA 11-01; 2) testimony; and 3) staff comment.

### **Changes to 15.1. Zones Established.**

#### ZTA 11-01 provisions

This section would establish the CRN and CRT zoning classifications (Lines 10 – 32). It includes the density and height maximum for each zoning classification (Lines 39 – 43)<sup>5</sup>:

- 1) CRN up to 1.5 FAR and 65 feet in height;
- 2) CRT up to 4.0 FAR and 150 feet in height; and
- 3) CR remains the same – up to 8.0 FAR and 300 feet in height.

These ranges allow fine-tuned densities and heights with the different uses for each classification. The Council will use the density and height limit in an approved master or sector plan to limit these standards in the zone applied.

#### Testimony

Testimony recommended lowering the maximum density and height in the Ordinance; the CRN zone was cited as allowing development that is excessively dense and high. In particular, the Kensington View Civic Association recommended a maximum density of .5 FAR and a maximum building height of 45 feet.<sup>6</sup>

Density averaging has only been changed in ZTA 11-01 to ensure clarity (Lines 61 – 80). The applicability of density averaging is expanded to allow it if the property is:

- 1) in the same site plan (without regard to whether it is in the same sketch plan; Line 64)
- 2) included in a phasing plan, even if it is not created by the same preliminary plan (Lines 65 – 66).

ZTA 11-01 would retain the requirement that any commercial/residential zone can only be applied when it is specifically recommended by a master or sector plan (Lines 81 – 84). All of the zones in the CR family of zones would be Euclidian; the Council would apply the zones by sectional map amendments to implement a master plan or sector plan.

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<sup>4</sup> The devil is in the details.

<sup>5</sup> All line numbers referred to in this memorandum are the line numbers in ZTA 11-01.

<sup>6</sup> Under ZTA 11-01, any building over 40 feet in height would trigger a requirement for site plan approval.

Some testimony wanted the CR, CRT, or CRN zones to be floating zones that the Council could apply only by individual local map amendments.<sup>7</sup> Some testimony would bar the application of CR zoning and CRT zoning if the property was abutting a residential property or confronting a residential property across a small street. Testimony recommended including a dwelling unit per acre standard in the CR zone as a requirement.

Testimony from Capital View Park & Environs recommended adding CRHistoric zones to the CR family.

#### Staff comment

##### Density and Height

The Council controls the maximum allowable density and the height recommendation for a particular zone in every master plan or sector plan; additional restrictions are not necessary. As the Council adopts a master plan or sector plan, it is in a better position to determine if the situation warrants densities below the maximum when it establishes the zone. *Staff does not recommend changing the maximum FAR or height in the establishment of the CRN zone.*

##### Maximum for dwelling units per acre

A dwelling unit per acre standard would add another layer of complication to the CR zones. If the standard is in addition to an FAR standard it could only limit the size of apartments. If it is a standard instead of FAR, then the Ordinance would not control the project's bulk.<sup>8</sup> It is not difficult to make an early estimate of dwelling units from knowing the floor area devoted to residential uses. *Staff does not recommend adding a maximum number of units per acre as a standard.*

##### Local map amendments

Piecemeal zoning, the phrase used by Maryland courts to describe local map amendments, is less likely to carry out the vision of a master plan than a comprehensive rezoning.<sup>9</sup> *Staff believes that applying the CR, CRT, and CRN zones by sectional map amendment is a good idea.*

##### Notice

What notice will the community get? CRN, CRT, and CR zones with maximum densities and heights must be recommended in master plans and sector plans. The community would be a party to public conversations throughout the entire master plan process. Community notice would be required before preliminary plans are filed. Notice is required when site plan applications are filed. If neither a preliminary nor a site plan is required (only possible if the building is less than 10,000 square feet of floor area and less than 40 feet in height), the only public notice will be a posted sign when a building permit is issued. This is the same notice (or lack of notice) currently required in the C-1 and C-2 zones; however, it is less public involvement than that allowed for floating zones such as CT, PD, or the TS zones.

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<sup>7</sup> Staff believes that the testimony complaining about the lack of input in the zoning process is due to the comparison between the input accorded a local map amendment compared to that accorded a sectional map amendment, although the vast majority of this testimony did not provide details on why ZTA 11-01 would result in a lack of community input.

<sup>8</sup> Currently, an all residential project in a CBD zone is limited in size only by the number of dwelling units. A mixed-use project is limited by FAR. There is an incentive for projects to build the largest marketable apartments in a single use project and exceed the FAR limits.

<sup>9</sup> ZTA 11-01 retains the provision that the Commercial/Residential family of zones can only be applied by the recommendation of a master or sector plan. This provision will present a challenge to the use of these zones in the Zoning Ordinance Rewrite process. If the commercial/industrial family of zones must wait for a master plan recommendation, then the current commercial and mixed-use zones must survive the zoning rewrite process.

## Applicability of the CRN, CRT, and CR zones

Should the CR and CRT zones be prohibited from abutting one-family zoned property and confronting one-family zoned property across a minor street? In White Flint, the CR zones have already been applied to property abutting one-family zoned property. The reason to choose one CR zone over another is not dependent upon density, major land use limits, or height. Those elements are “controlled” by the master plan. Even if those standards were not controlled, buildings on large sites can be located away from single-family zones in the site plan process. It is more difficult to do that on small sites. Unforeseen future positive opportunities may be missed if there is a firm rule limiting the Council’s ability to apply a zone; however, rules for applicability are common in the Ordinance and provide more certainty to residents and landowners. This is a close call. *There is no wrong choice between not including applicability standards and including significant standards, because either way the matter comes before the Council in the form of a master plan recommendation.*<sup>10</sup>

## Density averaging

If density is proposed to be averaged in a site plan but was not included in the sketch plan, it will likely require amending the binding elements of the sketch plan. The Planning Board believes that a project in a CRN zone should not be able to do density averaging, even though a sketch plan would not be required.<sup>11</sup> As proposed, ZTA 11-01 would allow optional method of development projects to avoid showing density averaging in the sketch plan and only show it on a site plan. *Staff recommends requiring density averaging to be shown in sketch plans, except for CRN zones; in CRN zones, density averaging may be indicated on a site plan.*

## Mix of land uses

In most CR, CRT, and CRN zones, the maximum allowed density could only be achieved by a mixed-use project. Mandating mixed-use projects is something that has been tried with some success in the approval of optional method of development projects in CBD zones. Where it has not succeeded, it resulted in vacant retail spaces. It would be difficult to enforce a mix of uses in any standard method project (all CRN projects, projects less than 1.0 FAR in the CRT, and projects less than .5 FAR in the CR zones) that does not require site plan approval. At any given time, the property owner may have a market for one use but not 2 uses. Requiring a mix of uses would reduce the number of potential developments. *Staff does not recommend requiring a mix of uses for projects that develop at less than maximum density.*

## New CRHistoric zone

Staff does not see the need for a CRHistoric family of zones. Historic properties are themselves protected by the Historic Preservation Commission. If commercial/residential zones are used on or abutting historic properties, the Council can take that into consideration when it determines the appropriate maximum density and height.

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<sup>10</sup> The Council’s previous decisions in the White Flint Sector Plan applied CR zones abutting one-family zoned property. If the Council decides to restrict the application of the zone, it should do so from the day that the CRN and CRT zones are established.

<sup>11</sup> A CRN zoned project can only use the standard method of development, and a sketch plan is not required under the standard method of development.

## Changes to 15.2. Descriptions and Objectives of the CR Zones.

Language was changed to focus the objectives and improve clarity. No substantive changes were intended (Lines 102 – 125).

## Changes to 15.3. Definitions Specific to the CR Zones.

ZTA 11-01 provisions

Two new definitions are proposed:

- 1) “Limits of Disturbance” was added to deal with public use space requirements on very large lots (Lines 142 – 143).
- 2) “Tenant Footprint” was added to split general retail uses by size to better regulate neighborhood impact in the various CR zones (Lines 165 – 167).

Transit Proximity definition change

“Transit Proximity” would be amended by ZTA 11-01 to clarify that a transit station or stop must at least be in the County’s Capital Improvement Program (“CIP”) to be considered “planned” and therefore qualify a nearby property owner for reduced parking and incentive density (Lines 170 – 173).

Testimony

This was a subject of considerable Planning Board discussion. Master Plans encourage development near master planned transit lines in part because it will help justify construction of the transit. On the other hand, the time between transit recommended in a master plan and having the transit on the ground can be considerable. The Planning Board ultimately recommended allowing a project proximate to a master planned transit facility to qualify for reduced parking and incentive density.

Testimony from a representative of the DANAC property (CR zoned property at the intersection of Key West Avenue and Great Seneca Highway) believes that the Planning Board guidelines (referenced in the Board’s May 13 letter) should not limit density for projects near a master planned transit facility. DANAC believes that it was the Council’s intent to promote development along the CCT where it applied the CR zone. Testimony from the Town of Chevy Chase and a resident of Kensington was concerned about the possible lack of transportation facilities if a master planned facility was sufficient to approve a project.

The Kensington View Citizens Association recommended excluding MARC rail from the transit facilities that would qualify for reduced parking.

Staff comment

The Council considered the issue of including MARC rail for the purpose of transit proximity when it established the CR zones. It decided that MARC stations should count as transit. The establishment of the CRT and CRN zones and their application near MARC stations can reduce the negative affects of counting MARC as transit because the projects would be required to provide more parking spaces than CR zoned property. Staff agrees with the Planning Board that phasing of a project with multiple buildings may solve some potential problems of allowing density before a master planned transit facility is funded. *Staff agrees with the changes recommended by the Planning Board.*

## ZTA 11-01 provision

### Live/Work Unit definition

Currently, the Ordinance limits the definition of Live/Work Unit to dwellings where the residential use of the space may be secondary or accessory to the primary use as a place of work (Lines 144 – 146). ZTA 11-01 would delete that limitation. A live/work unit would be defined as buildings or spaces within buildings that are used jointly for non-residential and residential purposes. Any residential unit with any commercial activity would satisfy the new definition. Providing Live/Work Units is proposed as a public benefit (Lines 786 – 788).

### Seasonal outdoor sales

“Seasonal Outdoor Sales” is an allowable land use in CR zones. The definition was not changed from the current text (Lines 161 – 164).<sup>12</sup> The Planning Board recommends making “Seasonal Outdoor Sales” a similarly permitted use in the CRN and CRT zones.

### Testimony

Testimony suggested that the “limited period” during which sales may occur should be defined, and staff should be trained to enforce the use. The current provision for the sale of Christmas trees limits their sale to the period between December 5 and December 25.<sup>13</sup>

### Staff comment

The last Council did not act on an Executive proposed ZTA to delete the time period for the sale of Christmas trees. The complaints to the Council concerning the Executive’s failure to enforce the time period limit are minimal. *Staff recommends retaining the “Seasonal Outdoor Sales” use as proposed by ZTA 11-01.*

### ZTA 11-01 provision – No optional method in CRN

The CRN zones are principally for use on properties abutting one-family residential zones; as such, optional method of development density would not be allowed in the zone (Lines 175 – 176).

### **Changes to 15.41. Standard Method.**

#### ZTA 11-01 provisions

ZTA 11-01 would establish different standard method densities for the CR, CRT, and CRN zones (Lines 183 – 188). Standard method in the CR zone would remain at 0.5 FAR. The CRT zone would allow properties more development density, 1.0 FAR, without necessarily having to meet optional method requirements. In CRN zones, where optional method development would be prohibited, the maximum standard method FAR was proposed for 1.5. Any development above the standard method (in the CRT and CR zones) would require public benefits under Section 59-C-15.8 and would require a sketch plan.

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<sup>12</sup> Seasonal Outdoor Sales: A lot or parcel where a use or product is offered annually for a limited period of time during the same calendar period each year. The availability or demand for the use or product is related to the calendar period, such as Christmas trees, pumpkin patches, or corn mazes.

<sup>13</sup> The Executive has stated that the Department of Permitting Services has higher priorities than the enforcement of this provision.

Site plan thresholds would be changed to add a new element (Lines 188 – 195); any development that proposes a use designated as “L” for “limited” in the use table will require a site plan if the use is abutting or confronting one-family residentially zoned property (Lines 316 – 324). In addition, site plan approval would be required in all CR, CRT, and CRN zones if a development proposes:

- A building greater than 10,000 square feet;
- A building height above 40 feet (this is not currently a trigger in the CR zones); or
- Ten or more dwelling units.

#### Testimony

Testimony recommended: 1) requiring public benefits for CRN zoned property and filing a sketch plan; 2) limiting the FAR in the zone to .5 FAR; and 3) requiring minimum setbacks. Proponents of this change point to the .5 FAR limit in the CT zone as their guide. In the absence of a sketch plan requirement, civic organizations claim that there may be no notice of a pending development, and the absence of standards makes the development impact uncertain.

Testimony recommended limiting when site plans are required. The Action Committee for Transit cautioned against obstacles to development. In the opinion of a shopping center owner in the Takoma/Langley area, site plan should be required only if the additional gross floor area (GFA) exceeds 25 percent of the existing GFA. In the opinion of a Kensington Town Councilmember, site plans should be required for any project larger than 5,000 square feet. The City of Takoma Park wanted a requirement for development to improve streetscapes.

#### Staff comment

##### Site plan triggers

There are 2 sections of ZTA 11-01 concerning site plan. This section concerns when site plan is required (Lines 188 – 195). The master plan conformance requirement (Lines 340 – 343) is discussed in another section of this memorandum.

The site plan process can be costly and time consuming. The standards that trigger a site plan requirement will influence development. Development will only be above the site plan trigger points when the economic return is sufficiently high. The Planning Board can ensure compatible development in the site plan process; however, the costs and delays in the site plan process can overburden small projects. For large projects, 10,000 square feet can be a relatively small addition to existing gross floor area.

ZTA 11-01 allows more standard method of development in the CRN and CRT zones than in the CR. That increased development flexibility is tempered by absolute requirements for site plan approval unrelated to FAR.

How would a new small (less than 10,000 GFA) freestanding structure for a permitted use (not a Limited use) in an existing shopping center’s parking lot be reviewed? As a new building, it would not be covered by the grandfathering provisions in the CR zones. The freestanding project would be subject to setbacks from residentially zoned property, the location of drive-throughs, and the location of parking. It would not be subject to site plan approval.

Does the 10,000 square foot addition apply to the development proposed or the total development on the site? ZTA 11-01 would amend the Ordinance to read as follows (Lines 188 – 195):

- (c) A site plan approval under Division 59-D-3 is required for a standard method development only if the development:
- (1) is a Limited Use;
  - (2) includes a gross floor area exceeding 10,000 square feet;
  - (3) includes a building height exceeding 40 feet; or
  - (4) includes 10 or more dwelling units.

As drafted, “the development could either mean the total amount of floor area on the site or the size of the building in the application. *Staff recommends amending this text to make it clear that multiple developments, each of which are less than 10,000 square feet, cannot be constructed without site plan approval if the total amount of floor area in new buildings exceeds 10,000 square feet.*

A requirement for streetscaping, as requested by the City of Takoma Park, should be addressed in design guidelines.

#### ZTA 11-01 provision - Standards adjacent to one-family zoned property

There are setbacks (25 feet) for standard method projects adjacent to one-family zoned property (Lines 500 – 505). Heights above 40 feet require site plan approval. If a project exceeds 55 feet, vertical plane limits apply (Lines 506 – 518).

#### **59-C-15.42. Optional method.**

##### ZTA 11-01 provision

Optional method development is allowed under the following requirements (Lines 196 – 206):

- (1) The maximum total, non-residential, and residential densities and building heights for any property are set by the zone shown on the zoning map.
- (2) A sketch plan must be submitted under Section 59-C-15.43.
- (3) Site plan(s) must be submitted under Division 59-D-3.
- (4) Public benefits must be provided under Section 59-C-15.8.

Site plans are required for optional method development in the CR or CRT zones. No substantive changes were proposed by the Planning Board in these provisions.

##### Testimony

The Friendship Heights Coordinating Committee and others believe that ZTA 11-01 would throw out the community from the decision-making process for appropriate public benefits.

##### Staff comment

Community involvement is the cornerstone of the planning process. It starts with a master plan, a multi-year process with numerous phases of public outreach, including 2 formal public hearings. The master plan is the starting point for all CR zones and may include a list of desired public benefits. The sectional map amendment, which applies the recommended zones to the zoning map, is a public process. The sketch plan is a public process, as is the preliminary plan and site plan. The sketch plan is the first and best place to determine public benefits. ZTA 11-01 would increase the scope of projects that must submit site plans. Profound as the perception is that the CR zones exclude the community in the decision-making process, the facts do not support that conclusion. *Staff agrees with ZTA 11-01 as recommended by the Planning Board.*

### 59-C-15.43. Sketch plan.

#### ZTA 11-01 provision

ZTA 11-01 would split the provisions for a sketch plan into a new subsection §59-C-15.43. Currently, sketch plans must be submitted before a preliminary plan (Lines 202 – 204); however, this would be amended to require an approved sketch plan before a preliminary plan or site plan is required (Lines 212 – 213). Testimony recommended allowing an applicant to submit a preliminary plan any time after the applicant submits a sketch plan; the developer would undertake the risk of needing major revisions to the preliminary plan in that process.

A requirement for the sketch plan to include pedestrian, bicycle, and vehicular circulation, parking, and loading would be added (Lines 224 – 225). The current requirement for a “general phasing outline” would also be amended to require the phasing of rights-of-way, sidewalks, dedications, and preliminary plans (Lines 232 – 234).

The Planning Board debated the implications of sketch plan changes under Section 59-C-15.43(d) (Lines 293 – 304).<sup>14</sup> After reviewing the legislative record, the Planning Board determined that the binding elements of a sketch plan can be amended by the Planning Board without the consent of the applicant in the site plan process.

#### Planning Board proposed change

On May 13, the Planning Board recommended that the sketch plan amendment provision read as follows:

- (d) During site plan review, the Planning Board may approve amendments to the binding elements of an approved sketch plan.
  - (1) Amendments to the binding elements may be approved if such amendments are:
    - (A) requested by the applicant;
    - (B) recommended by the Planning Board staff and agreed to by the applicant; or
    - (C) made by the Planning Board, based on a staff recommendation or on its own initiative, if the Board finds that a change in the relevant facts and circumstances since sketch plan approval demonstrates that the binding element either is not consistent with the applicable master or sector plan or does not meet the requirements of the zone.

#### Testimony

Testimony from the White Flint Partnership supported the proposed changes to ZTA 11-01. Testimony from civic organizations objected to any limit of the Planning Board’s ability to make additional or different requirements at site plan from those required at sketch plan.

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<sup>14</sup> A majority of Board members felt that language should be inserted to clarify the interpretation of the existing language on which the Board relied in its recent approvals of the first three sketch plans that have been submitted under the CR zones: that the Board has the authority to require changes from the concept submitted at sketch plan when the details of a site plan are reviewed. The Board felt strongly that if changes could be made only with the agreement of the applicant, thereby effectively binding the Planning Board to the key elements of a sketch plan, that would require a sketch plan to be more detailed than the zone intends.

## Staff comment

The Planning Board believes that allowing a preliminary plan application before the approval of a sketch plan would be a waste of their time and staff's time. Currently, an applicant may submit a preliminary application with a project plan application in the CBD zones. The preliminary plan submitted with a project plan has not wasted time and has resulted in timely approvals in the past. Prohibiting simultaneous submissions would make the process more sequential, even if the applicant wanted to assume the risk of concurrent reviews. *Staff recommends changing ZTA 11-01 to allow sketch plans and preliminary plans to be submitted simultaneously.*

The purpose of a sketch plan was for both the community and the developer to have a framework for determining the public benefits that would be acceptable under the optional method of development process. For the developer, the sketch plan added some certainty in the process before proceeding to spend hundreds of thousands of dollars in preliminary plan and site plan expenses. The model development review process can be described as a funnel. The Zoning Ordinance allows a wide range of approvable options. With the first application (sketch plan), those options are narrowed. At the building permit stage, there is only one way the developer can meet the requirements of the permit. Decisions previously made are imposed throughout the process, although changed circumstances (not a change of opinion) can reopen past decisions. Each application in the trail of applications (sketch plan, preliminary plan, site plan, record plat, and building permits) adds detail to the proceeding approval. The testimony from the civic community would allow a change of opinion to re-open a previously decided approval.<sup>15</sup> *Staff agrees with the changes recommended by the Planning Board.*

The only way to accomplish public benefits in the CRN zone would be to retain the .5 FAR limit for standard method development and allow optional method development when the zone allows more than .5 FAR. Requiring a sketch plan for all development in the CRN zone without regard to the density would run counter to establishing "CR Lite" zones. The CRT allows more standard method; the Council should limit its application in master plans. *Staff does not recommend allowing an optional method of development or requiring sketch plans for all development in the CRN zone.*

## Changes to 15.5. Land Uses.

### ZTA 11-01 provision

ZTA 11-01 would not substantively change the permitted land uses for the CR zones. The new concept of "Limited" uses establishes a new use category (Lines 309 – 311). As proposed, "Limited" uses require more attention than "permitted" but not as much "special exception" uses. Limited uses located near single-family residential and agricultural zones trigger a requirement for site plan approval. There are special provisions for the site plan approval of Limited uses when the use abuts or confronts one-family residential zoning (Lines 325 – 335).<sup>16</sup> ZTA 11-01 classifies uses as Limited when they have potential adverse effects (such as visual intrusions, headlights from auto parking) that may require the kind of individualized mitigation that site plan review can provide. Limited uses abutting or confronting one-family residential zones would be required to comply with the design recommendations of master plans and assure compatibility through the site plan approval process (Lines 325 – 335).

The uses in the CRN zone received particular attention from the Planning Board. The Planning Board intends to recommend the CRN zone for properties adjacent to single-family homes. In the course of

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<sup>15</sup> This point of view is known as getting "multiple bites of the apple". Snow White found one bite of the apple more than sufficient.

<sup>16</sup> Limited uses that are not abutting or confronting one-family zoned property are permitted (Lines 323-324). If it would be clearer to Zoning Ordinance users, the "L" in the land use table could be properly expressed as "L/P".

developing its recommendation on uses, the Planning Board analyzed a number of precedents, held numerous conversations with citizens, and reviewed pages of written testimony. The ZTA includes a list of Permitted, Limited, and Special Exception uses which, in combination with the site plan requirement for Limited uses near single-family residential zones, will allow for a mix of neighborhood-serving commercial and residential uses while maintaining compatibility with adjacent homes.

### Testimony

Testimony recommended restricting the land uses in the CRN zone. In the course of its work on the Wheaton Sector Plan, Planning Staff indicated that they intend to ask the Council to replace the CT zone with the CRN zone in the Zoning Ordinance Rewrite process. In the opinion of some citizens, the CRN zone should be tailored for uses less active on weekday evenings and weekends. The Montgomery County Civic Federation and the Kensington View Civic Association recommended prohibiting the following uses in the CRN zone if the zone is allowed abutting or confronting a residential or agricultural zone:

- Farm and county markets
- Ambulance or rescue squads, private
- Automobile sales, indoor
- Cultural institutions
- Eating and drinking establishments
- Health clubs and gyms
- Hotels and motels
- Recreational facilities, participatory
- Retail trades (between 5,000 square feet and 15,000 square feet)

In the Federation's and Association's opinion, the following uses should only be allowed as a special exception in the CRN zones:

- Group homes, large
- Hospice care facilities
- Charitable and philanthropic institutions
- Clinic
- Day care facilities with over 30 users
- Educational institution, private
- Private clubs and service organizations

Testimony objected to allowing artisan manufacturing and production in the CRN zone. Those in opposition cited the industrial nature of this use with its hazardous and odiferous chemicals. It was noted that, even in industrial zones, soap making, making products from rubber, tanning, and wool pulling are specifically prohibited activities.<sup>17</sup> These uses are not excluded by the definition of artisan manufacturing.<sup>18</sup>

The owners of Lindsey Ford requested adding "vehicle inventory storage" as a permitted use in all commercial/residential zones.

### Staff comment

"Limited" uses trigger a requirement for site plan approval. Projects over 10,000 square feet of floor area require site plans. Proposed buildings higher than 40 feet require site plan. The site plan approval process

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<sup>17</sup> §59-C-5.22.

<sup>18</sup> Manufacturing and production, artisan: The manufacture and production of commercial goods by a skilled manual worker or craftsman, such as jewelry, metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food products.

requires a finding of “maximum compatibility”.<sup>19</sup> The site plan finding is a flexible standard that can address unique circumstances.

ZTA 11-01 establishes the CRN and CRT zones. The application of those zones is a matter decided in the master plan and sector plan process. The Council action to adopt the CRN zones as introduced would not eliminate the CT zone; however, the Council may be requested to eliminate the CT zone in the course of the Zoning Ordinance Rewrite. Retail and restaurant uses are most active when residents are likely to be at home. Their inclusion in the allowable uses may make the CRN zone less applicable when it abuts one-family residential uses.

Planning Staff finds no problem with retail and restaurant uses abutting single-family homes, if those projects are subject to site plan approval. The core idea is that a mix of all types of uses is a good thing, but aspects of design may make buildings incompatible. This is a significant departure from the current CT zone, where uses are limited. Under any circumstances, the adoption of ZTA 11-01 would not eliminate the CT zone.

*If the Council does not believe that the site plan process offers enough protection to single-family detached neighborhoods, uses should be limited in the CRN zones. Staff would not recommend allowing vehicle storage as a permitted use.*

Artisan manufacturing may be a problem next to single-family homes. Home occupations have the following prohibition:

No equipment or process that creates a nuisance such as noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable at or beyond the lot line ... or the floor, ceiling or party wall ... is allowed in connection with the operation of a home occupation or home health practitioner's office...<sup>20</sup>

*Staff believes that if artisan manufacturing is a permitted use in the CRN zone, then the definition should be amended to include a provision similar to the provision in home occupations.*

*Staff recommends deleting the “dry cleaning pick-up” use because it should be included as a general retail use.*

#### **Changes to 59-C-15.61. Master plan and design guidelines conformance.**

##### ZTA 11-01 provision

Currently, a site plan approved in the CR zones must be consistent with the applicable master plan (Lines 340 – 341). This is a more restrictive standard than the master plan conformance requirement for preliminary plans.<sup>21</sup> But for this current provision, site plan approval does not require a finding of consistency with a master plan or sector plan. The proposed amendment would allow the Planning Board to approve a site plan in a CR, CRT, and CRN zone that is not consistent with the applicable master plan if the Board determines

<sup>19</sup> § 59-D-3.4. Action by Planning Board.

...  
(d) The Planning Board must not approve the proposed site plan if it finds that the proposed development would not achieve a maximum of compatibility, safety, efficiency and attractiveness.

<sup>20</sup> §59-A-6.1(a)(4).

<sup>21</sup> Under §50-35(l), all preliminary plans, without regard to their zoning, are required to “substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.” Site plans in other zones are NOT required to be consistent with master plans.

that events have occurred to make the plan's recommendations no longer appropriate (Lines 339 – 344). ZTA 11-01 would also require substantial conformance to design guidelines (Line 343). Currently, site plans must only "address" design guidelines.

#### Testimony

The Executive's testimony objected to giving the Planning Board the authority to determine that events have occurred to make the Plan's recommendations no longer appropriate. Testimony from residents opposed this provision because it makes the Planning Board's discretion equal to the weight of an approved master plan. Although plans reflect the Council's vision, plans are not reviewed on a regular basis. A shopping center owner in Takoma/Langley recommended excluding the renovation or repair of existing buildings from design guidelines if the project would increase the floor area on the site by less than 20 percent.

#### Staff comment

The Planning Board currently has the discretion to disregard an out-of-date master plan when reviewing preliminary plans. It has used this authority sparingly; however, in the course of some future application, the Planning Board can in effect overrule the Council's guidance in a master plan. The Board does not currently have the authority to disregard a master plan when approving a project plan, except for the purpose of accommodating affordable housing.<sup>22</sup> *This grant of discretion is a policy issue for the Council.* Excluding existing projects from the proposed trigger for site plan review would not be a good idea; it would not accomplish the master plan's vision.

What will the Planning Board require to make its determination of master plan conformance in a standard method site plan? As proposed, the master plans have a large number of recommendations for particular sites in addition to "public benefits". Presumably the public benefit provisions would only apply to optional method projects, but there is currently no limit to the requirements that can be placed on a standard method project under a heading of master plan conformance.

Depending upon the master plan recommendations, the Planning Board could require an applicant to do as much through the site plan process as it does through the optional method of development. ZTA 11-01 would increase the number of projects that require site plan approval. This combination requires the Council to give a high level of scrutiny to the master plan recommendations. Does a modest addition trigger all of the master plan recommendations? This question should be addressed in master plans.

The requirement for substantial compliance with design guidelines is significant. The Council should not approve a sectional map amendment with CR zones until the relevant design guidelines are in place. In the absence of the guidelines, development in a new CR zone could not be approved.

#### **Deletion of 59-C-15.62. Priority retail street frontages.**

Due to the guidance provided in design guidelines, the Planning Board recommends deleting the provisions concerning "priority retail streets" and streetscaping (Lines 345 – 355).

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<sup>22</sup> §59-D-2.42. Findings required for approval.

Although an application may comply with all of the specific requirements and intent of the applicable zone, it does not create a presumption that the application must be approved. The Planning Board may approve, or approve subject to modifications, an application only if it finds that:

(a) It would comply with all of the intents and requirements of the zone.  
(b) The application would be consistent with the applicable sector plan or urban renewal plan...

## Changes to 59-C-15.63. Parking.

### ZTA 11-01 provision

The table to determine the minimum requirements and, in some instances, the maximum amount of allowed parking spaces, is replaced to provide standards for the CRN and CRT zones (Lines 400 – 409). Currently, a project may “count” parking spaces constructed on-street toward meeting the project’s minimum parking (Line 413).

A provision to allow parking requirements to be satisfied by a municipal shared parking program is proposed (Line 416). Shared parking arrangements would be allowed within ¼ mile (1,320 feet) of the subject property; currently, such shared parking must be within 1,000 feet (Line 418). A provision to keep curb cuts at a minimum would be deleted (Lines 441 – 442). Planning Staff believes that this should be a concern of design guidelines.

A drive-through facility within 100 feet of a property line shared with a one-family or agriculturally zoned land and between the street and the front wall would be prohibited (Lines 450 – 453). Under ZTA 11-01, the Planning Board would no longer be allowed to approve a drive-through facility with a lesser setback. Currently, the Planning Board may approve any design if it finds that the alternative design would provide safer and more efficient circulation (Lines 446 – 449).

A drive-through on a corner lot must be screened (Lines 458 – 459). The standards for parking landscaping were revised to make the requirements minimums and to add a lighting standard (Lines 468 – 470).<sup>23</sup> Making these standards minimums grants the Planning Board the discretion to require more than the minimum.<sup>24</sup>

A parking waiver standard would be added identical to the waiver allowed under §59-E (Lines 473 – 480).

### Planning Board recommended change

Since introduction, the Planning Board recommended amending the table to:

- 1) delete maximum parking limits for retail and restaurant uses in the CRN and CRT zones;
- 2) require 4 parking spaces per 1,000 GFA for all Commercial/Residential zones; and
- 3) increase the minimum required parking by .2 spaces per 1,000 for all other non-residential uses in the CRN and CRT zones.

### Testimony

Testimony from the County Executive objected to allowing on-street parking spaces to be counted; on-street spaces are subject to closure for a variety of reasons.

Testimony recommended increasing the parking required for all zones. One resident questioned whether people would walk far for parking spaces.

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<sup>23</sup> Testimony noted that the lighting standards should apply to confronting properties with single-family homes; however, this problem is solved by a .5 foot candle level at the subject property line.

<sup>24</sup> There is a direct correlation between discretion granted to the Planning Board and uncertainty by applicants and concerned residents. The new discretion would really only change the requirements for projects that do not require site plan approval. Even without the expression of standards as a minimum, the Planning Board must not approve a site plan if it finds that the proposed development would not achieve a maximum of compatibility, safety, efficiency and attractiveness (§59-D-3.4(d)).

## Staff comment

The Council may or may not wish to reopen the issue of counting on-street spaces. It was an issue decided when the CR zones were established; however, the Executive accurately points out that future operational issues may remove on-street spaces.

The design standards for parking should apply to renovations of existing centers; however, the guidelines themselves might address how small additions or small new buildings in larger centers can comply.

*Staff recommends the changes suggested by the Planning Board to require more parking in the CRT and CRN zones, with no maximum parking standard.* If the Council believes that more caution should be taken to reduce parking requirements in the CRN zone, it could require the current Chapter E standards.<sup>25</sup>

How far will someone walk to a parking space? Typography being equal, the answer depends upon 2 factors: 1) the attractiveness of the destination; and 2) the activity between the parking space and the destination. In an urban setting with interesting uses along the way, a ¼ mile walk is not excessive.

Deleting the provision to allow alternative designs is the only provision that takes away Planning Board discretion in all of ZTA 11-01. Testimony submitted believes that a finding of “safer and more efficient” circulation pattern should allow a waiver of setback standards for drive-through facilities. *Staff agrees with changes proposed by ZTA 11-01. A legislatively determined setback provides assurance to the neighbors.*

## **Changes to current §59-C-15.64. Bicycle parking spaces and commuter shower/change facility.**

### ZTA 11-01 provision

ZTA 11-01 would add a publicly accessible parking requirement. The bicycle parking requirement for multi-family buildings with 20 or less units would increase from 4 spaces to 6 spaces. The current bicycle parking rate for buildings with more units would increase by a maximum of 10 publicly accessible spaces (Lines 369 – 370).

### Testimony

Testimony objected to the number of bicycle spaces required. For projects with fewer than 100 units, .6 spaces are required for each unit. The CR zones have a maximum number of bicycle spaces required; however, the maximum only applies above 100 units for publicly accessible spaces and above 200 units for private spaces. In Arlington, only .35 spaces per unit are required, without regard to the number of units. Some testimony concluded that the requirements for projects with less than 200 units are excessive.

Planning Staff suggests that where there is a greater distance between transit stations, more bicycle parking spaces are needed. Planning Staff believes that the Arlington standards, which correspond with the closely spaced Metrorail stations in Arlington, are inadequate for the situation in Montgomery County.

### Staff comment

*Staff recommends using the Arlington bicycle parking rate for projects with less than 200 dwelling units.*

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<sup>25</sup> There is a belief among zoning professionals that the current parking requirements are excessive. There is an expectation that the Zoning Ordinance Rewrite will reduce parking standards across all zoning classifications. Using current Chapter E standards would be effective until those standards are changed in the Zoning Ordinance Rewrite process.

### **59-C-15.72. Setbacks.**

#### ZTA 11-01 provision

A setback of at least 25 feet is required between a building and any one-family residentially zoned property (Lines 500 – 505). For property abutting a one-family residential or an agricultural zone, the height allowed at the minimum 25 foot setback varies with the zoning classification: 1) CR = 55 feet; 2) CRT = 45 feet; and 3) CRN = 35 (Lines 508 – 509).

#### Testimony

A representative of White Flint Mall requested a change in the building setback provision. The Mall's representative recommended deleting the setback requirement from publicly owned property. This was proposed by a resident because buildings closer to the lot line could encroach upon existing parkland and limit the active recreational uses available on parkland.

#### Staff comment

White Flint Mall has an R-60 zoned park as a neighbor. Zoning is currently split on some properties in Takoma/Langley; R-60 is used as buffer on otherwise commercially zoned properties. Planning staff should comment on the proposed change.

### **59-C-15.73. Public use space.**

#### ZTA 11-01 provision

The minimum public use space requirement is currently 10 percent of the net lot area for any project that requires site plan approval. The proposed requirement would vary with the size of the property but would never be more than 10 percent of the net lot area. Projects on lots smaller than 10,000 square feet would not be required to provide any public use space (Lines 523 – 524). ZTA 11-01 deletes the requirement that public use space be within ¼ mile of the subject property and only requires that it be near the subject property (Line 542). For sites larger than 3 acres, the measure is 10 percent of the undisturbed area instead of 10 percent of the net lot area. A payment would be allowed instead of the provision of on-site open space (Lines 545 – 556). There is no longer a reference to the Public Amenity fund. The ability to accept money instead of space is a significant delegation of authority; however, the Council delegated this same authority in CBD zones.

#### Testimony

The Executive's testimony noted that the proposed public use space requirement was significantly lower than the 20 percent currently required in CBD zones. The Executive also noted that the amount of public use space required was not related to the density allowed. Testimony objected to deleting the requirement for an open space to be within ¼ mile and replacing it with open space near the subject site.

#### Staff comment

A comparison of the current CR zones to CBD zones yields evidence of zoning schizophrenia; the CR zones require substantially less public use space as a minimum but give public benefit points for adding more than the minimum requirement. Public use space is desirable when in an appropriate context. The Council required 10 percent public use space or less when it established the CR zones. *Staff agrees with the changes in ZTA 11-01 and would rely on site plan approval to determine compatibility issues.*

*Staff recommends retaining the current requirement that public use space must be within ¼ mile of a project.*

**59-C-15.74. Residential amenity space.**

ZTA 11-01 provision

ZTA 11-01 would clarify the requirements for MPDU and workforce housing units; it would also state the standards for residential amenity space as a minimum (Lines 566 – 574). Providing more than the minimum is permitted.

Testimony

Testimony recommended cutting the requirements in half.

Staff comment

There was no basis for the recommendation to lower the amount of residential amenity space. *Staff does not recommend changing this current standard.*

**59-C-15.8. Special regulations for the optional method of development.**

ZTA 11-01 provision - New framework for public benefits

The Planning Board recognized that the CR zones had too many requirements for application in lower density areas and areas with softer real estate markets. A particular obstacle to reducing CR requirements was the process that made particular public benefits “worth” a percentage of the optional method density granted. Under this process, every project had to get to 100%.

In order to accommodate a zone with fewer requirements (CRN and CRT), the Planning Board proposed a point system; the CR zones would require 100 points and the CRT would require 50 points (Lines 601 – 608). A diversity of benefits is still important to the Planning Board. Instead of requiring a maximum of 30 percent for any one major benefit category, an applicant must provide a benefit from 4 of the 6 major categories. The guidelines that must be followed are more clearly specified (Lines 615 – 616).

Of the 35 possible public benefits, 15 of those benefits have minimum points with no maximums; 19 have a maximum without any minimum; and 1 benefit (transit proximity) has a minimum and a maximum point range.

Excluding major public facilities and transit proximity, currently there are 4 major public benefit categories: 1) connectivity and mobility; 2) diversity of uses and activity; 3) quality building and site design; and 4) protection and enhancement of the natural environment. The public benefits in each of those categories currently account for more than 30 percent of the density for a project. ZTA 11-01 would remove the upper limitation for 15 public benefits; those benefits without maximum points are only restricted by a minimum point award.

Testimony

The Executive’s testimony suggested provisions for a direct relationship between the quantity of public benefits and the amount of density allowed for that benefit. Specifically, the Executive’s testimony said the following:

The proposed amendment moves a bit closer – but not close enough – to relating the public benefits to the requested incentive density but the relationship of the amount of development to the public benefits provided is still unclear.

#### Staff comment

The amount of public benefit relates to the size of the lot (public open space, tree canopy), the sizes of parts of a building (vegetative roof, green wall), and absolute minimum sizes without regard to the size of the project (care centers, vegetative area). Currently, only the provision for the purchase of BLTs includes that relationship; one BLT allows 20,000 square feet of optional method floor area. The Council did not choose to quantify the amount of benefit for the amount of floor area when it initially adopted the CR zones.

The Executive's recommendation would significantly change the provisions for the CR zones. The only public benefit that requires a direct relationship between the amount of public benefit and the amount of density allowed is for the purchase of BLTs. Affordable housing's density works as a percentage of bonus density for increased percentages of affordable housing. As much as staff finds the Executive's idea appealing, this issue was discussed and decided when the Council adopted the CR zones.<sup>26</sup> In any event, staff asked the Executive to express his recommendation in terms of specific amendments to ZTA 11-01.

*Staff recommends including a maximum point value for all public benefits. This will allow the Council to establish appropriate limits.*

#### ZTA 11-01 provision - Major facilities

When it established the CR zones, the Council added public facilities specifically recommended by a master plan as a highly valued public benefit. The Planning Board in ZTA 11-01 recommends that the Council allow the Planning Board to find that a proposed facility or improvement provides the community with a resource that is at least as beneficial as other major facilities recommended in the applicable master or sector plan (Lines 661 – 664).

#### Testimony

Testimony opposed this provision because it makes the Planning Board's discretion equal to the weight of an approved master plan.

#### Staff comment

Although master plans reflect the Council's vision, plans are not reviewed on a regular basis. As previously noted, the discretion to not adhere to a master plan is currently allowed for preliminary plan approvals; it is not allowed for project plan approvals. When the Council was considering establishing the CR zones, the Planning Board asked for the authority to add new public benefit categories at its own discretion. The Council declined that request. ZTA 11-01 is different because it is an explicit benefit for a public facility. Staff could not name a public facility that would not justify density. Staff recommends retaining this provision in ZTA 11-01.

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<sup>26</sup> Beating a dead horse does not make it run any faster.

#### ZTA 11-01 provision - Infrastructure upgrade clarification

Any infrastructure upgrade would only receive incentive density for improvements beyond those required by any applicable adequate public facilities requirement to complete the proposed development under the Planning Board's recommendation (Lines 665 – 668).

#### ZTA 11-01 provision - New benefits

There are 4 new public benefit categories proposed:

- 1) way finding signage (Lines 734 – 736);
- 2) Live/Work units (Lines 786 – 788);
- 3) architectural elevations (Lines 840 – 845); and
- 4) habitat preservation/restoration (Line 933 – 936; forest conservation in excess of law).

Given the revised definition of Live/Work, any apartment building with daycare, dry cleaning, or small convenience store would get Live/Work points.

#### ZTA 11-01 provision - Requiring the purchase of BLTs

The purchase of BLT easements would not be required in the CRT and CRN zones under ZTA 11-01.

#### Testimony

Testimony recommended a BLT purchase requirement in both zones. Testimony from the agricultural community and the League of Women Voters encouraged the Council to expand BLT purchase requirements whenever the Council can do so.

#### Staff comment

Unlike the CR zones, the application of the CRN and CRT zones may not be an up-zoning of the property. C-2 zoning allows a 1.5 FAR; density in the C-1 zone is not controlled by an FAR limit. The CRN zone would not allow optional method of development; no public benefits will be required. The Council could require the purchase of BLT easements for optional method of development projects in the CRT zone. *Staff does not recommend requiring purchase of BLTs in zones that are intended to be "CR Lite".*

#### ZTA 11-01 provision - Changing public benefit findings

Testimony recommended changing the findings necessary for approval. Instead of a point system, some people wanted a finding that public benefits and open space are adequate to justify the heights and density proposed. In the opinion of a number of civic organizations, the CR zones fail to provide public benefits in return for much greater densities. Testimony wanted adequate weight given to land for public facilities.

#### Staff comment

The current procedure of determining when there are sufficient public benefits for approval gives the Planning Board significant discretion. That aspect is similar to the findings necessary to approve optional method projects in CBD zones.<sup>27</sup>

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<sup>27</sup> §59-D-2.42. Findings required for approval.

The application would be more efficient and desirable than could be accomplished by the use of the standard method of development.

## Testimony - Other benefits

Testimony recommended retaining the current text for small business retention; ZTA 11-01 would change the title to small business opportunities (line 777 – 778). The Executive’s testimony recommended deleting the recycling benefit, as recycling is required (Lines 929 – 932). He also recommends increasing the incentive for affordable housing (Lines 755 – 769). Testimony requested a clear legislative history that the historic preservation public benefit is intended to apply to contributing resources in a historic district (Line 805).<sup>28</sup>

## Staff comment

Staff believes that ZTA 11-01 correctly changes small business retention to small business opportunities.

As a general principle, benefits which are required by other code provisions should not be counted as public benefits for the purpose of granting optional method of development density. *Staff recommends deleting the recycling facility benefit.*

The points for affordable housing can be changed; it is a legislative judgment on the value of affordable housing compared to other benefits.

The only possible confusion in the historic resource protection benefit is that the text uses the term “contributing element” instead of “contributing resource”. If it is not clear to the Council that contributing element includes contributing resources, then the text should be changed. Staff does not recommend changing the text.

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<sup>28</sup> Historic Resource Protection: Up to 20 points for the preservation and/or enhancement of or payment towards preservation and/or enhancement of a historic resource or a contributing element within a historic district designated in the Master Plan for Historic Preservation.

<b>Public Benefit</b>	<b>Number of Benefit Points (minimum or calculation)</b>	<b>Line #</b>
Major Public Facility	Up to 40 in CRT – Up to 70 in CR	669-670
Transit Proximity (CR zones)	50 to 15 (depending on distance)	683-684
Transit Proximity (CRT zones)	25 to 7.5 (depending on distance)	683-684
Neighborhood retail services	At least 10 (10 small retailers within ¼ mile)	709
Minimize Parking	Up to 10 (less than maximum parking)	713-714
Through-Block Connections	Up to 20 (no minimum)	717
Public Parking	Up to 25 (no minimum amount)	719
Transit Access Improvements	Up to 20 (no minimum)	721
Trip Mitigation Agreement	At least 15 (non-auto mode share at least 50%)	724
Off-site Streetscape	Up to 20 (no minimum)	729
Advance Dedication of Master Plan ROW	Up to 30 (no minimum)	731
<b>Way-Finding</b> (new benefit)	At least 5 (no minimum)	734-736
Affordable Housing	Up to 30 (above min. MPDU or 2 pts. per 1% WF)	763
Adaptive Building	At least 10 (15 ft. floor height at grade – 12 ft. floor height above grade)	770
Child or Adult Care Centers	Up to 20 (space for at least 15 users)	775
Small Business Opportunities	Up to 20 (possible duplicate points with neighborhood retail services)	777
Dwelling Unit Mix (# of bedrooms)	At least 5 (min. % by # of bedrooms)	779
Enhanced Accessibility for the Disabled	Up to 20	782
<b>Live/Work Units</b> (new benefit)	At least 10 (3 units or 10% of density-up to 2 FAR)	786-788
Historic Protection	Up to 20 (no minimum)	803-804
Structured parking	Up to 20 (no minimum)	811
Tower Step-Back	At least 5 (at least 6 feet)	814
Public Art	Up to 15 (Arts Council review but no minimum)	818
Public Open Space (new payment option)	Up to 20 (above the minimum required – 0 to 10%)	822
Exceptional Design	Up to 10 (must enhance the character of a setting)	836-837
<b>Architectural Elevations</b> (new benefit)	Up to 20 (windows, doors, awnings, signs, lighting)	840
BLT Purchase	Up to 30 (min. 5% in the CR zones – Line 607; specific calculations for BLTs)	854
Energy Conservation	At least 10 (exceed current efficiency by 17.5%)	906
Energy Generation	At least 15 (at least 2.5% of energy needs)	909-911
Vegetated Wall (formerly “Green Wall”)	At least 5 (cover at least 100 square feet or 30%)	913
Tree Canopy	At least 10 (25% of open space covered in 15 years)	917
Vegetated Area	At least 5 (at least 5,000 square feet)	919
Vegetated Roof	At least 10 (at least 1/3 with 4 inches of soil)	922
<b>Cool Roof</b> (new benefit)	At least 5 (minimum SRI – slope dependent)	925-928
Recycling Facility Plan	At least 5 (compliance with executive regulations)	929-932
<b>Habitat Preservation/Restoration</b> (new)	Up to 20 (in addition to forest conservation)	933-936

## 59-C-15.9. Existing Approvals.

ZTA 11-01 provision

ZTA 11-01 would amend the grandfathering provision:

- 1) for existing structures and uses by allowing some use changes (Line 953 – 956);
- 2) for projects with development plans by requiring conformance to all binding elements (Lines 968 – 670); and
- 3) for special exceptions by compliance with the terms and conditions of the special exception (Lines 984 – 991).

As drafted, the new provision for special exceptions would require **amendments** to currently approved special exceptions to comply with the provisions of the Commercial/Residential zone.

The Planning Board's March 11, 2011 transmittal letter had the following to say on the subject of grandfathering:

The Planning Board debated at some length a proposal from a property owner that any applicant with an approved sketch plan be permitted to proceed with the entire development under the current CR zones. *A four-member majority of the Board rejected the proposal on the basis that the administrative costs of tracking the three existing sketch plan approvals through a separate set of rules would be too burdensome, given the minor changes that are proposed to the basic structure of the CR zones, which will ensure that all existing sketch plan approvals will remain in conformance with the zone if these amendments are passed.* One Planning Board member argued that applicants should be able to rely on the law that was in effect when they submitted their sketch plan, but the majority felt strongly that sketch plan is too early in the process to warrant grandfathering, particularly in view of the minor impacts that the proposed changes will have on existing sketch plans. Finally, there is no precedent in, for example, the CBD zones for grandfathering approved project plans when text amendments are applied to the CBD zone between project plan approval and site plan approval. The flexibility of the zone and the ability to make modifications at site plan ensure adequate predictability for applicants and staff. *{Emphases added}*

Testimony

The Kensington View Citizens Association wants binding elements of a recently CT zoned property to be retained. The Takoma/Langley Coalition recommended more flexibility to expand existing development. Two representatives of sites with sketch plan approval requested a grandfathering provision for their situation.

Staff comment

The covenants in the land records required by a local map amendment do not apply if the Council chooses to rezone a property. The Council could choose not to rezone properties with such covenants.

Grandfathering properties with sketch plan approval to comply only with the current CR zone standards is not required by law. Zoning law can change in the morning and a building permit signed in the afternoon

must comply with the new provisions.<sup>29</sup> Sketch plan is the first approval for an optional method of development project in CR or CRT zones. Grandfathering is a discretionary method by which the Council can be respectful of approved plans. It is true that sketch plans are submitted early in the development process. It is also true that the Planning Board charged significant fees for sketch plan applications to avoid speculative plans.

To approve a site plan, the Board must make a finding that the site plan complies with the zoning requirements. ZTA 11-01 would change the CR zoning requirements. The Planning Staff should explain to the Committee what, if any, changes are needed for the 3 approved sketch plans to satisfy ZTA 11-01. Grandfathering would be an administrative burden.

Staff does not recommend any change from ZTA 11-01 as proposed.

### **Technical changes**

**Line 40 – 41 should read as follows:**

- (a) Each CRN, CRT, and CR classification and unique sequence of C, R, and H is established as a zone under the following limits:

**Line 172 add the term “entrance” after “bus stop”**

**Line 225: remove underline under “; and” (the text is in the current code)**

**Line 314 (in the table) under (c) Commercial: Ambulance or rescue squads, private, “, private” should be underlined**

**Line 331 replace “including but not limited to” to “such as”**

**Line 401 add at the end of the first sentence “unless the minimum number of parking spaces is waived under §59-C-15.636”**

**Line 441 add “one or a combination” after the word “any”**

**Line 416 clarify that parking regulated by municipal shared parking may be ¼ mile away**

**Line 449 delete “service”**

**Line 451 delete “an”, add “(Division 59-C-1)” after family and “(Division 59-C-9)” after agriculture**

**Line 465: the word “in” should be in brackets and the word “zoned” should be underlined**

**Line 466: the word “zones” (after (59-C-9)) should be in brackets**

**Line 502: the underlined word “applicable” is not necessary since it is between brackets**

**Line 680 add “or stop” at the end of the sentence**

**Line 789: the section number within the brackets should be 59-C-15.86; the 6 is missing**

**Line 810: underline the period, not the space**

**Line 860: remove underline from (1); the (1) already exists.**

**Line 873: remove underline from (2); the (2) already exists.**

**Line 915 add “square” after “300”**

**Lines 945: remove the comma at the beginning of that line (before “that”)**

**Lines 946 and 959 replace site with “land”**

**Line 977 replace “applicable sectional map amendment” with “application of the CR zone to the property”**

**Line 980 add “then” after the word “will”**

**Line 981 add the words “continued” and “repaired” before and after “renovate”**

---

<sup>29</sup> In Maryland, a property owner’s rights vest in development approvals only when footings in the ground are started in conformance with a validly issued building permit. Under Maryland law, any project that is not so vested may be required to satisfy the most current zoning requirements.

This Packet Contains

ZTA 11-01

Planning Board Transmittal Letter March 11

Planning Board Transmittal Letter May 13

© Number

1 – 49

50 – 57

58 – 62

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Zoning Text Amendment No: 11-01  
Concerning: Commercial/Residential  
                  zones – Neighborhood  
                  and Town zones  
Draft No. & Date: 2 – 4/7/11  
Introduced: April 12, 2011  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No:

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

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By: Council President Ervin at Request of the Planning Board

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- **establish** the Commercial/Residential Neighborhood (CRN) and Commercial/Residential Town (CRT) zones; and
- generally amend the Commercial/Residential zones.

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

DIVISION 59-C-15       “COMMERCIAL/RESIDENTIAL [(CR)] ZONES”

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

*ORDINANCE*

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

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

2 \* \* \*

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

4

5 **59-C-15.1. Zones established.**

6 **59-C-15.11.** [The Commercial/Residential (CR) zones are established as  
7 combinations of a sequence of 4 factors: maximum total floor area ratio (FAR),  
8 maximum non-residential FAR, maximum residential FAR, and maximum  
9 building height.]

10 (a) There are 3 commercial/residential classifications with variable uses,  
11 density and height limits, general requirements, development standards, and  
12 public benefit requirements to respond to different settings. These zone  
13 classifications are:

- 14 (1) CR Neighborhood (CRN);
- 15 (2) CR Town (CRT); and
- 16 (3) CR (CR).

17 (b) [These zones are identified by] Each CRN, CRT, or CR zone classification  
18 is followed by a number and a sequence of 3 additional symbols: [CR,] C,  
19 R, and H, each followed by a number where:

- 20 [(a)](1) the number following the [symbol “CR”-] CRN, CRT, or CR is  
21 the maximum total FAR;
- 22 [(b)](2) the number following the [symbol] “C” is the maximum non-  
23 residential FAR;
- 24 [(c)](3) the number following the [symbol] “R” is the maximum  
25 residential FAR; and
- 26 [(d)](4) the number following the [symbol] “H” is the maximum  
27 building height in feet.

28 (c) The Commercial/Residential zones must be applied on the zoning map that  
29 will show, for each property classified:

30 (1) the commercial/residential classification; and

31 (2) the 4 standards (total, non-residential, and residential densities and  
32 building height).

33 (d) This Division uses examples and illustrations to demonstrate the intent of  
34 the CR zones. [The] These examples [in this Division] and illustrations do  
35 not add, delete, or modify any provision of this Division. [Examples are  
36 provided only to demonstrate particular applications of the provisions in the  
37 Division. Examples are not intended to limit the provisions.]

38 **59-C-15.12. Density and height allocation.**

39 **59-C-15.121. Density and height limits.**

40 (a) Each unique sequence of CRN, CRT, or CR, and C, R, and H is established  
41 as a zone under the following limits:

<u>Category</u>	<u>Maximum Total FAR</u>	<u>Maximum C or R FAR</u>	<u>Maximum H</u>
<u>CRN</u>	<u>0.5 to 1.5</u>	<u>0.25 to 1.5</u>	<u>40 to 65</u>
<u>CRT</u>	<u>0.5 to 4.0</u>	<u>0.25 to 3.5</u>	<u>40 to 150</u>
<u>CR</u>	<u>0.5 to 8.0</u>	<u>0.25 to 7.5</u>	<u>40 to 300</u>

42 (b) Zones may be established and mapped at densities in increments of 0.25 and  
43 heights in increments of 5 feet within the ranges indicated in the table.

44 Example: Under the provisions of Sections (a) and (b) above, the CRN zones may  
45 establish maximum total densities of 0.5, 0.75, 1.0, 1.25, or 1.5 FAR and  
46 maximum heights of 40, 45, 50, 55, 60, or 65. The range of densities and heights  
47 from which the various CRN zones can be established and mapped provides  
48 guidance to the Planning Board’s recommendation and to the Council when

49 applying a particular zone. Once the zone is approved on a zoning map, it allows a  
50 developer to build at any height and density up to the maximum. For example, a  
51 property owner whose land is zoned at CRN1.0 C0.5 R1.0 H45 could elect to  
52 build at a 1.0 FAR with a height of 35 feet or 0.75 FAR and 42 feet or any other  
53 combination up to 1.0 FAR and 45 feet.

- 54 [(a) the maximum total FAR must be established as an increment of 0.25 from  
55 0.5 up to 8.0;
- 56 (b) the maximum non-residential and residential FAR must be established as an  
57 increment of 0.25 from 0.25 up to 7.5; and
- 58 (c) the maximum height must be established as an increment of 5 feet up to 100  
59 feet and an increment of 10 feet from 100 feet up to 300 feet.]

60

61 **[59-C-15.121]59-C-15.122. Density averaging.**

62 Permitted density may be averaged over 2 or more directly abutting or confronting  
63 lots or parcels in one or more CRN, CRT, or CR zones, provided that:

- 64 (a) the lots or parcels are subject to the same site plan or sketch plan;
- 65 (b) the lots or parcels are created by the same preliminary subdivision plan or  
66 satisfy a phasing plan established by an approved sketch plan;
- 67 (c) the maximum total [density and], non-residential and residential density  
68 limits apply to the entire development, not to individual lots or parcels;
- 69 (d) no building may exceed the maximum height set by the zone;
- 70 (e) [public benefits must be provided under the phasing element of an approved  
71 sketch plan] uses are subject to the provisions of the zone classification;
- 72 (f) the total allowed maximum density [of] on a lot or parcel [zoned CR] that is  
73 adjacent to or confronting [one-family residentially zoned or agriculturally  
74 zoned lots or parcels] a lot or parcel in a one-family residential zone or an

75 agricultural zone may not [be exceeded] exceed that allowed by the lot or  
76 parcel’s commercial/residential zone; and

77 (g) [the resulting development must conform to the design and land use  
78 objectives of the applicable master or sector plan and design guidelines.]  
79 public benefits must be provided under the phasing element of an approved  
80 sketch plan.

81 **59-C-15.13. Applicability.**

82 The CRN, CRT, and CR zones can only be applied when specifically  
83 recommended by an approved and adopted master or sector plan and only by [the]  
84 sectional map amendment [process].

- 85
- 86 *Examples:*
- 87 • An area zoned [CR-2.0] CRN1.5, C1.0, R1.0, [H80] H45 allows a total FAR [of 2.0] up  
88 to 1.5, with maximum non-residential and residential FARs of 1.0, thereby requiring [an  
89 equal] a mix of uses to obtain the total FAR allowed. The height for any building in this  
90 zone is limited to [80] 45 feet.
  - 91 • An area zoned CR[-]6.0, C3.0, R5.0, H200 allows [a residential FAR of up to 5.0,] a non-  
92 residential FAR [of] up to 3.0, a residential FAR up to 5.0, and a mix of the two uses  
93 could yield a total FAR of 6.0. This combination allows for flexibility in the market and  
94 shifts in the surrounding context. The height for any building in this zone is limited to  
95 200 feet.
  - 96 • An area zoned [CR-4.0] CRT3.5, [C4.0] C3.5, [R4.0] R3.5, [H160] H100 allows  
97 complete flexibility in the mix of uses, including buildings with no mix, because the  
98 maximum allowed non-residential and residential FARs are both equivalent to the total  
99 maximum FAR allowed. The height for any building in this zone is limited to [160] 100  
100 feet.

101

102 **59-C-15.2. Description and objectives of the CR zones.**

103 The CRN, CRT, and CR zones permit a mix of residential and non-residential uses  
104 at varying densities and heights. The zones promote economically,  
105 environmentally, and socially sustainable development patterns where people can  
106 live, work, recreate, and have access to services and amenities while minimizing  
107 the need for automobile use. The application of the CR zones is appropriate where

108 ecological impacts can be moderated by co-locating housing, jobs, and services.

109 The objectives of the CRN, CRT, and CR zones are to:

- 110 (a) implement the policy recommendations of applicable master and sector  
111 plans;
- 112 (b) target opportunities for redevelopment of single-use areas and surface  
113 parking lots with a mix of uses;
- 114 (c) reduce dependence on the automobile by encouraging development that  
115 integrates a combination of housing types, mobility options, commercial  
116 services, and public facilities and amenities;
- 117 (d) allow a mix of uses, densities, and building heights appropriate to various  
118 contexts to ensure compatible relationships with adjoining neighborhoods;
- 119 (e) [encourage] allow an appropriate balance of employment and housing  
120 opportunities [and compatible relationships with adjoining neighborhoods];
- 121 (e) establish the maximum density and building height for each zone, while  
122 retaining appropriate development flexibility within those limits]; and
- 123 (f) standardize optional method development by establishing minimum  
124 requirements for the provision of [the] public benefits that will support and  
125 accommodate density above the standard method limit.

126 **59-C-15.3. Definitions specific to the CR zones.**

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

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

131 **Cultural institutions:** public or private institutions or businesses including: art,  
132 music, and photographic studios; auditoriums or convention halls; libraries and

133 museums; recreational, performance, or entertainment establishments,  
134 commercial; theater, indoor; theater, legitimate.

135 **Day care facilities and centers:** facilities and centers that provide daytime care  
136 for children and/or adults, including: child daycare facility (family day care,  
137 group day care, child day care center); daycare facility for not more than 4  
138 senior adults and persons with disabilities; and day care facility for senior  
139 adults and persons with disabilities.

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

142 **Limits of Disturbance:** an area on a certified site plan within which all  
143 construction work must occur.

144 **Live/Work unit:** Buildings or spaces within buildings that are used jointly for  
145 non-residential and residential purposes [where the residential use of the space  
146 may be secondary or accessory to the primary use as a place of work].

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

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

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

156 **Recreational facilities, participatory:** Facilities used for sports or recreation.

157 **Reconstruction:** Building the same or less floor area on or within the footprint of  
158 a demolished or partially demolished building.

159 **Renovation:** An interior or exterior alteration that does not affect a building's  
160 footprint.

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

165 **Tenant Footprint:** The horizontal area measured within the exterior walls for the  
166 ground floor of the main structure allocated to each non-residential tenant or  
167 owner-occupant.

168 **Transit proximity:** Transit proximity is categorized in two levels: 1. proximity  
169 to an existing or planned Metrorail Station; 2. proximity to an existing or  
170 planned station or stop along a rail or bus line with a dedicated, fixed path. All  
171 distances for transit proximity are measured from the nearest transit station  
172 entrance or bus stop. To qualify as a planned station or stop, the station or stop  
173 must have funds appropriated in the relevant Capital Improvement Program.

174 **59-C-15.4. Methods of development and approval procedures.**

175 [Two methods of development are available under the CR zones] The CRN zones  
176 allow development only under the standard method. The CRT and CR zones  
177 allow development under the standard method and may allow development under  
178 the optional method.

179 **59-C-15.41. Standard Method.**

180 Standard method development [must comply with the general requirements and  
181 development standards of the CR zones] is allowed under the following  
182 requirements.

- 183 (a) In the CRN zones, the maximum total, non-residential, and residential  
 184 densities and maximum building height for any property are shown on the  
 185 zoning map.
- 186 (b) In the CRT and CR zones, the maximum standard method density is the  
 187 lesser of the density shown on the zoning map or:

<u>Category</u>	<u>Maximum Total Density</u>
<u>CRT</u>	<u>The greater of 1.0 FAR or 10,000 gross square feet of floor area.</u>
<u>CR</u>	<u>The greater of 0.5 FAR or 10,000 gross square feet of floor area.</u>

- 188 (c) A site plan approval under Division 59-D-3 is required for a standard  
 189 method development [project] only if the development:

- 190 [(a)](1) is a Limited Use;  
 191 (2) [the] includes a gross floor area [exceeds] exceeding 10,000 square feet;  
 192 [or]  
 193 (3) includes a building height exceeding 40 feet; or  
 194 [(b)](4) [any building or group of buildings contains] includes 10 or more  
 195 dwelling units.

196 **59-C-15.42. Optional method.**

197 Optional method development [must comply with the general requirements and  
 198 development standards of the CR zones and must provide public benefits under  
 199 Section 59-C-15.8 to obtain greater density and height than allowed under the  
 200 standard method of development. A sketch plan and site plan are required for any  
 201 development using the optional method. A sketch plan must be filed under the  
 202 provisions below; a site plan must be filed under Division 59-D-3. Any required  
 203 preliminary subdivision plan must not be submitted before a sketch plan is  
 204 submitted] is allowed under the following requirements.

205 (a) The maximum total, non-residential, and residential densities and building  
206 height for any property are set by the zone shown on the zoning map.

207 (b) A sketch plan must be submitted under Section 59-C-15.43.

208 (c) Site plan(s) must be submitted under Division 59-D-3.

209 (d) Public benefits must be provided under Section 59-C-15.8.

210 **59-C-15.43. Sketch plan.**

211 Any optional method development in the CRT and CR zones requires an approved  
212 sketch plan. Any required preliminary plan of subdivision or site plan may not be  
213 submitted before a sketch plan has been approved.

214 (a) A sketch plan application must contain:

215 (1) a justification statement that addresses how the project meets the  
216 requirements and standards of this Division [for optional method  
217 development] and describes how the development will further the  
218 objectives of the applicable master or sector plan;

219 (2) [an] illustrative [plan] plans [or model that shows] showing:

220 (A) [the maximum densities for residential and non-residential  
221 uses, massing, and heights of buildings] building densities, massing,  
222 heights, and the anticipated mix of uses;

223 (B) locations of public use and other open spaces;

224 (C) pedestrian, bicycle, and vehicular circulation, parking, and  
225 loading; and

226 (D) [the] relationships between existing or proposed adjacent  
227 buildings [on adjoining tracts] and rights-of-way;

228 (3) [an illustrative diagram of proposed vehicular, pedestrian, and bicycle  
229 access, circulation, parking, and loading areas;

230 (4)] a table of proposed public benefits and the incentive density  
231 requested for each; and

232 [(5)](4) [the] a general phasing outline of structures, uses, rights-of-  
233 way, sidewalks, dedications, public benefits, and future preliminary  
234 and site plan applications.

235 (b) Procedure for a sketch plan:

236 (1) Before filing a sketch plan application, an applicant must comply  
237 with the provisions of the Manual for Development Review  
238 Procedures, as amended, that concern the following:

239 (A) notice;

240 (B) posting the site of the application submittal; and

241 (C) holding a pre-submittal meeting.

242 (2) A public hearing must be held by the Planning Board on each sketch  
243 plan application no later than 90 days after the filing of an optional  
244 method development application, unless a request to extend this  
245 period is requested by the applicant, Planning Board staff, or other  
246 interested parties. A request for an extension must be granted if the  
247 Planning Board finds it not to constitute prejudice or undue hardship  
248 on any interested party. A recommendation regarding any request for  
249 extension must be acted upon [as a consent agenda item] by the  
250 Planning Board on or before the 90-day hearing period expires.  
251 Notice of the extension request and recommendation by Staff must be  
252 posted no fewer than 10 days before the item's agenda date.

253 (3) No fewer than 10 days before the public hearing on a sketch plan,  
254 Planning Board staff must submit its analysis of the application,  
255 including its findings, comments, and recommendations with respect

256 to the requirements and standards of this division and any other  
257 matters that may assist the Planning Board in reaching its decision on  
258 the application. This staff report must be included in the record of the  
259 public hearing.

260 (4) The Planning Board must act within 30 days after the close of the  
261 record of the public hearing, by majority vote of those present and  
262 voting based upon the hearing record, to:

263 (A) approve;

264 (B) approve subject to modifications, conditions, or binding  
265 elements; or

266 (C) disapprove.

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

270 (1) [The plan: (A) meets the] meet objectives, general requirements, and  
271 standards of this Division;

272 (2) [(B) will further] further the recommendations and objectives of the  
273 applicable master or sector plan; [and (C) will provide more efficient  
274 and effective development of the site than the standard method of  
275 development;]

276 [(2)](3) [The proposed building massing and height and public use and  
277 other open spaces are located and scaled to achieve] achieve  
278 compatible internal and external relationships [with each other and  
279 with] between existing and proposed nearby buildings, [and] open  
280 space [adjacent to the site and with adjacent communities] , and uses;

281            ~~[(3)](4)~~        [The] provide satisfactory general vehicular, pedestrian, and  
282                            bicyclist access, circulation, parking, and loading [areas are adequate,  
283                            safe, and efficient];

284            ~~[(4)](5)~~        [The proposed] propose an outline of public benefits [and  
285                            associated] that supports the requested incentive density [will further  
286                            the objectives of the applicable master or sector plan and the  
287                            objectives of the CR zones]; and

288            ~~[(5)](6)~~        [The general] establish a feasible and appropriate provisional  
289                            phasing [of] plan for all structures, uses, rights-of-way, sidewalks,  
290                            dedications, public benefits, and future preliminary and site [plans is  
291                            feasible and appropriate to the scale and characteristics of the project]  
292                            plan applications.

293        (d)    During site plan review, the Planning Board may approve modifications to  
294            the binding elements or conditions of an approved sketch plan.

295            (1)    If changes to a sketch plan are requested by the applicant, notice of  
296                            the site plan application must identify those changes requested. The  
297                            applicant has the burden of persuading the Planning Board that such  
298                            changes should be approved.

299            (2)    If changes are recommended after the application is made, notice of  
300                            the site plan hearing must identify changes requested.

301            (3)    In acting to approve a sketch plan modification as part of site plan  
302                            review, the Planning Board must make the findings required in  
303                            Section 59-C-15.42 (c) in addition to those required by Section 59-D-  
304                            3.

305        **59-C-15.5. Land uses.**

306        No use is allowed in the CRN, CRT, or CR zones except as indicated below:

- 307 - *Permitted Uses* are designated by the letter “P” and are permitted  
 308 subject to all applicable regulations.  
 309 - *Limited Uses* are designated by the letter “L” and are permitted  
 310 subject to all applicable regulations and the additional restrictions  
 311 under Section 59-C-15.51.  
 312 - *Special Exception Uses* are designated by the letters “SE” and may be  
 313 authorized as special exceptions under Article 59-G.  
 314

Use	CRN	CRT	CR
<b>(a) Agricultural</b>			
Farm and country markets	<u>L</u>	<u>P</u>	P
Farm, limited to crops, vegetables, herbs, and ornamental plants	<u>P</u>	<u>P</u>	P
Nursery, horticultural – retail or wholesale		<u>P</u>	P
Seasonal outdoor sales	<u>P</u>	<u>P</u>	P
<b>(b) Residential</b>			
Dwellings	<u>P</u>	<u>P</u>	P
Group homes, small [or large]	<u>P</u>	<u>P</u>	P
<u>Group homes, large</u>	<u>L</u>	<u>P</u>	<u>P</u>
Hospice care facilities	<u>L</u>	<u>P</u>	P
Housing and related facilities for senior adults or persons with disabilities	<u>P</u>	<u>P</u>	P
Life care facilities	<u>P</u>	<u>P</u>	P
Live/Work units	<u>P</u>	<u>P</u>	P
Personal living quarters	<u>P</u>	<u>P</u>	P
<b>(c) Commercial Sales and Service</b>			
Advanced technology and biotechnology		<u>P</u>	P
Ambulance or rescue squads, private	<u>L</u>	<u>L</u>	P
Animal boarding places	SE	SE	SE
Automobile filling stations		SE	SE
Automobile rental services, excluding storage of vehicles and supplies	<u>P</u>	<u>P</u>	P
<u>Automobile rental services, including storage of vehicles and supplies</u>		<u>L</u>	<u>L</u>
Automobile repair and services		<u>L</u>	P
Automobile sales, indoors	<u>L</u>	<u>L</u>	P
Automobile sales, outdoors [(except where a municipality prohibits the use within its jurisdiction by resolution)]		<u>L</u>	P
Clinic	<u>L</u>	<u>P</u>	P
Conference centers		<u>P</u>	P
Eating and drinking establishments	<u>L</u>	<u>P</u>	P
Health clubs and gyms	<u>L</u>	<u>P</u>	P

Home occupations, major	<u>SE</u>	<u>SE</u>	SE
Home occupations, registered and no-impact	<u>P</u>	<u>P</u>	P
Hotels and motels	<u>L</u>	<u>P</u>	P
Laboratories		<u>P</u>	P
Dry cleaning and laundry pick-up stations	<u>P</u>	<u>P</u>	P
Offices, general	<u>P</u>	<u>P</u>	P
Recreational facilities, participatory	<u>L</u>	<u>P</u>	P
Research, development, and related activities		<u>P</u>	P
Retail trades, businesses, and services of a general commercial nature <u>with each tenant footprint up to 5,000sf</u>	<u>P</u>	<u>P</u>	P
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 5,000sf and 15,000sf</u>	<u>L</u>	<u>P</u>	<u>P</u>
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 15,000sf and 60,000sf</u>		<u>P</u>	<u>P</u>
<u>Retail trades, businesses, and services of a general commercial nature with each tenant footprint over 60,000sf</u>		<u>L</u>	<u>P</u>
Self-storage facilities		<u>SE</u>	SE
<u>Veterinary hospitals and offices with boarding facilities</u>	<u>SE</u>	<u>L</u>	P
Veterinary hospitals and offices without boarding facilities	<u>P</u>	<u>P</u>	P
Warehousing, not including self-storage, less than 10,000 square feet		<u>P</u>	P
<b>(d) Institutional &amp; Civic</b>			
Charitable and philanthropic institutions	<u>L</u>	<u>P</u>	P
Cultural institutions	<u>L</u>	<u>P</u>	P
Day care facilities and centers <u>with over 30 users</u>	<u>L</u>	<u>L</u>	P
<u>Day care facilities and centers with up to 30 users</u>	<u>P</u>	<u>P</u>	<u>P</u>
Educational institutions, private	<u>L</u>	<u>P</u>	P
Hospitals		<u>P</u>	P
Parks and playgrounds, private	<u>P</u>	<u>P</u>	P
Private clubs and service organizations	<u>L</u>	<u>P</u>	P
Publicly owned or publicly operated uses	<u>P</u>	<u>P</u>	P
Religious institutions	<u>P</u>	<u>P</u>	P
<b>(e) Industrial</b>			
Manufacturing and production, artisan	<u>P</u>	<u>P</u>	P
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, and projects resulting from biotechnical and biogenetic research and development		<u>L</u>	P
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment		<u>L</u>	P
<b>(f) Other</b>			
Accessory buildings and uses	<u>P</u>	<u>P</u>	P
Bus terminals, non-public		<u>P</u>	P
Parking garages, automobile		<u>P</u>	P
Public utility buildings, structures, and underground facilities	<u>P</u>	<u>P</u>	P

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

315 **59-C-15.51. Limited Uses.**

316 **59-C-15.511. Applicability.** Uses designated by an “L” in the land use table are  
 317 Limited Uses and must comply with the requirements of this Section if they are on  
 318 properties that are:

319 (a) Located adjacent to a property in a one-family residential or agricultural  
 320 zone; or

321 (b) Separated from such a property only by the right-of-way of a primary,  
 322 secondary, or tertiary residential street.

323 Where these circumstances do not apply, the use is considered a permitted use and  
 324 Section 59-C-15.41(c)(1) does not apply.

325 **59-C-15.512. Requirements of Limited Uses.**

326 Development applications that include Limited Uses must

327 (a) satisfy the site plan requirements of 59-D-3;

328 (b) comply with the design recommendations of the applicable sector or master  
 329 plan, and associated design guidelines; and

330 (c) ensure compatible relationships with existing and proposed adjacent residential  
 331 housing through mitigating factors including, but not limited to;

332 (1) increased setbacks;

333 (2) sound and visual barriers;

334 (3) decreased structural heights, or

335 (4) diminished site lighting.

336 **59-C-15.6. General requirements.**

337 Development in the CRN, CRT, and CR [zone] zones must comply with the  
 338 following requirements.

339 **59-C-15.61. Master plan and design guidelines conformance.**

340 Development that requires a site plan must be consistent with the applicable  
 341 master or sector plan, unless the Planning Board finds that events have occurred to  
 342 render the relevant master or sector plan recommendation no longer appropriate,  
 343 and must [address] substantially conform to any design guidelines approved by the  
 344 Planning Board that implement the applicable plan.

345 **[59-C-15.62. Priority retail street frontages.**

346 Development that requires a site plan and is located on a street identified as a  
 347 priority retail street frontage in the applicable master plan, sector plan, or design  
 348 guidelines must be developed in a manner that is consistent with the  
 349 recommendations and objectives of the applicable plan and address any applicable  
 350 design guidelines approved by the Planning Board that implement the applicable  
 351 plan.

352 **59-C-15.63. Streetscape.**

353 Streetscape improvements must be consistent with the recommendations of the  
 354 applicable master or sector plan and must address any Planning Board approved  
 355 design guidelines that implement the applicable plan.]

356 **[59-C-15.64]59-C-15.62. Bicycle parking spaces and commuter shower/change**  
 357 **facility.**

- 358 [(a) Bicycle parking facilities must be secure and accessible to all residents or
- 359 employees of the proposed development.
- 360 (b) The number of bicycle parking spaces and shower/change facilities required
- 361 is shown in the following table (calculations must be rounded to the higher
- 362 whole number):

363

<b>Bicycle and Shower/Change Facilities Required</b>	
Use	Requirement

<b><i>Multi-family Residential</i></b>	
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 fewer 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 fewer than 2 spaces, up to a maximum of 100 required spaces.
<b><i>Non-Residential</i></b>	
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.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces.
In a building with a total non-residential floor area of 100,000 square feet or greater.	Two bicycle parking spaces for the first 10,000 square feet plus one additional space for every additional 10,000 square feet, up to a maximum of 100 spaces. One shower/change facility for each gender available only to employees when the building is accessible.

364

]

365

Instead of the requirements of Article 59-E regarding bicycle parking spaces,

366

development in the CRN, CRT, and CR zones must satisfy the following

367

provisions.

368

(a) Bicycle Parking Spaces

369

<u>Use</u>	<u>Publicly Accessible Bike Spaces</u>	<u>Private, Secure Bike Spaces</u>

(1) <u>Multi-family Residential</u>		
<u>In a building containing less than 20 dwelling units</u>	<u>2</u>	<u>4</u>
<u>In a building containing 20 or more dwelling units</u>	<u>0.1 per unit to a maximum requirement of 10</u>	<u>0.5 per unit to a maximum requirement of 100</u>
<u>In any group living arrangement expressly for senior citizens</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>	<u>0.1 per unit, not fewer than 2, to a maximum requirement of 100</u>
(2) <u>Non-Residential</u>		
<u>Total non-residential floor area under 10,000 square feet gross floor area</u>	<u>2</u>	<u>2</u>
<u>Total non-residential floor area between 10,000sf and 100,000 square feet gross floor area (sf)</u>	<u>2 per 10,000sf</u>	<u>1 per 10,000sf, not fewer than 2, to a maximum requirement of 10</u>
<u>Total non-residential floor area greater than 100,000 square feet gross floor area (sf)</u>	<u>20</u>	<u>1 per 10,000sf, not fewer than 10, to a maximum requirement of 100.</u>

371 (b) For office uses with a total non-residential floor area of 100,000 square feet  
 372 of gross floor area or greater, one shower/change facility is required for  
 373 each gender available only to employees when the building is accessible.

374

375 **[59-C-15.63]59-C-15.63. Parking.**

376 [(a) (1) For projects that satisfy the requirements for transit proximity levels 1  
 377 or 2, the number of parking spaces provided on site must not exceed the  
 378 number required under Article 59-E, except that the maximum number of  
 379 parking spaces for general retail and restaurant uses is 4 spaces for every  
 380 1,000 square feet of gross leasable area, and no parking spaces are required  
 381 for restaurant outdoor patron areas.

382 (2) All projects that do not satisfy the requirements for transit proximity levels  
 383 1 or 2 must meet the parking requirements established under Article 59-E,  
 384 except that the number of parking spaces for general retail and restaurant  
 385 uses in Subsection (a)(1) may be provided without a parking waiver.

386 (b) Except for retail and restaurant uses that satisfy Subsection (a)(1) and  
 387 projects that do not satisfy transit proximity level 1 or 2, the number of  
 388 parking spaces required is based on a building's distance from transit as  
 389 follows:

390

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

391

392 The appropriate parking rates apply to the gross floor area within each distance  
 393 category.]

394 Instead of the requirements of Article 59-E regarding parking space numerical  
 395 requirements, landscaping, and surface parking design, development in the CRN,  
 396 CRT, and CR zones must comply with the following provisions. All standards and  
 397 requirements of Article 59-E that are not modified by this Section must be  
 398 satisfied.

399

400 **59-C-15.631. Parking Ratios.**

401 Parking spaces must satisfy the following minimums and maximums. The  
 402 minimum number of spaces required is equal to the number of parking spaces that  
 403 would otherwise be required by Division 59-E-3 multiplied by the applicable  
 404 factor in the table, or at the rate indicated. When a maximum number of spaces is

405 indicated, no more parking than would otherwise be required by Division 59-E-3  
 406 may be provided.

<u>Use</u>	<u>CRN</u>		<u>CRT</u>		<u>CR</u>			
	<u>Up to</u>	<u>Greater</u>	<u>Up</u>	<u>Greater</u>	<u>Up to</u>	<u>¼ to ½</u>	<u>½ to 1</u>	<u>Greater</u>
<u>Distance from a level 1 or 2 transit station or stop</u>	<u>½</u> <u>mile</u>	<u>than ½</u> <u>mile</u>	<u>to ½</u> <u>mile</u>	<u>than ½</u> <u>mile</u>	<u>¼ mile</u>	<u>mile</u>	<u>mile</u>	<u>than 1</u> <u>mile</u>
<u>(a) Residential</u>								
<u>Maximum:</u>	<u>None</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.8</u>	<u>1.0</u>	<u>0.7</u>	<u>0.8</u>	<u>0.6</u>	<u>0.7</u>	<u>0.8</u>	<u>0.9</u>
<u>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</u>								
<u>Maximum:</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.6</u>	<u>0.8</u>	<u>0.4</u>	<u>0.6</u>	<u>4 per</u> <u>1,000</u> <u>square</u> <u>feet</u>	<u>4 per</u> <u>1,000</u> <u>square</u> <u>feet</u>	<u>4 per</u> <u>1,000</u> <u>square</u> <u>feet</u>	<u>0.8</u>
<u>(c) All other non-residential uses</u>								
<u>Maximum:</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>None</u>	<u>59-E</u>	<u>59-E</u>	<u>59-E</u>	<u>None</u>
<u>Minimum:</u>	<u>0.6</u>	<u>0.8</u>	<u>0.4</u>	<u>0.6</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>

407

408 (d) The appropriate rates to determine the number of parking spaces apply to  
 409 the gross floor area of each use within each distance category.

410 **59-C-15.632. Accepted Parking Spaces**

411 [(c)] Parking requirements must be met by any of the following:

412 [(1)](a) providing the spaces on site;

413 [(2)](b) constructing publicly available on-street parking; or

414 [(3)](c) participating in;

415 (1) a parking lot district;

- 416           (2)   [or] a shared parking program established by municipal resolution; or  
 417           (3)   entering into an agreement for shared parking spaces in a public or  
 418           private facility within [1,000 feet] ¼ mile of the subject lot, if the off-  
 419           site parking facility is not in an agricultural (Division 59-C-9),  
 420           planned unit development (Division 59-C-7), or one-family  
 421           residential (Division 59-C-1) zone, unless otherwise allowed by this  
 422           Chapter.

423   [(d)] Every “car-share” space provided reduces the total number of required spaces  
 424   by 6 spaces for a non-residential use or 3 spaces for a residential use.

425

426   *Example:* A non-residential project on a CR-zoned site requiring at least 100 spaces under  
 427   Article 59-E would be required to provide a maximum of 100 spaces on site. If that site was  
 428   within ¼ to ½ mile of a transit station, the minimum requirement for parking would be 40 spaces  
 429   (100 x 0.40 = 40). If 2 car-share spaces were provided, that requirement would be 28 for non-  
 430   residential use or 34 for residential use.

431   **59-C-15.633. Parking space location and access.**

432   [(e)] The design of surface parking [facilities] spaces must comply with the  
 433   following:

434   [(1)](a)    [a] parking [facility at] spaces on or above grade must not be located  
 435           between the street and the main front wall of the building or the side wall of  
 436           [a] the main building on a corner lot[ unless the Planning Board finds that  
 437           safe and efficient circulation would be better served by a different  
 438           arrangement]; and

439   [(2)](b)    if a site is adjacent to an alley, the primary vehicular access to the  
 440           parking facility must be from that alley.]; and

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

443   **59-C-15.634. Drive-through facility design.**

444 Any drive-through facility requires the approval of a site plan under Division 59-  
445 D-3 and must satisfy the following:

446 [(f)](a) [The design of parking facilities with drive-through services must  
447 comply with the following; however, the Planning Board may approve a  
448 design if it finds that the alternative design would provide safer and more  
449 efficient circulation:] no part of a drive-through service facility, including  
450 the stacking area, may be located within 100 feet of a property line shared  
451 with an one-family or agriculturally zoned land;

452 [(1)](b) [the driveway must not be] no drive-through service window, drive  
453 aisle, or stacking area may be located between the street and the main front  
454 wall of [a ] the main building [or the side wall of a building on a corner lot];

455 [(2)](c) [the] no drive-through service window [must], drive aisle, or stacking  
456 area may be located [on the rear or] between the street and the side wall of  
457 the main building [; any service window on the side wall of a building must  
458 be] on a corner lot unless permanently screened from any street by a 5-foot  
459 or higher wall or fence; and

460 [(3) curb cuts to a street must be minimized to one drive aisle of no more than 20  
461 feet in width for two-way traffic or two drive aisles each of no more than 10  
462 feet in width for one-way traffic]

463 **59-C-15.635. Landscaping and lighting.**

464 [(g)] Except for areas used for internal driveway or sidewalk connections  
465 between lots or parcels that are not zoned one-family residential [(59-C-1)] or  
466 agricultural [(59-C-9)] , landscaping for surface parking [facilities] spaces must  
467 satisfy the following requirements:

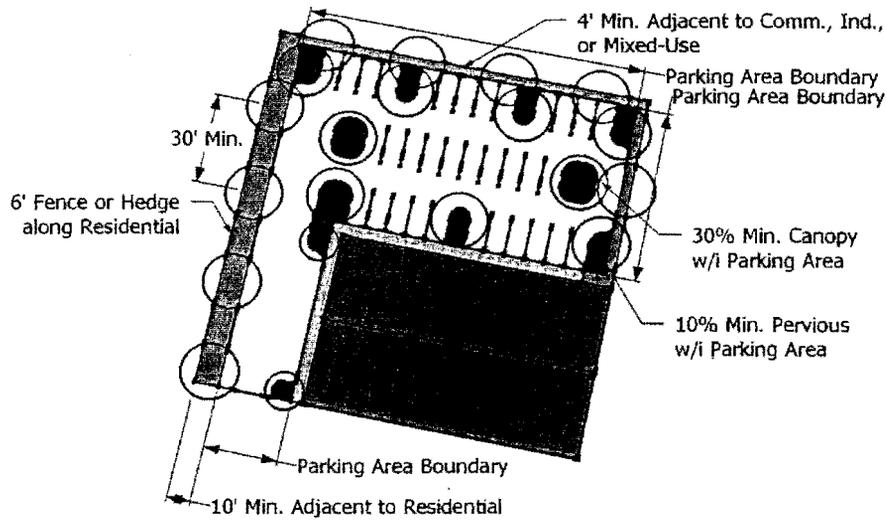
468

<b>Minimum Landscape Standards for Surface Parking</b>
--

Subject	Requirement
(a) [Right-of-Way Screening] <u>Property line adjacent to a right-of-way</u>	<u>No less than 6-foot [width of] wide continuous soil panel [or] (excluding any easements) with stormwater [management recharge facility (not including any PUE or PIE) with groundcover] facilities, planting bed, or lawn, including[;] a minimum 3-foot high continuous evergreen hedge or fence; [and] plus one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.</u>
(b) <u>Property line adjacent to a lot or parcel in a one-family residential or agricultural zone</u>	<u>No less than 10-foot width continuous soil panel (excluding any easements) with stormwater facilities, planting bed, or lawn including a minimum 6-foot high continuous evergreen hedge or fence; plus one deciduous tree per 30 feet of frontage.</u>
(c) <u>Property line [Adjacent] adjacent to a lot or parcel in any [Commercial, Industrial, or Mixed-Use Zone] zone not subject to (b), above</u>	<u>No less than 4-foot width continuous soil panel [or] (excluding any easements) with stormwater [management recharge facility with groundcover] facilities, planting bed, or lawn; plus one deciduous tree per 30 feet [of frontage].</u>
[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.]
(d) Internal Pervious Area	<u>No less than 10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.</u>
(e) Tree Canopy Coverage	<u>No less than 30 percent of the parking facility area (at 15 years growth).</u>
(f) <u>Lighting</u>	<u>Per the Illuminating Engineering Society of North America standards, or County equivalent, with full or partial cut-off fixtures and no more than 0.5 footcandle illumination at any property line subject to (b), above.</u>

469

470



*Surface Parking Landscape Requirements Illustrative*

471  
472

473 **59-C-15.636. Waiver of parking provisions.**

474 The Director, Planning Board, or Board of Appeals may waive any requirement of  
475 Section 59-C-15.63 not necessary to accomplish the objectives of this Division  
476 and Section 59-E-4.2, and in conjunction with such a waiver may adopt reasonable  
477 mitigating requirements above the minimum standards. At least 10 days notice of  
478 any request for a waiver under this Section must be provided to all adjoining  
479 property owners, affected citizen associations, and Planning Department Staff, if  
480 applicable, before a decision may be made.

481 **59-C-15.7. Development standards.**

482 Development in [any] the CRN, CRT, and CR [zone] zones must comply with the  
483 following standards.

484 **59-C-15.71. Density and height.**

485 Maximum density and height are specified by the zone established on the zoning  
486 map under the provisions of Section 59-C-15.1.

487 [(a) The maximum density for any standard method project is the greater of 0.5  
488 FAR or 10,000 square feet of gross floor area. Any single land use or any

489 combination of land uses allowed in the zone may achieve the maximum  
490 density.

491 (b) The maximum total density and mix of maximum non-residential and  
492 residential density for any project using the optional method of development  
493 is specified by the zone.]

494 **[59-C-15.72. Height.**

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

497 (b) The maximum height for any building or structure in an optional method  
498 project is determined by the zone.]

499 **[59-C-15.73]59-C-15.72. Setbacks.**

500 (a) [A building must not be any closer to a lot line shared with] Where a tract of  
501 land is adjacent to a lot or parcel in [an agricultural (Division 59-C-9) or  
502 applicable residential (Division 59-C-1)] a one-family residential or  
503 agricultural zone [than] any building:

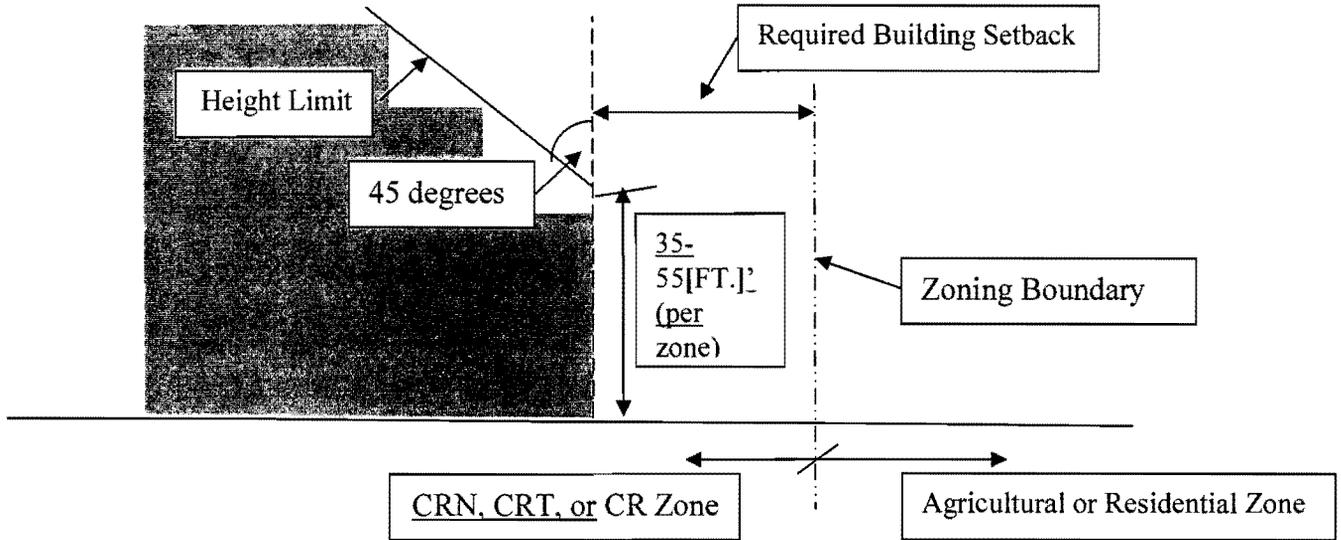
504 (1) must have a minimum setback of 25 feet or the setback required by  
505 the adjacent lot or parcel, whichever is greater; and

506 (2) [the building] must not project beyond a 45 degree angular plane  
507 projecting over the subject lot or parcel measured from a height of 55  
508 feet in the CR zones, 45 feet in the CRT zones, or 35 feet in the CRN  
509 zones at the setback line determined above, with the exception of  
510 those features exempt from height and setback restrictions under  
511 Section 59-B-1.

512 (b) The development of a new building in place of a building existing when  
513 [the] a CRN, CRT, or CR zone is applied may be built to the [pre-existing

514 setbacks] previously allowed setback if the height of the new building is not  
 515 increased [over that] above the height of the former building.

516



517  
 518

*Angular Plan Setback Illustration*

519 **[59-C-15.74]59-C-15.73. Public use space.**

520 (a) Public use space is not required for any standard method project that does  
 521 not require a site plan. If a site plan is required for the proposed project,  
 522 [then the minimum ]public use space is [10 percent of the project’s net land  
 523 area.] required as follows:

<u>Gross Tract Area</u>	<u>Minimum Public Use Space</u>
<u>Up to 10,000sf</u>	<u>None</u>
<u>10,001sf up to 3 acres</u>	<u>10% of net tract area</u>
<u>Over 3 acres</u>	<u>10% of limits of disturbance</u>

524

525 (b) Projects using the optional method of development must provide public use  
 526 space as follows:

527

<b>Minimum Required Public Use Space (% of net tract area)</b>				
Acres (Gross)	Number of Existing, Proposed, and Master-Planned Right-of-Way Frontages			
	1	2	3	4+
< ½	0	0	0	5
½ - 1.00	0	0	5	10
1.01 - 3.00	0	5	10	10
3.01 - 6.00	5	10	10	10
6.01 +	10	10	10	10

528

529

(c) Public use space must:

530

(1) be [calculated on the net tract area that was included in the sketch plan application;

531

532

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

533

~~[(3)]~~(2) be easily and readily accessible to the public; and

534

~~[(4)]~~ be distributed within the entire tract area included in the sketch plan application; and

535

536

~~[(5)]~~~~(3)~~ contain amenities such as seating options, shade, landscaping, artwork, or [other similar public benefits] fountains.

537

538

(d) Instead of providing on-site public use space, [for any site of 3 acres or less, a development may propose the following alternatives,] an applicant may satisfy all or part of the requirement by one or more of the following means, subject to Planning Board approval:

539

540

541

542

(1) implementing public park or public use space improvements of an equal or greater size within [¼ mile of the subject site] or near the applicable master or sector plan area; or

543

544

545

(2) making a payment in part or in full [to the Public Amenity Fund under Section 59-D-2.31.] for design, construction, renovation,

546

547

restoration, installation, and/or operation within or near the applicable master or sector plan area if the payment is:

548

549 (A) equal to the cost of constructing an equal amount of public use  
 550 space and associated amenities on-site per square foot plus the  
 551 fair market value of the application tract of land per square  
 552 foot;

553 (B) used to implement the open space, recreation, and cultural  
 554 goals of the applicable master or sector plan; and

555 (C) made within 30 days of the release of any building permit for  
 556 the subject application.

557 [(e) A development on a site larger than 3 acres may only provide off-site public  
 558 use space in order to provide master-planned open space improvements, or a  
 559 payment under Subsection (d)(2), for an area of equal or greater size  
 560 required on site that is:

- 561 (1) located within the same master plan area as the proposed development; and
- 562 (2) indicated on the approved sketch plan.]

563 **[59-C-15.75]59-C-15.74. Residential amenity space.**

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

<b>Required Residential Amenity Space</b>	
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.	<u>A minimum of 20 square feet per market-rate dwelling unit up to 5,000 square feet.</u>
Passive or active outdoor recreational space.	<u>A minimum of 20 square feet per market-rate dwelling unit, of which at least 400 square feet must adjoin or be directly accessible from the indoor amenity space, up to 5,000 square feet.</u>

567

568 (b) [The] Additional amenity space is not required for Moderately Priced  
 569 Dwelling Units (MPDUs) or Workforce Housing Units (WFHUs) on a site

570 within a metro station policy area or where the Planning Board finds [that  
 571 there is ]adequate recreation facilities and open space area available within  
 572 [a] ½ mile [radius] of the subject site. If such a finding cannot be made,  
 573 amenity space must be provided as if all the dwelling units were market-rate  
 574 units.

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

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

581 **59-C-15.8. Special regulations for the optional method of development**

582 **[59-C-15.81. Incentive Density Provisions.]**

583 This section establishes incentives for optional method projects to provide public  
 584 benefits in return for increases in density and height above the standard method  
 585 maximums[, consistent with the applicable master or sector plan,] up to the  
 586 maximum permitted by the zone.

587 **59-C-15.81. Incentive Density Categories.**

588 [(a)] Public benefits must be provided that enhance or contribute to the  
 589 objectives of the CRT and CR [zone] zones in some or all of the following  
 590 categories:

- 591 [(1)](a) [Master-planned major] Major public facilities;
- 592 [(2)](b) Transit proximity [for residents, workers, and patrons];
- 593 [(3)](c) Connectivity between uses [and], activities, and mobility options;
- 594 [(4)](d) Diversity of uses and activities;
- 595 [(5)](e) Quality of building and site design; and

596 ~~[(6)](f)~~ Protection and enhancement of the natural environment[; and  
597 (7) Advanced dedication of right-of-way].

598 [Sections 59-C-15.82 through 59-C-15.88 indicate] Section 59-C-15.85 indicates  
599 the individual [types of] public benefits that may be accepted in each of  
600 these categories.

601 **59-C-15.82. Public benefits required.**

602 Any optional method development must provide public benefits from at least 4 of  
603 the 6 categories listed in Section 59-C-15.81 and:

604 (a) Development in the CRT zones must provide public benefits worth a  
605 minimum total of 50 points; and

606 (b) Development in the CR zones must provide BLTs required under Section  
607 59-C-15.856(a) for at least 5 points and provide additional public benefits;  
608 the sum of the public benefit points must equal at least 100.

609 **59-C-15.83. General incentive density considerations.**

610 [(b)] In approving any incentive density based on the provision of public  
611 benefits, the Planning Board must consider:

612 [(1)](a) The [policy] recommendations and objectives [and priorities] of the  
613 applicable master or sector plan;

614 [(2)](b) [Any applicable design guidelines and any adopted public benefit  
615 standards and guidelines] The CR Zone Incentive Density Implementation  
616 Guidelines and any design guidelines adopted for the applicable master plan  
617 area;

618 [(3)](c) The size and configuration of the tract;

619 [(4)](d) The relationship of the site to adjacent properties;

620 [(5)](e) The presence or lack of similar public benefits nearby; and

621 [(6))(f) Enhancements beyond the elements listed in the individual public  
622 benefit descriptions or criteria that increase public access to or enjoyment of  
623 the benefit.

624 Examples: Pedestrian activation along a through-block connection, greater  
625 vegetated roof or tree canopy area than required, tower step-backs at a lower  
626 height or deeper into the site than the minimum necessary to qualify for the  
627 benefit, or provision of neighborhood services for more smaller businesses  
628 than required.

629 [(c) Any incentive density increase approved by the Planning Board for an  
630 optional method of development application must satisfy Subsection 59-C-  
631 15.87(a).]

632 **59-C-15.84. CR zones incentive density implementation guidelines.**

633 [(d)] The Planning Board must adopt, publish, and maintain guidelines that detail  
634 the standards and requirements for public benefits [that may be provided for  
635 incentive density]. The guidelines must:

636 [(1))(a) be consistent with the [recommendations and] objectives of [the  
637 applicable master or sector plan and the purpose of the CR zones] this  
638 Division;

639 [(2))(b) be in addition to any standards, requirements, or rules of incentive  
640 density calculation included in this Division, but may not [supersede]  
641 conflict with those provisions; and

642 [(3) allow any single feature of a project a density incentive from only 1 public  
643 benefit;

644 [(4))(c) only [address the] allow incentive density for those public benefits  
645 listed in [Sections 59-C-15.82 through 59-C-15.88 and must not add a  
646 public benefit category; and

647 (5) include the criteria to determine when an early dedication of right-of-way  
648 qualifies for incentive density, and the amount of the incentive density  
649 permitted] Section 59-C-15.85.

650 **59-C-15.85. Individual public benefit descriptions and criteria.**

651 **[59-C-15.82]59-C-15.851. [Incentives for master-planned] Major public**  
652 **facilities.**

653 Major public facilities [such as schools, libraries, recreation centers, urban parks,  
654 and county service centers] provide public services at convenient locations and  
655 where increased density creates a greater need for civic uses and greater demands  
656 on public infrastructure [, centers for community meetings, and civic events].

657 (a) Major public facilities include, but are not limited to, such facilities as  
658 schools, libraries, recreation centers, parks, county service centers, public  
659 transportation or utility upgrades, or other resources delineated in an  
660 applicable master or sector plan.

661 (b) If a major public facility is not recommended in the applicable master or  
662 sector plan, the Planning Board must find that the facility or improvement  
663 provides the community with a resource that is at least as beneficial as other  
664 major facilities recommended in the applicable master or sector plan.

665 Additionally, any infrastructure upgrade may only receive incentive density  
666 for improvements beyond those required by any applicable adequate public  
667 facilities requirement to complete the proposed development.

668 (c) Because of their significance in place-making, the Planning Board may  
669 approve incentive density of up to 40 points in the CRT zones and 70  
670 [percent] points in the CR zones for (1) the conveyance of a site or floor  
671 area for, [and/or] (2) construction of, and/or (3) making a payment for a  
672 major public facility that is [designated on a master plan or sector plan and

673 is] accepted for use and/or operation by [the] an appropriate public agency,  
 674 community association, or nonprofit organization.

675 **[59-C-15.83]59-C-15.852. [Incentives for transit] Transit Proximity.**

676 [In order to encourage] Development near transit facilities encourages greater use  
 677 of transit, [control] controls sprawl, and [reduce] reduces vehicle miles traveled,  
 678 congestion, and carbon emissions[, the Planning Board may approve incentive  
 679 density for transit proximity under this section. The percentage of incentive  
 680 density awarded to a project for transit proximity is]. Transit proximity points are  
 681 granted for proximity to existing or planned transit based on transit service level  
 682 and CRT and CR zones as follows:

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

683

<b><u>Proximity</u></b>	<b><u>Adjacent or confronting</u></b>		<b><u>Within ¼ mile</u></b>		<b><u>Between ¼ and ½ mile</u></b>		<b><u>Between ½ and 1 mile</u></b>	
	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>
<b><u>Transit Service Level</u></b>								
<b><u>CRT</u></b>	<u>25</u>	<u>15</u>	<u>20</u>	<u>12.5</u>	<u>15</u>	<u>10</u>	<u>10</u>	<u>7.5</u>
<b><u>CR</u></b>	<u>50</u>	<u>30</u>	<u>40</u>	<u>25</u>	<u>30</u>	<u>20</u>	<u>20</u>	<u>15</u>

684

685 (a) A project is adjacent to or confronting a transit station or stop if it shares a  
 686 property line[,] or easement line, or is separated only by a right-of-way from  
 687 an existing or planned transit station or stop and 100 percent of the gross

688 tract area [submitted] in a single sketch plan application is within ¼ mile of  
689 the transit portal.

690 (b) For split proximity-range projects:

691 (1) [For all other projects to qualify for incentive density availability at  
692 the other distances,] If at least 75 percent of the gross tract area in a single  
693 sketch plan application [must be within the range for which the incentive is  
694 proposed.] is within the closer of two proximity ranges, the entire project  
695 may take the points for the closer range;

696 (2) [The incentive density for projects] If less than 75 percent of the gross tract  
697 area in [1 distance range] a single sketch plan is within the closer of 2  
698 proximity ranges, the points must be calculated as the weighted average of  
699 the percentage of area in each range.

700 ~~[59-C-15.84]~~59-C-15.853. [Incentives for connectivity] **Connectivity and**  
701 **mobility.**

702 [In order to enhance] Development that enhances connectivity between uses and  
703 amenities; [and increase] increases mobility options; [encourage] encourages non-  
704 automotive travel [for short and multi-purpose trips as well as for commuting];  
705 [facilitate] facilitates social [and commercial] interaction; [provide] provides  
706 opportunities for healthier living; and [stimulate] stimulates local businesses[, the  
707 Planning Board may approve incentive density of up to 30% for a project that  
708 provides at least 2 of the following public benefits:].

709 (a) **Neighborhood Services:** [Safe] At least 10 points for safe and direct  
710 pedestrian access to at least 10 different retail services on site or within ¼  
711 mile, of which at least 4 have a [maximum] retail bay floor area of no  
712 greater than 5,000 square feet.

- 713 (b) **Minimum Parking:** [Provision of the minimum required] Up to 10 points  
714 for providing less than the maximum allowed number of parking [for  
715 projects of one acre of gross tract area or more] spaces, if a maximum is  
716 applicable under Section 59-C-15.631.
- 717 (c) **Through-Block Connections:** [Safe] Up to 20 points for safe and attractive  
718 pedestrian connections between streets.
- 719 (d) **Public Parking:** [Provision of] Up to 25 points for providing up to the  
720 maximum number of parking spaces allowed in the zone as public parking.
- 721 (e) **Transit Access Improvement:** [Ensuring] Up to 20 points for ensuring that  
722 access to transit facilities meets County standards for handicapped  
723 accessibility.
- 724 (f) **Trip Mitigation:** [A] At least 15 points for entering into a binding [and  
725 verifiable] Traffic Mitigation Agreement to reduce the number of weekday  
726 morning and evening peak hour trips attributable to the site in excess of any  
727 other regulatory requirement; the agreement must result in a non-auto driver  
728 mode share of at least 50% for trips attributable to the site.
- 729 (g) **Streetscape:** Up to 20 points for construction of off-site streetscape  
730 excluding any streetscape improvements required by this Division.
- 731 (h) **Advance Dedication:** Up to 30 points for dedicating or providing a  
732 reservation for dedication for master-planned rights-of-way in advance of a  
733 preliminary or site plan application.
- 734 (i) **Way-Finding:** At least 5 points for design and implementation of a way-  
735 finding system orienting pedestrians and cyclists to major open spaces,  
736 cultural facilities, and transit opportunities.
- 737 **[59-C-15.85]59-C-15.854. [Incentives for diversity] Diversity of uses and**  
738 **activities.**

739 [In order to increase] Development that increases the variety and mixture of land  
 740 uses, types of housing, economic [diversity] variety, and community activities;  
 741 [contribute] contributes to development of [a ]more efficient and sustainable  
 742 [community] communities; [reduce] reduces the necessity for automobile use; and  
 743 [facilitate] facilitates healthier lifestyles and greater social interaction], the  
 744 Planning Board may approve incentive density of up to 30% for a project that  
 745 provides affordable housing or a public facility, as described below, or at least 2 of  
 746 the other following public benefits:].

747 (a) **Affordable Housing:**

748 (1) All residential development must comply with the requirements of  
 749 Chapter 25A for the provision of Moderately Priced Dwelling Units  
 750 (MPDUs) [and may provide Workforce Housing Units (WFHUs)  
 751 under Chapter 25B.

752 (1) MPDU Incentive Density: Provision of MPDUs above the minimum  
 753 required is calculated on the total number of dwelling units as  
 754 required by Chapter 25A, and the percent of incentive density  
 755 increase is based on the proposed FAR for the entire project], except  
 756 that achieving bonus density under Section 25A-5(c)(3), as amended  
 757 from time to time, entitles an applicant to incentive density points  
 758 under this Division equal to the bonus density percentage.

759 *Example:* Provision of 14.5% MPDUs is awarded [an incentive density of  
 760 20 % (see 25A-5(c)(3)). In the case of a CR 4.5 zone that proposes 4.5  
 761 FAR, that equals 0.20 x 4.0 (the incentive density), which is 0.8 FAR] 20  
 762 points; provision of 13.0% MPDUs is awarded 5 points.

763 (2) [WFHU Incentive Density: Provision of] Up to 30 points for  
 764 providing Workforce Housing Units (WFHUs) at a rate of [is

765 calculated at the following rate:] 2 times the percentage of total units,  
766 excluding MPDUs [provided as WFHUs].

767 *Example:* Provision of 5% WFHUs is awarded [incentive density of] 10[%]  
768 points; provision of 12% WFHUs is awarded [incentive density of] 24[%]  
769 points.

- 770 (b) **Adaptive Buildings:** [Provision of buildings with] At least 10 points for  
771 constructing commercial or mixed use buildings with minimum floor-to-  
772 floor heights of at least 15 feet on any floor that meets grade and 12 feet on  
773 all other floors. Internal structural systems must be able to accommodate  
774 various types of use with only minor modifications.
- 775 (c) **Care Centers:** [Child] Up to 20 points for constructing a child or adult day  
776 care [facilities] facility with spaces for at least 15 users.
- 777 (d) **Small Business [Retention] Opportunities:** [Provision of] Up to 20 points  
778 for providing on-site space for small, neighborhood-oriented businesses.
- 779 (e) **Dwelling Unit Mix:** [Provision of] At least 5 points for integrating a mix of  
780 residential unit types with at least 7.5% efficiency units, 8% 1-bedroom  
781 units, 8% 2-bedroom units, and 5% 3-or-more bedroom units.
- 782 (f) **Enhanced Accessibility for the Disabled:** [Provision of] Up to 20 points  
783 for constructing dwelling units that satisfy American National Standards  
784 Institute A117.1 Residential Type A standards or [units that satisfy] an  
785 equivalent County standard.
- 786 (g) **Live/Work:** At least 10 points for developments of up to 2.0 FAR total  
787 density that provide at least the greater of 3 units or 10% of the total unit  
788 count as live/work units.
- 789 **[59-C-15.8]59-C-15.855. [Incentives for quality] Quality building and site**  
790 **design.**

791 High quality design is especially important in urban, integrated-use settings to  
792 ensure that buildings and uses are visually compatible with each other and  
793 adjacent communities and to provide a harmonious pattern of development. Due to  
794 [the] increased density [of] in these settings, buildings tend to [have high  
795 visibility. High] be highly visible and high quality design [may help to] helps  
796 attract residents, patrons, and businesses to [locate in] these [settings] areas.  
797 Location, height, massing, façade treatments, and ornamentation of buildings  
798 affect sense of place, orientation, and the perception of comfort and convenience.  
799 The quality of the built environment affects light, shadow, wind, and noise, as well  
800 as the functional and economic value of property. [In order to promote high  
801 quality design, the Planning Board may approve incentive density of up to 30% to  
802 a project that provides at least 2 of the following public benefits:]

803 (a) **Historic Resource Protection:** [Preservation] Up to 20 points for the  
804 preservation and/or enhancement of or payment towards preservation and/or  
805 enhancement of a historic resource [indicated on] or a contributing element  
806 within a historic district designated in the Master Plan for Historic  
807 Preservation [in conformance with a plan approved by the Historic  
808 Preservation Commission. A fee-in-lieu for a specific preservation project  
809 may be paid to the Historic Preservation Division as specified in the  
810 Guidelines for Public Benefits].

811 (b) **Structured Parking:** [Parking provided] Up to 20 points for placing  
812 parking within [a structure or below-grade] above- or below-grade  
813 structures.

814 (c) **Tower [Setback] Step-Back:** [Setback of building] At least 5 points for  
815 stepping back a building's upper floors by a minimum of 6 feet [beyond]

816 behind the first floor façade [at a maximum height of] . The step-back must  
 817 begin at a height no greater than 72 feet.

818 (d) **Public Art:** [Provision of ] Up to 15 points for installing public art [must  
 819 be] reviewed for comment by, or paying a fee accepted by, the [Public Arts  
 820 Trust Steering Committee. A fee-in-lieu may be paid to the Trust as  
 821 specified in the Guidelines for Public Benefits] Arts and Humanity Council.

822 (e) **Public Open Space:** [Provision of] Up to 20 points for providing, or  
 823 making a payment for, open space in addition to the minimum public use  
 824 space required by [the zone. Public open space must be easily accessible to  
 825 the public during business hours and/or at least from sunrise to sunset and  
 826 must contain amenities such as seating, plantings, trash receptacles, kiosks,  
 827 and water features] this Division.

828 [(f) **Streetscape:** Construction of off-site streetscape in addition to the  
 829 requirements of this division].

830 [(g)](f) **Exceptional Design:** [Building design that provides innovative  
 831 solutions in response to the immediate context; creates a sense of place and  
 832 serves as a landmark; enhances the public realm in a distinct and original  
 833 manner; introduces new materials, forms, or building methods; uses design  
 834 solutions to make compact infill development living, working, and shopping  
 835 environments more pleasurable and desirable; and integrates low-impact  
 836 development methods into the overall design of the site and building.] Up to  
 837 10 points for building or site design whose visual and functional impacts  
 838 enhance the character of a setting and the purposes delineated in this  
 839 Section.

840 (g) **Architectural Elevations:** Up to 20 points for providing elevations of  
 841 architectural façades and agreeing to be bound by particular elements of

842 design, such as minimum amount of transparency, maximum separation  
843 between doors, awning provisions, sign restrictions, or lighting parameters  
844 that affect the perception of mass, pedestrian comfort, or enhance  
845 neighborhood compatibility.

846 **[59-C-15.87]59-C-15.856. [Incentives for] Protection and enhancement of the**  
847 **natural environment.**

848 [In order to combat sprawl and] Protection and enhancement of natural systems  
849 and decreases in energy consumption help mitigate or reverse environmental  
850 [problems] impacts such as heat island effects from the built environment,  
851 inadequate carbon-sequestration, habitat and agricultural land loss, and air and  
852 water pollution caused by reliance on the automobile [, the Planning Board may  
853 approve a density increase up to 30% for the public benefits in this Subsection:].

854 (a) **Building Lot Termination(BLT):** [CR zones require] Up to 30 points for  
855 the purchase of BLT easements or payment to the Agricultural Land  
856 Preservation Fund (ALPF) [for at least 5% but no more than 30% of the  
857 incentive density under the following conditions]. The first 5 points are  
858 mandatory for all developments in the CR zones; up to 25 additional points  
859 are allowed as an option.

860 (1) In the CR zones, an applicant must purchase BLT easements, or make  
861 payments to the ALPF, in an amount equal to 5% of the incentive  
862 density floor area under the following parameters:

863 (A) One BLT must be purchased or equivalent payment made for  
864 every 20,000 square feet of gross floor area to qualify for the  
865 first 5% incentive density floor area; and

866 (B) Any private BLT easement must be purchased in whole units;  
867 or

868 (C) BLT payments must be made to the ALPF, based on the  
869 amount established by Executive Regulations under Chapter  
870 2B; if a fraction of a BLT easement is needed, a payment based  
871 on the gross square footage of incentive density must be made  
872 for at least the fraction of the BLT easement.

873 (2) [BLT payments must be made to the Agricultural Land Preservation  
874 Fund, based on the amount established by Executive Regulations  
875 under Chapter 2B; if a fraction of a BLT easement is needed, a  
876 payment based on the gross square footage of incentive density must  
877 be made to the Agricultural Land Preservation Fund for at least the  
878 fraction of the BLT easement.] Up to 25 points for the purchase of  
879 BLTs, or equivalent payments to the ALPF for any incentive density  
880 above 5%. Each BLT easement purchase or payment is equal to  
881 30,000 square feet of gross floor area, or such proportionate square  
882 footage represented by a fractional BLT purchase or payment. This is  
883 converted into points by dividing the incentive density floor area  
884 covered by the purchase or payment by the total square feet of the  
885 incentive density area.

886 (3) In the CRT zones, BLT payments are optional; each BLT easement  
887 purchase or payment is equal to 30,000 square feet of gross floor area,  
888 or such proportionate square footage represented by a fractional BLT  
889 purchase or payment.](A) For the first 5% of incentive density,  
890 each BLT easement purchase or payment allows 20,000 gross square  
891 feet of incentive density or a proportion thereof, allowed by a  
892 payment for a fraction of a BLT.

893 (B) For the incentive density above 5%, each BLT easement purchase or  
 894 payment allows 30,000 gross square feet of incentive density or a  
 895 proportion thereof, allowed by a payment for a fraction of a BLT.]

896 Example: If a 50,000 square-foot (sf) CR3.0 site is fully developed, the  
 897 incentive density available to be earned equals 125,000sf (150,000sf -  
 898 25,000sf = 125,000sf). The 5% BLT requirement for 125,000sf equals  
 899 6,250sf, which equals 0.32 BLT (6,250sf / 20,000sf = 0.32). If the applicant  
 900 seeks an additional 10 points through the purchase of BLTs, 10% of the  
 901 incentive density is calculated, which in this case is 12,500sf (125,000sf x  
 902 0.10 = 12,500sf). Because 1 BLT, above the required 5%, is equivalent to  
 903 30,000sf, the 12,500sf requires a payment for an additional 0.42 BLTs  
 904 (12,500sf / 30,000sf = 0.42). Together, the required and incentive BLTs  
 905 equal 0.74 BLTs for 15 points in the Environment category.

906 (b) **Energy Conservation and Generation:** At least 10 points for constructing  
 907 buildings that [Provision of energy-efficiency that exceeds] exceed the  
 908 energy-efficiency standards for the building type by 17.5% for new  
 909 buildings or 10% for existing buildings [, or provision of]. At least 15  
 910 points for providing renewable energy generation facilities on-site or within  
 911 ½ mile of the site for a minimum of 2.5% of the projected energy  
 912 requirement for the development.

913 (c) **[Green] Vegetated Wall:** [Installation] At least 5 points for the installation  
 914 and maintenance of a vegetated wall that covers at least 30% of any blank  
 915 wall or parking garage façade that is at least 300 feet in area and is visible  
 916 from a public street or open space.

917 (d) **Tree Canopy:** [Coverage] At least 10 points for tree canopy coverage at 15  
 918 years of growth of at least 25% of the on-site open space.

- 919 (e) **Vegetated Area:** [Installation] At least 5 points for installation of plantings  
920 in a minimum of 12 inches of soil, covering at least 5,000 square feet [of  
921 previously impervious surfaces]. This does not include vegetated roofs.
- 922 (f) **Vegetated Roof:** [Provision ] At least 10 points for installation of a  
923 vegetated roof with a soil depth of at least 4 inches covering at least 33% of  
924 a building's roof, excluding space for mechanical equipment.
- 925 (g) **Cool Roof:** At least 5 points for constructing any roof area that is not  
926 covered by a vegetated roof with a minimum solar reflectance index (SRI)  
927 of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI  
928 of 25 for slopes above 2:12.
- 929 (h) **Recycling Facility Plan:** At least 5 points for providing a recycling facility  
930 plan to be approved as part of a site plan for buildings that must comply  
931 with Montgomery County Executive Regulation 15-04AM or Montgomery  
932 County Executive Regulation 18-04.
- 933 (i) **Habitat Preservation and Restoration:** Up to 20 points for protection,  
934 restoration, or enhancement of natural habitats, onsite or within the same  
935 local watershed, which are in addition to requirements of the Forest  
936 Conservation Law or other county laws.

937 [59-C-15.88. Advanced dedication of right-of-way.

938 When sketch plans or site plans are approved, the Planning Board may allow an  
939 incentive density not to exceed 30% for a prior dedication of rights-of-way  
940 for roadways, sidewalks, or bikeways recommended in the applicable master  
941 or sector plan, if the County or the State is responsible for constructing the  
942 facility on the right-of-way.]

943 **59-C-15.9. Existing Approvals.**

- 944 (a) One or more lawfully existing buildings [or], structures [and the], or uses  
945 [therein which] ,that predate the [applicable sectional map  
946 amendment]application of the CR zone to the site[,] are conforming  
947 structures or uses, and may be continued, renovated, repaired, or  
948 reconstructed to the same size and configuration, or enlarged up to a total of  
949 10 percent above the total existing floor areas of all buildings and structures  
950 on site or 30,000 square feet, whichever is less, and such development does  
951 not require a site plan. [Enlargements] Expansions in excess of the  
952 limitations in this Subsection will require compliance with the full  
953 provisions of this Division. Uses located in a building or structure deemed  
954 conforming under the provisions of this Subsection may be converted to any  
955 permitted non-residential or residential use(s) up to the density limits for the  
956 land use established by the CRT, CRN, or CR zone.
- 957 (b) A project that received an approved development plan under Division 59-D-  
958 1 or schematic development plan under Division 59-H-2 before the  
959 [enactment] application of the CR zones to the site may proceed under the  
960 binding elements of the development plan and will thereafter be treated as a  
961 lawfully existing building, and may be renovated or reconstructed under  
962 Subsection (a) above. Such development plans or schematic development  
963 plans may be amended as allowed under Division 59-D-1 or 59-H-2 under  
964 the provisions of the previous zone; however, any incremental increase in  
965 the total floor area beyond that allowed by Subsection (a) above or any  
966 incremental increase in building height greater than 15 feet requires, with  
967 respect to the incremental increase only, full compliance with the provisions  
968 of this Division. Any failure to fully comply with the binding elements of

969 the development plan will require full compliance with the provisions of  
970 this Division.

971 (c) At the option of the owner, any portion of a project subject to an approved  
972 development plan or schematic development plan described in Subsection  
973 (b) above may be developed under this Division. The remainder of that  
974 project continues to be subject to the approved development plan or  
975 schematic development plan, under Subsections (a) and (b).

976 (d) A project which has had a preliminary or site plan approved before the  
977 applicable sectional map amendment may be built or altered at any time,  
978 subject to either the full provisions of the previous zone or this [division]  
979 Division, at the option of the owner. If built under the previous approval, it  
980 will be treated as a [lawfully existing building] conforming building,  
981 structure, or use and may be renovated or reconstructed under Subsection  
982 (a) above. If built with an incremental increase over the previous approval,  
983 only that incremental increase must comply with this Division.

984 (e) A project that has had a special exception approved before application of  
985 the CR zone to the site may continue as a lawfully existing use as long as it  
986 fully complies with the terms and conditions of its approval. Any failure to  
987 fully comply with the terms and conditions of the special exception  
988 approval will require full compliance with the provisions of this Division.  
989 If a special exception holder chooses to operate under this Division instead  
990 of under the special exception, written notice must be provided to the Board  
991 of Appeals that the special exception has been abandoned.

992 \* \* \*

993 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
994 Council adoption.

995

996 This is a correct copy of Council action.

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998

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999 Linda M. Lauer, Clerk of the Council

1000



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

OFFICE OF THE CHAIRMAN

March 11, 2011

The Honorable Valerie Ervin, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

Re: Planning Board Recommendation to County Council for  
Introduction of Zoning Text Amendment to make changes to the  
Commercial/Residential (CR) Zones.

Dear Ms. Ervin and Councilmembers:

Attached for your consideration is a zoning text amendment with three functions:

- (i) to create a new CRN (Neighborhood) zone;
- (ii) to create a new CRT (Town) zone; and
- (iii) to make a variety of mostly minor amendments to the CR zones, some related to the integration of the new CRN and CRT zones, and some representing improvements and clarifications resulting from experience with the CR zones since their adoption.

At our meeting on March 10, 2011, the Planning Board voted unanimously, 5-0, to recommend introduction of the attached zoning text amendment (ZTA). We believe that creating a family of CR zones will provide a valuable set of tools to promote vibrant, mixed-use development in diverse areas of the County, and that the changes to the existing CR zones will make the zones easier to administer while retaining the benefits that the Council recognized when it first approved the CR zones.

As you know, following PHED committee work sessions on the Kensington Sector Plan in March of 2010, Planning Board Staff was directed to evaluate the appropriateness of the CR zones for lower density areas with smaller properties, diverse ownership patterns, and detached-house residential neighborhoods in close proximity. The Planning Board and Planning Staff have also considered this question in the context of the Takoma/Langley Crossroads and Wheaton Sector Plans, each of which presents its own unique challenges.

To resolve these issues, Planning Board Staff discussed several models with stakeholders, including overlay zones, retention of existing zones, modifications to other commercial and mixed-use zones, or modifications to the CR zones. For numerous

reasons, however, these models did not provide adequate solutions. Overlay zones have generally not proved to be as effective as predicted, and a new overlay zone would be needed in each area where the CR zones would otherwise be considered. Existing zones lack the mixture of uses desired in many places. They also lack the protections provided by master plan conformance and site plan review requirements. Modifications to existing zones, such as MXTC or TMX, risked unintended consequences in Olney or Twinbrook, where these zones are already in place. Ultimately, the Planning Board and its staff concluded that the best approach would be to create two new CR zoning categories that retain much of the flexibility of the existing CR zones while lessening public benefit requirements for certain areas and ensuring compatibility with surrounding residential uses.

Specifically, we developed the CR Neighborhood (CRN) and CR Town (CRT) zones for areas where there are smaller properties, lower densities, and more challenging economic conditions. The existing CR zones were categorized as CR Metro (still called "CR" because the zone has been mapped as CR in White Flint and Gaithersburg). Early on in thinking about developing a "CR Lite" zone, it became clear that two zones would be necessary: one for areas where existing commercial zones are located next to single-family residential neighborhoods, and one for areas where requiring too many public benefits might impede redevelopment.

The Planning Board undertook a detailed review process in crafting the attached ZTA, including a very high level of participation by interested community members, attorneys, and business owners. We held eight work sessions on this ZTA, including one that was devoted entirely to public comment. We had the benefit of extensive, detailed written comments from participants a variety of viewpoints, several of whom took the time and trouble to prepare a detailed, point-by-point analysis of the proposed amendments. We also had the benefit of the considerable energy and talent of our own staff, who repeatedly considered the public comments and Board discussion and came up with new ideas for how to adjust the draft zoning categories in response.

The CR, CRT, and CRN zones have been carefully calibrated to address varied and sometimes competing goals. Uses, density and height limits, site plan thresholds, standard method densities, public benefit requirements, parking requirements, and development standards have all been crafted to ensure that public review of development applications is based on impacts to the community, and that opportunities for revitalization are appropriate to the context. A change to any one standard or threshold would have consequences for other aspects, all of which need to work together.

One of the challenges we faced as a deliberative body was the difficulty of satisfying diverse interests. The primary concern for some people who participated in developing the ZTA is preserving maximum flexibility for property owners and controlling the cost of public benefits, particularly for small properties. For other participants, the main goal is maximizing the value of public benefits and minimizing the risk that redevelopment might adversely affect the character of residential neighborhoods.

The Planning Board heard these views and many in between. And we expect the Council will hear similar concerns as it considers this ZTA. To assist the Council and its staff in understanding how the Planning Board reached the careful balancing of objectives represented in this ZTA, our staff has prepared a table that summarizes the many written comments we received and our staff's response. The table is arranged by ordinance section, so that one can readily check the comments and discussion on any given section while that section is being discussed. That table will be finalized in the next week or two to reflect some late-arriving comments, and will be provided to the Council and its staff shortly. We hope this will be a useful tool.

The following summary outlines the changes recommended to the zone to integrate the CRN and CRT zones. Generally, though, the changes to the zone allow incorporation of the new CR categories without changing the fundamental architecture of the CR zones or the base requirements, standards, and benefits. The summary also provides some background on the Planning Board's intent in recommending certain changes.

The sections of the CR zones remain the same:

- 15.1. Zones Established.
- 15.2. Descriptions and Objectives of the CR Zones.
- 15.3. Definitions Specific to the CR Zones.
- 15.4. Methods of Development and Approval Procedures.
- 15.5. Land Uses.
- 15.6. General Requirements.
- 15.7. Development Standards.
- 15.8. Special Regulations for the Optional Method of Development.
- 15.9. Existing Approvals.

**Changes to 15.1. Zones Established.**

- Introduction of the CRN and CRT zoning categories to Division 59-C-15.
- Density and height limits set for each CR category: CRN up to 1.5 FAR and 65 feet in height; CRT up to 4.0 FAR and 150 feet in height; and CR remains the same – up to 8.0 FAR and 300 feet in height. These ranges have allowed modeling of fine-tuned densities and heights with the appropriate uses for each category.
- Density averaging has only been changed to ensure it is clear that uses are regulated by the underlying zone.
- Applicability remains the same.

**Changes to 15.2. Descriptions and Objectives of the CR Zones.**

- Language was changed to focus the objectives and improve clarity. No substantive change is intended.

**Changes to 15.3. Definitions Specific to the CR Zones.**

- Three definitions were added.
- “Applicable Residential Zone” was added as a defined term for shorthand used throughout the CR zones to address compatibility at locations near residential uses.
- “Limits of Disturbance” was added to deal with public use space requirements on very large lots.
- “Tenant Footprint” was added to split general retail uses by size to better regulate neighborhood impact in the various CR zones.
- A change to “Transit Proximity” was made to clarify that a transit station or stop must at least be in the County’s Capital Improvement Program (“CIP”) to be considered “planned” and therefore qualify a nearby property owner for reduced parking and incentive density. This was a subject of considerable discussion, acknowledging the tension between encouraging development in areas where transit has been proposed because additional density will help justify construction of the transit, and recognizing that when transit has been recommended in a master plan but is not programmed in the CIP it is very uncertain. Therefore, the public benefit of focusing density near potential future transit is too intangible to justify granting incentive density on that basis. A majority of the Planning Board agreed that at a minimum, incentive density for transit proximity should require that the transit be far enough along to be part of the CIP. Two members argued that it should be enough to get incentive density that transit has been recommended in a master plan, because private property owners cannot control when transit infrastructure is actually built. The meaning of “planned” transit for these purposes was somewhat unclear in the original CR zone legislation, so clarification is called for, whether the Council agrees with the Planning Board majority or with the minority view. An alternative that was also considered, but ultimately not brought forward, was that a reduced incentive density may be appropriate for transit facilities that are within master plans, but not yet programmed in the CIP. Planning Board staff will be able to provide alternatives if the Council is interested in pursuing this or other options during its consideration of the ZTA.

**Changes to 15.4. Methods of Development and Approval Procedures.**

- Different standard method densities are set for the CRN, CRT, and CRN zones. Standard method in the CR zone remains 0.5 FAR, and increases in the CRT zone to allow properties in these areas more development potential without necessarily having to meet optional method requirements. Finally, the CRN zone, for which we do not propose to have any optional method, the standard method is set at 1.5 FAR.
- As before, any development above the standard method requires public benefits under Section 59-C-15.8.
- Site plan thresholds have been changed to add a new element: any development that proposes a use designated as “L” for “limited” in the use

table will require a site plan. The new concept of “limited” uses establishes a third use category in between “permitted” and “special exception” for uses that require particularly careful consideration when located near sensitive uses (those in single-family residential and agricultural zones). Uses are categorized as Limited when they have potential adverse effects that may require the kind of individualized mitigation that site plan review can provide: visual and noise buffering, setbacks, careful location of parking, etc.

- With this additional site plan trigger, site plan will be required in all CR Zones if a development proposes:
  - A Limited use;
  - A building greater than 10,000 square feet;
  - A building height above 40 feet; or
  - Ten or more dwelling units.

In addition, site plan will be required for all optional method development, whether in the CR or CRT zones.

- Optional method changes have been made to clarify, streamline, and focus the contents, procedures, and findings related to sketch plans. No substantive changes are intended.
- The greatest amount of debate was over the implications of sketch plan changes under Section 59-C-15.43(d). In the end, a majority of Board members felt that language should be inserted to clarify the interpretation of the existing language on which the Board relied in its recent approvals of the first three sketch plans that have been submitted under the CR zones: that the Board has the authority to require changes from the concept submitted at sketch plan when the details of a site plan are reviewed. The Board felt strongly that if, as one member suggested, changes could be made only with the agreement of the applicant, thereby effectively binding the Planning Board to the key elements of a sketch plan, that would require a sketch plan to be more detailed than the zone intends it should be, viz., a concept plan. This is most clearly indicated in the language of the CR zone that describes the basis for a sketch plan approval: under Section 59-C-15.43(c), the Planning Board is directed to approve a sketch plan if it finds that it is “appropriate in concept and appropriate for further detailed review at site plan.”

#### **Changes to 15.5. Land Uses.**

- Permitted land uses have not changed for the CR zones.
- For the CRN zones, which will often be adjacent to single-family homes, a number of precedents were analyzed, numerous citizen meetings were held, and pages of written testimony were reviewed. The ZTA recommends a list of Permitted, Limited, and Special Exception uses which, in combination with the site plan requirement for Limited uses, will allow for a mix of neighborhood-serving commercial and residential uses while maintaining compatibility with adjacent homes.

- The CRT zones, with greater applicability to larger areas suitable for medium density development, allow more uses than the CRN zones, but less than the CR zones.
- Limited uses are defined by proximity to residential uses, and particular language regarding compatibility was crafted to guide site plan review.

**Changes to 15.6. General Requirements.**

- Master plan and design guideline consistency are still required for all site plans. The ZTA recommends adding a phrase identical to the subdivision regulations, to allow the Planning Board to find that events have changed to render the master plan recommendations no longer appropriate. We believe that this will provide valuable flexibility, with the assurance that as the chief architect of our master plans, the Planning Board understands the importance of master plan integrity and will, as it has historically in the subdivision context, make use of this language sparingly. In fact, the use of this language during subdivision review has been applied only a few times, according to the collective memory of staff that has been here for the past 20-plus years.
- Priority retail streets and streetscape requirements have been removed because they are both aspects of master plans or design guidelines and, therefore, redundant with the master plan consistency requirement.
- Bicycle parking and shower facility requirements have been clarified in a more detailed table.
- Parking requirements have been modified to incorporate the CRN and CRT zones; parking ratios for the CR zones remain unchanged, the ratios for CRT and CRN are increased and, in most cases, maximums for these categories have been removed.
- Municipal parking facilities have been added as accepted parking spaces.
- Drive-throughs are required to have a site plan review.
- A waiver provision based on the existing language in Article 59-E has been added.
- Other changes have been made for clarity and simplicity.

**Changes to 15.7. Development Standards.**

- Density and height remain but have been consolidated.
- Setbacks have only been changed to step the angular plane setback down with the CRT and CRN zones to 45' and 35', respectively. Thus, the roof slope on a building will have to begin at a lower height in the least dense CRN zone, increasing from CRN to CRT to CR.
- Public use space has been modified to ensure a more appropriate amount of open space based on lot size. Thus, for standard method development, small lots have no requirement, medium lots have a 10% requirement, and large lots have a 10% requirement based on the limits of disturbance for each site plan rather than for the entire tract at once. Optional method development remains unchanged.

- Residential amenity space has been modified to address changes in workforce housing laws.

**Changes to 15.8. Special Regulations for the Optional Method of Development.**

- Sections have been organized under headings for clarity.
- Some public benefits were reorganized into different categories to reflect their impact and experience with sketch plan reviews.
- Significantly, to incorporate the CRT zones, it was much easier to change the percent system to a point system. This has no impact on the CR zones – 100% simply converts to 100 points. The CRT zones are proposed to require public benefits worth 50 points, reflecting their intended use in areas with less density and more challenging economic conditions.
- BLTs are still required in the CR zones for the first 5% of incentive density; no BLTs are required for the CRT or CRN zones.
- The current CR Zones permit an application to obtain no more than 30% of its incentive density from any one public benefit category. To simplify this system while still ensuring a diversity of public benefits, the ZTA would require each applicant to propose public benefits from at least 4 of the 6 categories. This is a much easier system to calculate and implement for both applicants and Planning Board staff.
- Generally, redundancies were removed and language was modified for clarity and focus.
- Significantly, the “major master plan facility” category has been modified to allow the Planning Board to grant incentive density for land, construction or financing of a major facility that has not been recommended in a master plan, but that the Board finds is similar to and will provide at least as valuable a benefit as the type of facility that master plans typically recommend. Some community members strongly objected to this provision, arguing that incentive density should be reserved for master-planned public facilities. Nonetheless, the entire Planning Board considered it important to allow for flexibility, given the long shelf lives of many of our master plans and the desirability of being able to provide public facilities and infrastructure improvements that benefit the community as a whole, beyond what is required during a regular review and approval.
- Several public benefits were added that are specifically tailored to smaller towns with lower densities, smaller lots and fragmented ownership patterns.

**Changes to 15.9. Existing Approvals**

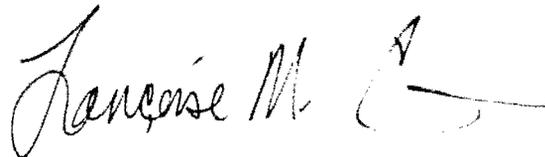
- Section (a) of the existing approvals was clarified to ensure that uses are grandfathered, as well as structures; further, buildings and structures that are deemed conforming may convert to any permitted use up to the density limits established by the zone.

The Honorable Valerie Ervin  
March 11, 2011  
Page 8 of 8

- Clarifications were added for development plans and special exception approvals that were granted prior to application of the CR zones to the subject sites.
- The Planning Board debated at some length a proposal from a property owner that any applicant with an approved sketch plan be permitted to proceed with the entire development under the current CR zones. A four-member majority of the Board rejected the proposal on the basis that the administrative costs of tracking the three existing sketch plan approvals through a separate set of rules would be too burdensome, given the minor changes that are proposed to the basic structure of the CR zones, which will ensure that all existing sketch plan approvals will remain in conformance with the zone if these amendments are passed. One Planning Board member argued that applicants should be able to rely on the law that was in effect when they submitted their sketch plan, but the majority felt strongly that sketch plan is too early in the process to warrant grandfathering, particularly in view of the minor impacts that the proposed changes will have on existing sketch plans. Finally, there is no precedent in, for example, the CBD zones for grandfathering approved project plans when text amendments are applied to the CBD zone between project plan approval and site plan approval. The flexibility of the zone and the ability to make modifications at site plan ensure adequate predictability for applicants and staff.

We look forward to assisting the Council in its deliberations on the enclosed ZTA.

Sincerely,



Françoise M. Carrier  
Chair

Enclosures

cc: Montgomery County Planning Board  
Rollin Stanley



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

OFFICE OF THE CHAIRMAN

May 13, 2011

The Honorable Valerie Ervin, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

Re: Planning Board Recommendation to County Council on Zoning  
Text Amendment 11-01.

Dear Ms. Ervin and Councilmembers:

Attached for your consideration is the Planning Board's recommendation for Zoning Text Amendment 11-01, "ZTA 11-01", which concerns the establishment of the Commercial/Residential Neighborhood (CRN) and Commercial/Residential Town (CRT) Zones and general amendments to the Commercial/Residential (CR) Zones.

The Planning Board recommends approval of ZTA 11-01 with modifications to three sections:

- 59-C-15.3. Definitions Specific to the CR Zones, regarding the definition of "Transit Proximity";
- 59-C-15.43. Sketch Plan, regarding the modification of binding elements during site plan review; and
- 59-C-15.631. Parking Ratios, regarding non-residential parking ratios in the CRN and CRT Zones.

These changes are based on testimony received and presented to the Board and discussions with stakeholders after the Board transmitted the ZTA to the Council for introduction. It is the Board's intent that these modifications refine ZTA 11-01 in concert with the original intentions of the County Council when it adopted the CR Zones, with applicants currently working through the review process under the CR Zones, and with the recommendations of Municipalities.

The suggested modifications are detailed below with an explanation of each change.

1. *Transit Proximity*

In Section 59-C-15.3, the Planning Board recommends removing the last sentence, which the Planning Board proposed to add as part of the original recommended amendments to the CR zones. Testimony provided to us after we transmitted the recommended amendments to the Council has shown that the change we proposed would be counter to the County Council's intent in crafting the original CR zone, based on records of specific discussions regarding transit proximity for properties on or near master-planned transit lines such as the CCT or Purple Line.

The Board was not unanimous, however, in its support for this change. A very strong argument can be made that density should not be permitted to be built prior to construction of a transit network that can alleviate traffic problems associated with new development. While this can be a problem, a majority of the Board members felt that it was important to allow projects to proceed based on master-planned facilities to encourage the density that justifies actual construction of transit. In other words, if a transit system is in a master plan, it is because it is intended to be built. And if densities are assigned, it is because we want development at those locations (and the increased revenue provided by increased density can only increase the capacity to build such transit systems). Further, it was noted that the "chicken-and-egg" dilemma can be solved, in part, by requiring development to be phased, and possibly limiting the phasing of development associated with any incentive density granted for transit proximity until the transit system is actually in place. This strategy will be outlined in the Incentive Density Guidelines and assessed on a case-by-case basis.

We also recommend adding the term "master-planned" to clarify what constitutes a "planned" transit station or stop.

The modified language would read:

**Transit proximity:** Transit proximity is categorized in two levels: 1. proximity to an existing or master-planned Metrorail Station; 2. proximity to an existing or master-planned station or stop along a rail or bus line with a dedicated, fixed path. All distances for transit proximity are measured from the nearest transit station entrance or bus stop. [~~To qualify as a planned station or stop, the station or stop must have funds appropriated in the relevant Capital Improvement Program.~~]

2. *Binding Elements*

Section 59-C-15.43 was the subject of considerable debate because of three recently approved sketch plans. Because of this ongoing debate, Council Staff published the introduced text of the ZTA with the existing CR Zone language

rather than the language in the Planning Board's original transmittal. This was done to allow further discussion and a revised Planning Board recommendation before the Council hearing on this ZTA.

The Planning Board recommends the following change, which is intended to clarify the position of the County Council based on the approved Council Opinion and input from stakeholders present during the original CR Zones adoption. These changes would ensure a reasonable amount of certainty, flexibility, and public notification. Moreover, the Board believes these changes:

- Clarify the Planning Board's authority;
- Define rules for changes requested by various parties; and
- Reference specific standards to establish findings.

To fulfill these objectives, Subsection (d) would be modified to read:

- (d) During site plan review, the Planning Board may approve ~~[[ modifications to the binding elements or conditions of an approved sketch plan.~~
- ~~(1) — If changes to a sketch plan are requested by the applicant, notice of the site plan application must identify those changes requested. The applicant has the burden of persuading the Planning Board that such changes should be approved.~~
- ~~(2) — If changes are recommended after the application is made, notice of the site plan hearing must identify changes requested.~~
- ~~(3) — In acting to approve a sketch plan modification as part of site plan review, the Planning Board must make the findings required in Section 59-C-15.42 (c) in addition to those required by Section 59-D-3.]]~~

amendments to the binding elements of an approved sketch plan.

- (1) Amendments to the binding elements may be approved if such amendments are:
- (A) requested by the applicant;
- (B) recommended by the Planning Board staff and agreed to by the applicant; or
- (C) made by the Planning Board, based on a staff recommendation or on its own initiative, if the Board finds that a change in the relevant facts and circumstances since sketch plan approval demonstrates that the binding element either is not consistent with the applicable master or sector plan or does not meet the requirements of the zone.
- (2) Notice of proposed amendments to the binding elements must be identified in the site plan application if requested by the applicant or in the final notice of the site plan hearing if recommended by Planning Board staff and agreed to by the applicant.

(3) For any amendments to the binding elements, the Planning Board must make the applicable findings under Section 59-D-43(c) in addition to the findings necessary to approve a site plan under Section 59-D-3.

3. *Parking Ratios for the CRT & CRN Zones*

Additional testimony was received regarding the parking ratios for the CRT and CRN Zones, and Planning Board Staff presented further analysis of the recommended requirements for non-residential uses. The Town of Kensington, in particular, raised the concern that parking requirements are too low in non-metro station areas. In order to address this concern, the Planning Board recommends raising certain non-residential parking ratios. Further refinement can be done through selection of the appropriate zones, with their differing parking requirements, during the mapping process.

Based on a Staff analysis of the proposed numbers in light of the recent Montgomery County Parking Study, existing parking ratios, and usage numbers, the Planning Board recommends the table below, taken from Section 19-C-15.631, be modified to increase the minimum parking requirements in the CRT and CRN Zones:

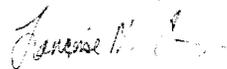
Use	CRN		CRT		CR			
	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
<b>(a) Residential</b>								
Maximum:	None	None	59-E	None	59-E	59-E	59-E	None
Minimum:	0.8	1.0	0.7	0.8	0.6	0.7	0.8	0.9
<b>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</b>								
Maximum:	<del>[[59-E]]</del> None	None	<del>[[59-E]]</del> None	None	59-E	59-E	59-E	None
Minimum:	<del>[[0.6]]</del>	0.8	<del>0.4</del>	0.6	4 per 1,000 square feet	4 per 1,000 square feet	4 per 1,000 square feet	<del>0.8]]</del>
4 per 1,000 square feet								
<b>(c) All other non-residential uses</b>								
Maximum:	59-E	None	59-E	None	59-E	59-E	59-E	None
Minimum:	<del>[[0.6]]</del> 0.8	<del>[[0.8]]</del> 1.0	<del>[[0.4]]</del> 0.6	<del>[[0.6]]</del> 0.8	0.2	0.4	0.6	0.8

Several other issues were raised and requests for modifications were made. The Planning Board is not recommending any other changes to ZTA 11-01, but a brief summary of these items is provided to assist the Council.

- Retain BLT requirement for the CRN and CRT Zones for 5% of all density above the standard method.
  - Based on the initial recommendation of the Planning Board to make all BLT purchases optional and the PHED Committee's direction to remove the BLT requirement from lower-density areas such as Kensington, the Planning Board does not recommend making this change.
- Allow density averaging only through a sketch plan application.
  - The option to request density averaging at site plan should be permitted because all development in the CRN Zones and some development in the CRT Zones will go through site plan review, but not sketch plan review.
  - It is understood that a minor change in the language of Section 59-C-15.122(a) will be necessary to clarify the process for the various zones.
- Allow preliminary plans to be filed prior to sketch plan approval.
  - The Planning Board believes that staff resources should not be spent on review of an application that is dependent on the outcome of an undetermined ruling.
  - While the time period may be longer due to consecutive filing requirements, the need for certainty in the sketch plan decision is important for any review of a preliminary plan.
- Reduce bicycle parking requirements for multi-family buildings with less than 200 units.
  - Because many areas with smaller multi-family buildings will not be located near Metro Stations, mode-share goals will be harder to reach and bicycle travel will be a key strategy to achieve these goals.
  - In cases where site constraints make this requirement truly onerous, a waiver can be pursued under the existing language of the ordinance.
- Stipulate maximum points allowed for each public benefit.
  - The Planning Board will modify the Incentive Density Guidelines in line with any changes approved by the Council and can address this issue through this process.
  - Alternatively, Planning Board Staff can provide language to address this issue through the ordinance if the Council prefers to take that approach.

A full accounting of the testimony received over the course of drafting this ZTA has been posted on the Planning Department's website and can be provided. We look forward to assisting the Council in its deliberations on the enclosed ZTA.

Sincerely,



Françoise M. Carrier  
Chair

cc: Planning Board  
Rollin Stanley