

MEMORANDUM

March 22, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Legislative Attorney
SUBJECT: Zoning Text Amendment 12-02, Commercial Zones – Combination Retail Stores

Zoning Text Amendment (ZTA) 12-02, sponsored by Councilmembers Ervin, Navarro, Elrich, and Riemer, was introduced on January 31, 2012.

Purpose

Combination retail stores are currently more regulated in surrounding jurisdictions than in Montgomery County.¹ ZTA 12-02 would align the standards for combination retail stores with surrounding jurisdictions. ZTA 12-01 applies to all large retail stores in a limited area (stores with at least 50,000 square feet of floor area at the ground level in the C-4 zone, located within ½ mile of a metro station). Some large retail stores may be combination retail stories. ZTA 12-02 would allow the Council to have a comprehensive approach for the standards for combination retail stores.

Actions by surrounding jurisdictions

Several nearby jurisdictions regulate large retail establishments, commonly known as big box stores, in a variety of ways that are different from other commercial uses. The most common regulation is to require the approval of a special exception. Big box stores are distinguished from other uses because they produce more vehicle trips, more truck trips, and more trips from further distances than other uses.² Their large floor plates can create uninviting places for pedestrians because they generally form barriers to extending the urban character of some communities. Communities regulate large retail stores on the basis of their gross floor areas or their building footprints. Most regulations also govern the density allowed in the zone.

¹ The staff report for Arlington County's October 2011 amendment for large format sales is attached to this memorandum.

² The record of ZTA 04-04 includes traffic reports from the Institute of Traffic Engineers and the studies of other jurisdictions that supported this claim.

The following table of regulations in nearby jurisdictions lists the most restrictive regulations first and the least restrictive last.

| | |
|-------------------------------|---|
| Alexandria | Any retail establishment with 20,000 square feet (SF) or more GFA must be approved by special exception. |
| Anne Arundel County | Retail establishments in some zones are limited to 25,000 SF of gross floor area (GFA); in other zones, the store's gross floor area is only limited by the maximum floor area ratio. |
| Arlington County | Any retail establishment with 50,000 SF or more of floor area on any 1 level, or that requires 200 or more parking spaces, must be approved by special exception. |
| City of Rockville | No retail establishment may be more than 65,000 SF of GFA on any 1 level. There is no absolute limit on the size of a retail establishment. |
| Loudoun County | Any retail establishment with 75,000 SF or more GFA must be approved by special exception. |
| Fairfax County | Certain retail establishments with 80,000 SF or more GFA must be approved by special exception. |
| Prince George's County | Combination retail stores (department, grocery, and drugstores) with 125,000 SF or more GFA must be approved by special exception. |

The sponsors of ZTA 12-02 believe that, if approved, it would put the County's regulations more in line with that of surrounding jurisdictions. ZTA 12-02 would retain the County's respect for approved master plans and would require space for small business if small businesses are demolished.

Changes under ZTA 12-02

ZTA 12-02 would affect all new projects or additions to projects located in commercial and mixed-use zones, except on regional mall sites. Club membership stores would no longer be exempt from the definition of a combination retail store. The Zoning Ordinance would currently allow department stores with full-line groceries, a pharmacy, and a department or retail store smaller than 120,000 square feet in all zones where any one of those individual uses is allowed. ZTA 12-02 would prohibit combination retail stores larger than 50,000 square feet in all zones except the C-2, C-3, and C-4 zones and at regional malls.³ Combination retail stores that require special exception approval would have additional standards. ZTA 12-02 would amend the grandfathering provision to allow existing stores that may come within the scope of ZTA 12-02 to continue as conforming uses at their current sizes.⁴

³ The National Football League standard dimensions for a regulation field are 360 feet by 160 feet. The area of a professional football field is 57,600 square feet.

⁴ The prohibition on expansions without a special exception is identical to the current grandfathering provision.

Approval method

In the C-2, C-3, and C-4 zones, combination retail stores would be permitted as of right within one-half mile from a Metro station. The use would be allowed in these zones as a special exception if the proposed site is located more than 1/2 mile from a Metro station.⁵

Development standards

ZTA 12-02 would not allow the light from any source on a site with a combination retail store to exceed 0.1 footcandle on any neighboring residentially zoned property.⁶

The proposed combination retail store must be consistent with land use recommendations and the neighborhood vision in the applicable master or sector plan.⁷

If the proposed combination retail store would require the demolition of existing retail space, then 20 percent of the total gross floor area of the proposed project must be used for businesses with less than 5,000 square feet of tenant gross floor area each. The tenant space would have to be located at street level, and the façade and customer entrance must front a public or private street. A secondary entrance accessing the primary retail use would be prohibited.

Public Hearing

The Council held a public hearing concerning ZTA 12-02 on March 20, 2012 (postponed from March 13, 2012). The Planning Board and Planning Staff supported ZTA 12-02 with clarifications and a revision for combination retail stores that would be allowed as of right. In the Planning Board's opinion, the design criteria applied by ZTA 12-01 in the C-4 zone should also apply in the C-2 and C-4 zones to the extent that the use is permitted as of right. The Montgomery Civic Federation supported ZTA 12-02 to the extent that it required a special exception for large combination retail stores but the Federation did not recommend allowing combination retail stores as of right in any zone. With the exception of testimony from UFCW Local 400, all of the other 4 speakers were opposed to the approval of ZTA 12-02. In the opinion of the speakers, the ZTA would harm existing and proposed businesses by increasing the burdens on new retail stores.

⁵ The special exception process is designed to produce development that is compatible with neighboring property. The process can control hours of operation, setbacks, screening, use limits, pedestrian and bicycle circulation, the locations of passenger vehicle access and truck docks, lighting, and noise. The special exception process allows neighbor and community input with a right to cross examine witnesses. An application can be denied when the attributes of a particular location make the burdens of the use a detriment to surrounding properties. There is a presumption that the special exception use is compatible with other land uses in the zone.

⁶ (59-G- 1.23(h)).

There is a general requirement to control lighting for special exceptions in residential zones:

Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

The current control does not regulate lighting from a commercial zone. Testimony suggested that lighting should be regulated only if the use in a residential zone was in fact residential. The current provision for lighting in a residential zone is not dependent upon the use of the property.

⁷ The Planning Board noted that this master plan conformance provision duplicates a requirement for getting a special exception.

Legislative History – Regulating Combination Retail stores

ZTA 04-04 established the current regulations concerning combination retail stores. Its approval was controversial.⁸ When introduced, ZTA 04-04 included the following definition of a combination retail store:

A department or retail store that exceeds 120,000 square feet and that devotes 10 percent or more of its gross floor area or combination of its gross floor area to a food and beverage store, a drug store, or a grocery store. A club or membership store that charges a membership or access fee and sells primarily bulk merchandise is not a combination retail store.

The record indicates that a grocery store alone did not constitute a combination retail store. The definition started with a “department or retail store” plus other types of goods. The record identified Walmart, Target, and Costco as stores that would satisfy the criteria of a department store with a full line grocery section. Where the term “superstore” appeared in the record, the list of stores also included Home Depot, Lowe’s, Kmart, and Kohl’s. Where the term big box retailer was used, Bed, Bath & Beyond and Toys R Us were added to the list. In a February 14, 2003 memorandum to then Councilmember Silverman, Council staff member Ralph Wilson noted that there was no intent to affect large grocery stores (Giant and Safeway were cited) who sell groceries and some general merchandise.⁹

Issues

Should ZTA 12-02 be approved?

Staff would place the following development approval process in order of business friendly:

- (1) Approval as of right (no site plan approval)
- (2) Approval as of right with site plan approval
- (3) Approval by special exception
- (4) Approval by special exception with site plan approval¹⁰

ZTA 12-02 takes two approaches; depending upon a site’s location relative to a Metro station, a combination retail use is sometimes permitted and sometimes permitted by special exception. It would be easier for applicants if the Council takes the approach of ZTA 12-01 and allows combination retail store as a permitted use with design conditions. Although ZTA 12-02 may be seen as anti-business, it would be a net positive for community engagement and a thorough vetting of a development proposal.

If you believe increased regulation over combination retail stores is warranted, then ZTA 12-02 would certainly do that; it would prohibit combination retail stores between 50,000 and 120,000 square feet in all zones except C-2, C-3, and C-4.

⁸ The ZTA was introduced in February but was not approved until November. The PHED Committee recommended a different ZTA that would have affected all free-standing discount stores. The Council was not persuaded that the broader definition was in the public interest. The recommendation to change the definition of combination retail store to use the term “full line grocery store and a pharmacy” was made to Council staff in June 2004 by Harry Lerch.

⁹ The Department of Permitting Services (DPS) and the County Attorney’s office has consistently interpreted the current definition of combination retail store as excluding grocery stores. Neither DPS nor the County Attorney have expressed any problem with the terms “full line grocery store” or “retail use”. The recommendation made in testimony to explicitly exclude grocery stores and define full line grocery store or retail store is unnecessary, in staff’s opinion.

¹⁰ Only hotel special exceptions always require site plan approval. In all other instances, site plan can be required by the Board of Appeals on a case-by-case basis.

ZTA 04-04 distinguished a combination retail store from other land uses because the use produced more traffic per square foot of floor area than other retail uses and because other jurisdictions were regulating large retail uses. Neither of those factors is in dispute. What is in dispute is whether ZTA 12-02 strikes the right balance between business friendliness and citizen participation. Each Councilmember can legitimately answer that question differently.

If the Committee believes that ZTA 12-02 should not be approved, there is no reason to review the remainder of this memorandum.

What is the appropriate approval process?

Some large retail stores may be combination retail stores and may be approved as of right under ZTA 12-01 in the C-4 zone.¹¹ ZTA 12-02 would apply to combination retail stores in the C-2, C-3, and C-4 zones. When the site is more than ½ mile from a Metro Station entrance, then ZTA 12-02 would require a special exception. Within ½ mile of a Metro Station, a combination retail store would be permitted. Although some large combination retail uses would be regulated by ZTA 12-01, properties within ½ mile of a Metro Station in the C-2 zone would be unregulated.¹²

The Civic Federation recommended requiring all combination retail stores to be approved by special exception. If the Committee accepted that advice for ZTA 12-01, then ZTA 12-02 should be similarly amended.¹³

The Planning Board recommended the following:

In the C-4 zone, any combination retail store proposed within one-half mile of a Metro station would be permitted by-right, but would be subject to the new regulations proposed in ZTA 12-01. As introduced, ZTA 12-02 also permits a combination retail store by-right in the C-2 and C-3 zones when located within one-half mile of a Metro station, but does not subject a project in these zones to the regulations for large retail uses near metro stations as proposed in ZTA 12-01 for the C-4 zone. The Board is not clear that this is the intent of the sponsor, and recommends that if combination retail stores are permitted by-right in the C-2 and C-3 zones, they should be subject to the same regulations proposed in ZTA 12-01 for the C-4 zone.

As staff indicate in the memorandum concerning ZTA 12-01, the special exception process allows a great deal of public participation, the possibility of a denial, and elements that require a public process to amend.¹⁴ Allowing the use without a special exception is a more expeditious, business-friendly process. Special exceptions are generally reserved for uses where all the aspects of compatibility are better determined on a case-by-case basis rather than by a set of rules. From the standpoint of an applicant, a special exception requirement adds time and cost to the development process.

When the Council is satisfied that issues of compatibility can be satisfied by quantitative standards, then allowing a use as of right is appropriate. When qualitative standards are appropriate, special exception is the

¹¹ **Combination retail store:** A department or retail store that exceeds 120,000 square feet and that includes a pharmacy and a full line grocery store. A club or membership store that charges a membership or access fee and sells primarily bulk merchandise is not a combination retail store.

¹² There are no properties currently in the C-3 zone within ½ mile of a Metro Station.

¹³ If the Council believes that combination retail as redefined under ZTA 12-02 should be allowed as a special exception near a Metro station, then the special exception provision for screening by a fence or a natural terrain should be modified to allow for a more urban context.

¹⁴ Denying a special exception generally requires a finding of adverse impacts on adjoining properties that are unique and different than that inherently associated with the use, regardless of its location in the zone.

better process. It allows the Council to require specific quantifiable standards. **Staff recommends allowing large retail uses as of right (without regard to metro proximity) with standards detailed in ZTA 12-01. Staff recommends amending ZTA 12-02 even if it is only to apply those standards in the C-2 and C-3 zones for sites located within ½ mile of a Metro station entrance, as recommended by the Planning Board.**

Is the provision for master plan conformance redundant because of the basic requirements for the approval of a special exception?

The general requirement for special exception approvals to be consistent with master plans is as follows:

59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use...
 - (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The provision in ZTA 12-02 is as follows:

The proposed combination retail store must be consistent with land use recommendations and the neighborhood vision in the applicable master plan or sector plan.

All master and sector plans are adopted as amendments to the general plan. Although ZTA 12-02 calls for specific consideration of the neighborhood vision, in other respects it is redundant. **Staff recommends deleting the master plan conformance provision in ZTA 12-02.**

What should be the trigger for requiring small retail space? Should the ZTA require that small space be used? How should the amount of required small space be calculated?

ZTA 12-02 would require the provision of space for small businesses if retail space was demolished to make way for a new combination retail store.

The mathematics of finding the required amount of space for small business in ZTA 12-02 is different from the standard in ZTA 12-01 (20 percent of the space designated for the large retail user). In addition to being different, some people may interpret the proposed text as circular.¹⁵

The provision for small retail uses indicates that the area must be "used" for businesses with less than 5,000 square feet each. This may have the unintended consequence of making vacant space a zoning violation. Sometimes the Zoning Ordinance provides only for the provision of **space** for small businesses.

One person who testified found the reference to tenant space confusing.

¹⁵ If 20,000 square feet is added to a 100,000 square foot retail project, then the total floor area would be 120,000 square feet. If the total project is 120,000, then 20 percent of that is 22,000 square feet. If the total retail square footage is 122,000....

The Planning Board recommended the following changes:

If the proposed [[combined]] combination retail store would require the demolition of at least one existing retail tenant space of less than 5,000 square feet, then [[20 percent of the total gross floor area of the proposed project must be used for businesses]] additional floor area equal to at least 20% of the footprint designed for the combination retail store must be provided as street level retail spaces with less than 5,000 square feet of tenant gross floor area each. These [[tenant]] spaces must be located at street level, and the façade and customer entrance must front a public or private street. A secondary entrance accessing the primary retail use is prohibited.

Staff agrees with the changes recommended by the Planning Board.

| <u>This Packet Contains</u> | <u>© number</u> |
|--------------------------------------|-----------------|
| Planning Board recommended ZTA 12-02 | 1 – 6 |
| Planning Board recommendation | 7 – 9 |
| Planning Staff recommendation | 10 – 14 |
| Arlington County Memorandum | 15 – 29 |

Planning Board Modifications on March 8, 2012

Zoning Text Amendment No: 12-02
Concerning: Commercial Zones -
Combination Retail Stores
Draft No. & Date: 1 – 1/23/12
Introduced: January 31, 2012
Public Hearing:
Adopted:
Effective:
Ordinance No:

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

By: Councilmembers Ervin, Navarro, Elrich, and Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amending defining the term “combination retail store”;
- amending the required findings for a combination retail use special exception; and
- generally amending the provisions for a combination retail store.

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

| | |
|-------------------|---|
| DIVISION 59-A-2 | “DEFINITIONS AND INTERPRETATION” |
| Section 59-A-2.1 | “Definitions” |
| DIVISION 59-C-4 | “COMMERCIAL ZONES” |
| Section 59-C-4.2 | “Land uses” |
| DIVISION 59-G-2 | “SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS” |
| Section 59-C-2.15 | “Combination Retail Store” |

*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:

Sec. 1. Division 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1 Definitions.

* * *

Combination retail store: A department or retail store that exceeds [120,000] 50,000 square feet and that includes a pharmacy and a full line grocery store. [A club or membership store that charges a membership or access fee and sells primarily bulk merchandise is not a combination retail store.]

* * *

Sec. 2. Division 59-C-4 is amended as follows:

DIVISION 59-C-4. COMMERCIAL ZONES.

* * *

59-C-4.2. Land uses.

* * *

| | C-T | O-M | C-O | C-P | C -1 | C-2 | C-3 | C-4 | C-5 | C-6 | H-M | Country Inn |
|---|-----|-----|-----|-----|---------|--------------------|--------------------|--------------|-----|-----|-----|----------------|
| (d) Commercial: | | | | | | | | | | | | |
| * * * | | | | | | | | | | | | |
| Combination retail store. ⁶¹ | | | | | | <u>IP/1</u> SE* | <u>IP/1</u> SE* | <u>P/SE*</u> | | | | |

* * *

⁶¹ Any combination retail store in existence before [November 29, 2004] April 1, 2012 is a conforming use and may continue [in accordance with] under the standards in effect before November 29, 2004. Any reconstruction or enlargement of a combination retail store in existence before [November 29, 2004] April 1, 2012 must comply with the standards in effect after [November 29, 2004] April 1, 2012.

22 * Except in a regional mall as defined in Section 59-A-2.1, a combination retail
23 store that is located further than one half mile from a metro station must be
24 approved as a special exception under Section 59-G-2.15.

25 * * *

26 **Sec. 2. DIVISION 59-G-2 is amended as follows:**

27 DIVISION 59-G-2. SPECIAL EXEPTIONS – STANDARDS AND
28 REQUIREMENTS.

29 * * *

30 **USE**

SECTION

31 * * *

32 **59-G-2.15. Combination Retail Store.**

33 A special exception for a combination retail store may be granted, subject to the
34 following requirements:

35 (a) The building must be designed in a way that reduces the [buildings]
36 building's massive scale and contributes to its visual interest. Long building
37 walls should be [broken-up] broken up with projections or recessions or
38 other effective treatments that improve building design.

39 (b) Parking areas must provide safe, convenient, and efficient access, and must
40 be landscaped to define vehicular drives and pedestrian areas.

41 (c) The site must have direct vehicular access to an existing arterial or major
42 highway, and the streets and roads adjoining the site must be adequate to
43 accommodate the increased traffic generated. The applicant must provide a
44 traffic impact study to demonstrate that acceptable peak hour levels of
45 service will result after taking into account existing and programmed
46 roads[,] and any improvements to be provided by the applicant.

47 (d) The site must be screened from any abutting residentially zoned property by
48 the natural terrain or by a solid wall or fence, not less than five feet in

49 height, together with a three-foot wide planting strip on the outside of the
50 wall or fence, planted in shrubs and evergreens three feet high at the time of
51 the original planting.

52 (e) Product displays, parked vehicles, and other obstructions that reduce
53 visibility at intersections or at entrances and exits to and from the site are not
54 permitted.

55 (f) Lighting must not reflect, or cause glare, on any property located in a
56 residential zone. [[Any light source on the site may not increase the light on
57 a residentially zoned property by more than .1 footcandle.]] Lighting levels
58 along any lot line that abuts residentially zoned property must not exceed 0.1
59 foot-candles.

60 (g) [[The proposed combined retail store must be consistent with land use
61 recommendations and the neighborhood vision in the applicable master plan
62 or sector plan.]]

63 [[h]]If the proposed [[combined]] combination retail store would require the
64 demolition of at least one existing retail tenant space of less than 5,000
65 square feet, then [[20 percent of the total gross floor area of the proposed
66 project must be used for businesses]] additional floor area equal to at least
67 20% of the footprint designed for the combination retail store must be
68 provided as street level retail spaces with less than 5,000 square feet of
69 tenant gross floor area each. These [[tenant]] spaces must be located at
70 street level, and the façade and customer entrance must front a public or
71 private street. A secondary entrance accessing the primary retail use is
72 prohibited.

73 * * *

74 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
75 date of Council adoption.

76

77 This is a correct copy of Council action.

78

79 _____

80 Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

March 19, 2012

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment Nos. 12-01 & 12-02

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment Nos. 12-01 & 12-02 at our regular meeting on March 8, 2012. By a vote of 4:1, the Planning Board recommends approval of both text amendments as modified by the Board to make additional plain language and technical clarifications. The dissenting vote was by Commissioner Dreyfuss, who opined that special exception approval is not necessary to permit a combination retail store (ZTA 12-02) in a commercial zone. In his view, the overall intent to address potential adverse impacts caused by retail uses with very large footprints can be addressed through the site plan review process, but without the numerous specific requirements proposed in ZTA 12-01 for large retail uses near metro stations.

The Board also recommends additional modifications to ZTA 12-02 to: (1) clarify whether combination retail uses in the C-2 and C-3 zones would be allowed within one-half mile of a Metro station and (2) eliminate the proposed specific special exception requirement establishing consistency of the use with the area master or sector plan. The proposed master plan consistency requirement is redundant because there is already a general special exception condition with the same requirement. The Planning Board further recommends that the specific special exception conditions of ZTA 12-02 be amended to clarify when small retail tenant space would be required as part of a project. The Board recommends that small retail space be required as part of a

combination retail store special exception only when small retail space is being eliminated to establish the large retail use.

The text amendment language as modified by the Board is included as an attachment to this memorandum, separate from the technical staff report.

ZTA 12-01 was introduced to address potential adverse impacts caused by retail uses with very large footprints on C-4 zoned properties located *within one-half mile of a Metro station* by allowing such uses only as part of a mixed-use project, and with building design features that help to activate streets at a pedestrian scale. In addition, the ZTA requires that some smaller retail businesses be integrated into such sites to provide variety in retail choices. The ZTA would also allow increased floor area and building height in the C-4 zone for projects with large single retail users if they conform to the proposed standards. Site plan review would be required to ensure compatibility with adjacent properties. The Board believes that ZTA 12-01, as modified by technical staff and the Board, assists in limiting potential adverse impact of large commercial uses due to size, aesthetics, parking, and loss of small businesses, and promotes the integration of uses in urban settings near metro stations.

ZTA No. 12-02 amends the term "combination retail store" (retail/pharmacy/grocery store), applies to property more than one half mile from a metro station and amends the required findings for a combination retail store special exception to include requirements for: light spillover onto residential property; consistency with master plan recommendations; and small retail space under certain circumstances. Any combination retail store larger than 50,000 square feet would have to be approved through the special exception process, which currently is only true at 120,000 square feet in the C-2 and C-3 zones. The amendment also would eliminate the existing club membership exemption and would add the combination retail store land use to the C-4 zone. The Board's understanding of the intent of ZTA 12-02 is to complement ZTA 12-01 by permitting a combination retail store that is located more than one-half mile from a Metro station to obtain special exception approval when located in the C-2, C-3 and C-4 zones. In the C-4 zone, any combination retail store proposed within one-half mile of a Metro station would be permitted by-right, but would be subject to the new regulations proposed in ZTA 12-01. As introduced, ZTA 12-02 also permits a combination retail store by-right in the C-2 and C-3 zones when located within one-half mile of a Metro station, but does not subject a project in these zones to the regulations for large retail uses near metro stations as proposed in ZTA 12-01 for the C-4 zone. The Board is not clear that this is the intent of the sponsor, and recommends that if combination retail stores are permitted by-right in the C-2 and C-3 zones, they should be subject to the same regulations proposed in ZTA 12-01 for the C-4 zone.

In areas that are more than one-half mile from a metro station, it is important to preserve the ability to develop retail buildings while minimizing adverse impacts from such commercial uses. The Planning Board believes that ZTA 12-02, as modified by technical staff and the Board, assists in limiting the potential adverse impacts of such

development through the general conditions for special exception approval, specific special exception requirements for combination retail uses, and the requirement for a public hearing.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, March 8, 2012.


Françoise M. Carrier
Chair

FC:GR



Zoning Text Amendment (ZTA) No. 12-01, Large Retail Uses in Commercial Zones
Zoning Text Amendment (ZTA) No. 12-02, Combination Retail Stores

ADR

Gregory Russ, Planner Coordinator, gregory.russ@montgomeryplanning.org, 301-495-2174

M

Mary Dolan, Acting Chief, mary.dolan@montgomeryplanning.org, 301-495-4552

Completed 3/1/12

Description

ZTA No. 12-01 establishes additional requirements in the C-4 zone with respect to retail uses with a ground floor area of at least 50,000 square feet or in a development containing more than 100,000 square feet of retail for a single user, and located within one-half mile of a metro station. Specifically, the ZTA would:

- limit the maximum footprint to 80,000 square feet;
- require space to be provided for small retailers (less than 5,000 square feet per space);
- require mixed use buildings (either office or residential in addition to retail); and
- require conformance to design standards.

The ZTA would also allow increased floor area and building height in the C-4 zone for projects with large single retail users if they conform to the proposed standards. ZTA No. 12-02 amends the term "combination retail store" (retail/pharmacy/grocery store), applies to property more than one half mile from a metro station and amends the required findings for a combination retail use special exception to include requirements for: light spillover onto residential property; consistency with master plan recommendations; and small retail space under certain circumstances.

Summary

Staff recommends approval of ZTA Nos. 12-01 and 12-02 with modifications to make plain language clarifications to both ZTAs to ensure that the intent is clear. Staff also recommends further modifications to ZTA 12-02 to: clarify whether combination retail uses in the C-2 and C-3 zones would be allowed within one-half mile of a Metro station and eliminate the proposed specific requirement for consistency with the area master or sector plan. The proposed requirement is redundant since there is currently a general special exception condition that addresses this issue. Staff further recommends that the specific conditions of ZTA 12-02 be amended to clarify the intent of when small retail tenant space would be required as part of a project.

ZTA 12-01 was introduced to address potential adverse impacts caused by retail uses with very large footprints on C-4 zoned properties located *within one-half mile of a Metro station* by allowing such uses only as part of a mixed-use project and with building design features that help to activate streets at a pedestrian scale within these areas. In addition, the ZTA requires that some smaller retail businesses be integrated into such sites to provide some variety in retail choices. Site plan review would also be required to ensure compatibility with adjacent properties.

Currently a combination retail store is regulated by special exception in the C-2 and C-3 zones when the store (combination of retail/grocery/pharmacy) exceeds 120,000 square feet of gross floor area. Club membership stores are excluded from the current combination retail definition, thereby not required to obtain special exception approval. ZTA 12-02 would require any store larger than 50,000 square feet to be approved through the special exception process, would eliminate the club membership exemption and would add this land use provision to the C-4 zone. Staff's understanding of the intent of ZTA 12-02 was to complement ZTA 12-01 by permitting a combination retail store that is located more than one-half mile from a Metro station to obtain special exception approval. Any existing store would not be affected by the ZTA unless the store expands. ZTA 12-02 would not apply to regional malls.

ZTA 12-01 (ATTACHMENT 1)

Land Uses-(Lines 10-16)

ZTA 12-01 proposes to allow residential uses as part of a mixed use building subject to the requirements of proposed new Section 59-C-4.379 pertaining to large retail uses near a metro station.

59-C-4.378. Special regulations—C-4 zone. (Lines 18-74)

The ZTA proposes an increase in density from the current maximum of 0.75 FAR (standard development maximum is only 0.25 FAR) to 1.5 FAR to accommodate mixed-use buildings that adhere to the requirements of proposed new Section 59-C-4.379 (discussed below). To accommodate the increased density, the Planning Board would be required to make a finding that the project will be compatible with the intensity of surrounding existing and planned land uses, will not have an adverse impact on existing and planned public facilities in the area, and will be consistent with the land use recommendations of the applicable approved and adopted master or sector plan and any design guidelines approved to implement the master or sector plan.

ZTA 12-01 further proposes an increase to the maximum building height from 40 feet to 75 feet to accommodate a mixed-use project within the scope of Section 59-C-4.379. The increased height would not be allowed if the Planning Board finds that the increased height would be incompatible with the intensity of surrounding existing and planned land uses, would have an adverse impact on existing and planned public facilities in the area, or would not be consistent with the land use recommendations of the applicable approved and adopted master or sector plan.

Further, the maximum building coverage is proposed to increase from 35 percent to 45 percent for a project that satisfies Section 59-C-4.379.

59-C-4.379. Large retail uses near a metro station. (Lines 86-207)

For a retail use designed for a single retailer that has at least 50,000 square feet of gross floor area on the ground floor (footprint) of a building or has more than 100,000 square feet of total floor area in a building and that is located within one-half mile of a metro station entrance, the requirements for a project are summarized as follows:

- The maximum area of an individual floor designed for a single retail user may not exceed 80,000 square feet.
- Site plan approval is required

- Prohibited uses--a drive-through service window or lane that is visible from a public street, an automobile repair or service facility or an automobile filling station
- Any facade longer than 100 horizontal feet must incorporate wall plane projections or recesses.
- Transparent glazing (i.e., transparent windows, unobstructed display windows, or transparent store doors) required for at least 60 percent of the horizontal length of the street level building façade when fronting public or private streets or parking (can be waived by Planning Board)
- At least 20 percent additional street level retail for small businesses (less than 5,000 square feet of tenant gross floor area each). Tenant space must be located at street level, and the façade and customer entrance must front a public or private street. No secondary entrance accessing the primary retail use allowed. At least 50 percent of the additional tenant space(s) must be located along the façade where the primary active customer entrance for the largest single retail use is located (can be waived by Planning Board).
- All sides of a building that front an abutting public right-of-way must have at least one active retail, residential, or office entrance
- Storage and loading areas must be screened from public rights-of-way
- The floor area of any non-retail components must be equal to or greater than the gross floor area of the single largest retail user. At least 50 percent of the gross floor area of the non-retail component must be located above the street level retail footprint.
- Parking facilities must be located below-grade or in a structure behind or within the primary building (can be waived by Planning Board).

Staff believes that it is important, in areas near metro stations, to ensure that uses are integrated to promote complete communities and that uses and buildings are visually compatible with each other and adjacent communities to provide a harmonious pattern of development. Building placement, height, massing, façade treatments, and the location of parking facilities affect sense of place, orientation, and the perception of comfort and convenience. As such, it is important to retain and promote the compatible integration of small businesses and mix of uses within complete communities to provide diverse employment and retail opportunities and housing choices for all incomes, ages, and family sizes. Staff believes that the provisions of ZTA 12-01 assist in limiting potential adverse impact of large commercial uses due to size, aesthetics, parking, and loss of small businesses and promote the integration of uses in urban settings near metro stations. **Staff recommends approval of ZTA 12-01 with plain language clarifications as provided in Attachment 1.**

ZTA 12-02 (ATTACHMENT 2)

59-A-2.1 Definitions. (Lines 3-8)

Currently a combination retail store is defined as a department or retail store that exceeds 120,000 square feet and that includes a pharmacy and a full line grocery store. Club membership stores are excluded from the current definition, thereby not required to obtain special exception approval. ZTA 12-02 would change the threshold for classification as a combination retail store from 120,000 square feet to any department or retail store/pharmacy/grocery store combination larger than 50,000 square feet. The reduction of the building size criteria falls within the range of sizes for large retail establishments being regulated in several neighboring jurisdictions (sizes range between 20,000 square feet to 125,000 square feet--see Attachment 4) as well other jurisdictions throughout the nation. Staff agrees with the sponsors' proposed elimination of the club membership exemption for a combination retail store.

59-C-4.2. Land uses. (Lines 13-24)

Currently a combination retail store is regulated by special exception in the C-2 and C-3 zones. Staff's understanding of the sponsors' intent is that any store larger than 50,000 square feet (the proposed new definition of combination retail store) would need to be approved through the special exception process in the C-2, C-3 and C-4 zones when the project is located more than one-half mile of a Metro station. In the C-4 zone, any combination retail store proposed within one-half mile of a Metro station would be permitted by-right but would be subject to the new regulations proposed in ZTA 12-01. As introduced, ZTA 12-02 also permits a combination retail store by-right in the C-2 and C-3 zones when located within one-half mile of a Metro station; but does not subject a project in these zones to the regulations for large retail uses near metro stations as proposed in ZTA 12-01 for the C-4 zone only. **Staff recommends that ZTA 12-02 be clarified for the C-2 and C-3 zones by eliminating the proposed by-right establishment of a new combination retail store within one-half mile of a Metro station. If the sponsors' intent is to allow the use by-right within one-half mile of a Metro station, staff recommends that it be subjected to the proposed requirements of Section 59-C-4.379 (Large retail uses near a metro station) of ZTA 12-01. It should be noted that Footnote 61 would grandfather existing combination retail uses established before April 1, 2012.**

Special Exception Requirements for 59-G-2.15. Combination Retail Store. (Lines 32-67)

In addition to the general conditions of approval for any special exception application (Section 59-G-1.21), Section 59-G-2.15 provides certain specific requirements for approval of a combination retail store as summarized below:

- Reduction of the building's mass and scale with projections or recessions along long walls
- Safe and efficient access to parking including landscaped areas
- Must have direct vehicular access to an existing arterial or major highway; must provide a traffic impact study to demonstrate acceptable peak hour levels of service
- Site must be screened from any abutting residentially zoned property
- Obstructions that reduce visibility at intersections or at entrances and exits to and from the site are prohibited
- Lighting must not reflect, or cause glare, on any residentially zoned property

ZTA 12-02 proposes additional requirements to further minimize impacts of a combination retail use on adjacent properties. The first modification adds a standard 0.1 footcandle requirement to the lighting requirement (f). Staff agrees with the intent of the provision but recommends plain language modifications to the text to further clarify the provision.

The second addition (proposed requirement "g") proposes a specific requirement for consistency with the area master or sector plan. Staff recommends eliminating this addition since there is currently a general special exception condition that addresses this issue.

The third modification (proposed requirement "h") would require 20 percent of the total gross floor area of the proposed project to be used for businesses that each have less than 5,000 square feet of tenant gross floor area if construction of the combination retail store resulted in the demolition of existing retail space. **Staff recommends that this condition be required only if construction of the combination retail store**

resulted in the demolition of existing retail space of less than 5,000 square feet for at least one tenant. Otherwise, there is the potential of requiring small retail space as replacement for a demolished large retail establishment. **Alternatively, the condition could require small business space without a connection to the demolition of existing space.**

In summary, in areas that are more than one-half mile from a metro station, it is important to preserve the ability to develop retail buildings while minimizing adverse impacts from such commercial uses. In numerous studies, retail uses with large building footprints have been shown to create unique impacts related to the environment, traffic congestion, architectural scale, compatibility with adjoining uses, lighting, and long-term vacancy if a retail tenant leaves. Staff believes that the general conditions for special exception approval along with the specific special exception requirements for combination retail uses as modified herein assist in limiting the aforementioned potential adverse impacts of such development. This is especially the case when noting the lower floor area threshold for requiring a special exception for a combination retail store (previously those buildings exceeding 120,000 square feet required a special exception; as proposed, a threshold exceeding 50,000 square feet would require a special exception).

Applicability

Zoning Text Amendment 12-01 (Attachment 1) applies to property zoned C-4 and located within one-half mile of a Metro station. Currently there are only three sites in the County that fit this criteria; Pike Center located at Rockville Pike and Bou Avenue (Twinbrook); Spring Center located at the intersection of Spring Street and 16th Street (Silver Spring); and Loehmann's Plaza located at Parklawn and Randolph Road (White Flint). Maps in Attachment 3 depict these locations.

Zoning Text Amendment 12-02 (Attachment 2) could be applicable inside or outside of one-half mile of a Metro station, depending on the approach decided by the County Council. Maps in Attachment 3 depict the applicable locations for the C-2, C-3 and C-4 zones. In summary, the number of sites large enough to accommodate a 50,000 square foot building footprint is as follows:

Parcels larger than 50,000 SF

Countywide:

C-2 – 77 parcels

C-3 – 23 parcels

C-4 – 16 parcels

Parcels within ½ mile of Metro stations:

C-2 – 24 parcels

C-3 – 0 parcels

C-4 – 3 parcels

ATTACHMENTS

1. ZTA 12-01 as modified by staff
2. ZTA 12-02 as modified by staff
3. GIS Maps of C-2, C-3 & C-4 zones within and greater than one-half mile of Metro station
4. Table of Local Jurisdictions Regulating Large Retail Establishments



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of October 15, 2011

DATE: October 6, 2011

SUBJECT: ZOA-11-02 Proposed amendments to the Arlington County Zoning Ordinance, Section 1. Definitions, Section 19. "C-1" Local Commercial Districts, Section 26. "C-2" Service Commercial - Community Business Districts, and Section 27A. "C-R" Commercial Redevelopment Districts, to define the term "Large Format Sales Establishment," as being a use for which one Certificate of Occupancy is to be sought or issued where the primary activity is the sale of any combination of food, merchandise and/or personal and business services, and to provide that "Large Format Sales Establishments" having a gross floor area of 50,000 square feet or more on any level or that propose to provide 200 or more parking spaces, are prohibited except after approval by the County Board of a Special Exception Use Permit. Commercial uses meeting the above referenced definition on properties zoned "MU-VS", "C-O-A", "C-3", "C-M", "M-1", "M-2", by reference in the Zoning Ordinance, would also be subject to this provision.

C. M. RECOMMENDATION:

Adopt the attached ordinance to amend, reenact, and recodify the Arlington County Zoning Ordinance, Sections 1, 19, 26, and 27A in order to provide that "Large Format Sales Establishments," as defined, may only be approved by the County Board through Special Exception Use Permit.

ISSUES: By-right development of "Large Format Sales Establishments" (retail stores having either a gross floor area of 50,000 square feet or more on any level or that propose to provide 200 or more parking spaces), more commonly known as "big box" retail, may have a deleterious effect on adjacent parcels and the surrounding area, such as increased traffic, congestion at points of ingress and egress, large areas of impervious surface, inadequate tree canopy, and other environmental impacts. Allowing big box retail development only through Special Exception Use Permit would provide the community and the County Board the opportunity to review the potential negative impacts of this type of development and to determine the appropriate mitigation measures.

SUMMARY: Due to pressures in the real estate market caused by Arlington's location within the Washington, DC metropolitan area, large sites with commercial or industrial zoning are attractive locations for big box retail development. There are some underutilized commercial and industrial properties in Arlington that could potentially be redeveloped by-right with this type of big box retail development, which is characterized by auto-oriented, traffic intensive

County Manager: *BMD/GA*

County Attorney: *[Signature]*

Staff: Richard Tucker, CPHD, Planning

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uses. Staff has determined that the traffic generated by this type of commercial development far exceeds that which a commensurate amount of office or residential development would produce. Staff has further determined that the traffic impacts of “big box” commercial development should be evaluated on a case-by-case basis to address the potential negative impacts on adjacent properties and the community generally. If this type of development were to occur under by-right conditions, there would be no opportunity for community or County Board review of the potential impacts. Infrastructure improvements and other conditions that may be necessary to mitigate these potential impacts could not be incorporated in the approved development. The Zoning Ordinance language that was advertised in July captured all by-right permitted uses in the “C-1” and “C-2” districts, and by reference in the Zoning Ordinance, properties zoned “MU-VS”, “C-O-A”, “C-3”, “C-M”, “M-1”, and “M-2”. Since then, staff has further analyzed this approach and recommends that not all uses be subject to this proposal. Staff now recommends that only retail-oriented uses, if developed as large format operations, be reviewed through a Special Exception Use Permit Process. Therefore, it is recommended that the County Board consider amendments to the Zoning Ordinance, including the addition of a definition for the term “Large Format Sales Establishment”, and modifications to “C-1”, “C-2” and “C-R” zoning districts, to require that Large Format Sales Establishments be developed only through Special Exception Use Permit approval by the County Board.

BACKGROUND: As interest in “big box” development increased, there was concern that these types of developments could locate in a number of potential sites in Arlington and be developed by-right. These sites include, for example, the industrial properties located in the Shirlington Crescent / Four Mile Run area and some commercially-zoned properties located along Lee Highway. Typically, developers seek large underutilized industrial and commercial properties with significant by-right potential for these types of developments. Currently, if “big box” development were to occur by-right, there would be no means to mitigate any potential negative impacts that may affect the surrounding areas. Therefore, staff initiated a Zoning Ordinance amendment to permit these uses only through Special Exception Use Permit, which would provide an opportunity for additional review of this type of development. In July 2011, the County Board authorized advertising of public hearings to be held in September 2011, which were deferred by until October to allow additional time for community review of a revised approach, which is discussed further below. As a revision to the proposed Zoning Ordinance amendment that was originally advertised, staff has incorporated changes to the “C-R” zoning district consistent with the previously proposed changes to the “C-1” and “C-2” districts, since the “C-R” district has similar permitted by-right commercial uses. Both this revision and the original amendment language were advertised for consideration.

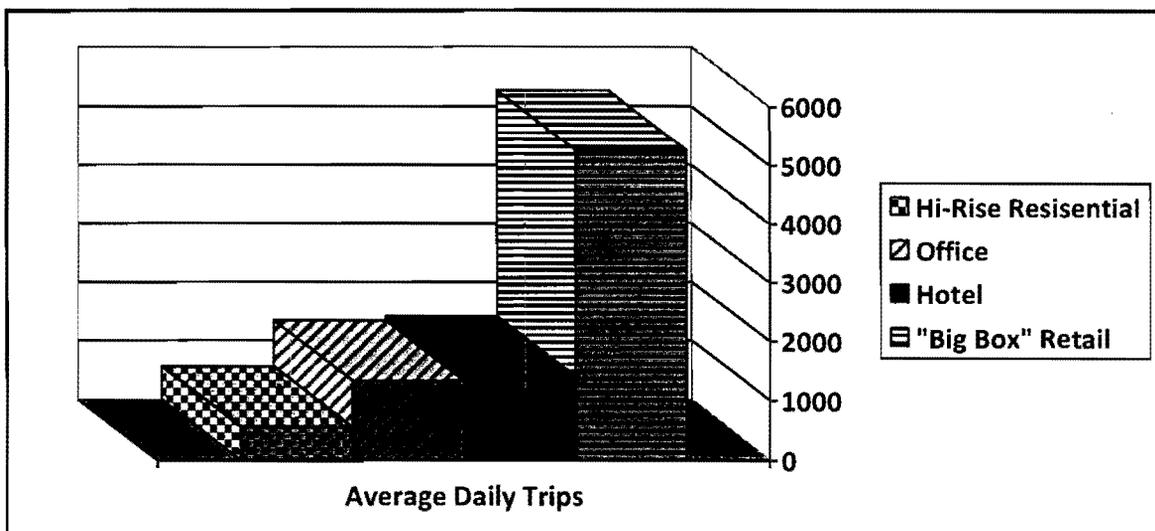
DISCUSSION: At its July 9, 2011, meeting, the County Board authorized advertising of a Zoning Ordinance amendment that would modify Section 19. “C-1” Local Commercial Districts and Section 26. “C-2” Service Commercial – Community Business Districts to provide that uses in buildings with a gross floor area of 50,000 square feet or more on any level, or that propose 200 or more parking spaces would be subject to approval by the County Board of a Special Exception Use Permit. This advertisement, broad in nature, captured all by-right permitted uses in the “C-1” and “C-2” districts, and by reference in the Zoning Ordinance, properties zoned “MU-VS”, “C-O-A”, “C-3”, “C-M”, “M-1”, and “M-2”, including office, industrial, and public development. Since July, staff has further analyzed this approach and recommends that not all uses be subject to this proposal. Staff now recommends that only retail-oriented uses, if

developed as large format operations, be reviewed through a Special Exception Use Permit Process. Therefore, in order to implement the revised approach, staff is proposing to add the following definition to the Zoning Ordinance, called "Large Format Sales Establishment," and is recommending that the above referenced zoning districts be modified to provide that "Large Format Sales Establishments" shall be allowed, but only subject to approval of a Special Exception Use Permit by the County Board:

Large Format Sales Establishment. A use for which one Certificate of Occupancy is to be sought or issued and that either occupies 50,000 square feet or more on any one level or provides 200 or more parking spaces dedicated to that use. This definition shall include uses where the primary activity is the sale of any combination of food, merchandise, and/or personal and business services (personal and business services include banks, dry cleaners, ticket agencies, hair salons, shoe repair, watch repair, photo copying, fitness centers, and other uses that are similar in character, as determined by the Zoning Administrator) for use or consumption by a purchaser. A Large Format Sales Establishment shall not be deemed to include "vehicle dealership, sales, or rental lot", or "vehicle service establishment."

Based on staff's analysis, retail-oriented uses, developed as large format operations, generate more serious impacts, particularly transportation related. According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, which does not typically assume a heavy transit or bicycle usage as a means of access to a site, a typical 100,000 square foot big box store would generate approximately 5,300 daily trips, whereas office or hotel uses would generate between 1,300 and 1,400 daily trips. Hi-rise residential would typically have a significantly lower impact on area traffic, generating approximately 560 daily trips (see graph below).

Comparison: 100,000 SF of Residential (100 units), Office, Hotel (200 rooms) and Big Box Retail



Source: Institute of Transportation Engineers, Trip Generation, 8th Edition

The proposed Zoning Ordinance amendment language specify either 50,000 square feet on any level or 200 or more parking spaces dedicated to that use as a threshold triggering Special Exception Use Permit review. Staff has identified two major concerns that this approach addresses: (a) issues related to the form of development, and (b) issues related to the potential negative impacts of development, such as increased traffic. Over time, Arlington has adopted policies promoting pedestrian-oriented, walkable development. This goal has been achieved through design guidance that encourages the elimination of “superblocks” where a single use limits pedestrian and vehicular circulation around and through an area. Staff has determined that setting a 50,000 square foot criterion will ensure that new retail development that exceeds this limit would only be allowed after additional community review thereby providing an opportunity to evaluate the impact of such development on the existing character of the area and the transportation grid with regard to pedestrian and vehicular circulation.

Similarly, staff has determined that individual retail uses that have 200 or more dedicated parking spaces, whether a stand-alone development or as part of a shopping center, are of a type that anticipate heavy parking demand, and increased traffic. It is for these uses that the parking criterion is specified in the proposed Zoning Ordinance amendment. As the retail market has evolved over time, and with the advent of larger all-in-one big box stores, more and more retailers, including grocery stores, try to provide a range of food, merchandise and services within one store; increasing the floor area needed to house all these elements. As these uses increase in size and provide more services, they become more of a regional draw, rather than merely a neighborhood-serving use. The Zoning Ordinance has not been changed, over time, to address this shift in the retail marketplace and staff has determined that the proposed Zoning Ordinance amendment is an appropriate modification to address the potential negative impacts of this type of development consistent with the County’s overall policies.

Staff concludes that the traffic and other negative impacts that may result from “big box” development in Arlington could have a deleterious effect on surrounding area.

Community Review: Below is a summary of the major comments and concerns that were received during the community review process, as well as staff responses.

Zoning Committee (ZOCO) of the Planning Commission: Staff met twice with ZOCO on this item. At its latest meeting, on September 14, 2011, ZOCO reviewed staff’s revised approach to include retail-oriented uses developed as large format operations to be subject to Special Exception Use Permits only. At this meeting, Planning Commissioners had procedural questions related to the submission requirements and review process for future big box development proposals that would be subject to the proposed Zoning Ordinance amendment. Some Commissioners questioned whether the 50,000 square feet size requirement in the proposed Zoning Ordinance language was the appropriate number to be targeted and whether that number would cause nonconforming issues for existing development. Other Commissioners suggested that the 50,000 square foot threshold should be lowered to 40,000 square feet, noting that some grocery store chains have standard store floor plans of this size. Also, Commissioners were concerned about the traffic impacts of other uses, such as distribution centers (i.e. UPS and Fedex) and shopping centers, and suggested that the scope of the proposed amendment be expanded to include them.

Staff Response: The submission requirements for the standard Use Permit application require that applicants provide sufficient information for community review, such as site design details, parking information, and a statement on how the applicant proposes to mitigate any negative impacts. Presently, many Special Exception Use Permit Application projects, such as those submitted under the Unified Commercial Mixed-Use Development (UCMUD) provisions, undergo a community review process that provides a sufficient opportunity for community review and input. It is anticipated that, similar to other types of Special Exception Use Permit applications for new construction, applicants would be required to attend at least one community meeting, to be led by the Planning Commission's Site Plan Review Committee, where Planning Commissioners and representatives from nearby affected civic associations can provide their input.

Staff continues to recommend that the 50,000 square foot is the appropriate threshold for Special Exception User Permit review for large-scale retail-oriented uses. There are currently 10 by-right grocery stores located throughout the County that range in size from 7,000 to 49,000 square feet*. Lowering the 50,000 square feet threshold would likely render some existing grocery stores non-conforming. If existing uses become non-conforming as a result of the adoption of this or some other measure, there could be an impact on the owner's ability to secure financing, complete modernization projects, and/or to slightly expand without seeking approval of a Use Permit.

In terms of expanding the scope of the proposed Zoning Ordinance amendment to include industrial uses (i.e. distribution centers like UPS or Fedex), it is staff's opinion that due to market forces including higher land costs in Arlington, the development of distribution center facilities on sites in Arlington is highly unlikely. In the view of the County's economic development staff, these uses, which are already located within the region on sites near area airports and major highways with comparatively lower land values, are best served in their current locations and would not benefit greatly from relocating to Arlington from elsewhere within the region. Further, given the size and development capacity of existing industrially-zoned sites in Arlington, the scale and function of by-right industrial, light industrial and warehouse/distribution uses would be consistent with the intent of the Zoning Ordinance for industrial areas.

Staff has examined the applicability of the proposed Zoning Ordinance amendment to existing and potential future shopping centers and has determined that, similar to existing by-right grocery store development, the adoption of this or some other measure requiring Special Exception Use Permit review for existing shopping centers would likely make these uses non-conforming. In examining the Zoning Ordinance, staff has concluded that shopping centers, as low-density, modest scale by-right developments, continue to provide a range of needed goods and services in locations convenient to the neighborhoods that they serve in a manner consistent with the original intent of the Zoning Ordinance. Therefore, staff does not recommend that shopping centers be subject to the requirements proposed for big box retail development.

* The Pentagon City Costco store, which was developed as a by-right reuse of an existing structure, has approximately 170,000 square feet of floor area.

Economic Development Commission, Business and Development Representatives: Staff attended meetings held by a joint committee of the Northern Virginia Building Industry Association (NVBIA), and the Northern Virginia Chapter of the National Association Industrial and Office Properties (NAIOP) (July 20 and August 10, 2011), the Arlington Chamber of Commerce's Government Affairs and Economic Development Committee (August 12 and September 23, 2011), and the County's Economic Development Commission (September 13, 2011). These groups were kept abreast of changes to the staff approach to this issue as they occurred.

Members of the business community expressed concerns that the process, which was initiated in July, proceeded too quickly. They also had concerns about the broad advertising to include all uses as there could be unintended impacts on by-right office development in the affected zoning districts. It was recommended that, if the County's concern is related to the impacts of by-right development of big box retail, then the proposed Zoning Ordinance amendment should address those uses only, and not by-right office development. Some members of the business community suggested that staff should exercise care in developing any change to the Zoning Ordinance that would hinder the development of grocery stores, and pointed out the County's Policy for Grocery Stores, which was adopted by the County Board in 1985 to address the shortage of grocery opportunities in Arlington. Also, there were questions about the meaning of the phrase "business and personal services" in the "Large Format Sales Establishment" definition.

Staff Response: With regard to the process, the proposed amendment has undergone extensive review with various groups. Moreover, the item was deferred in September to allow for additional review. On the broad advertising, staff agrees that the scope should be narrowed to only include retail-oriented large format uses and now proposes that the Zoning Ordinance be amended to include a new definition for the term "Large Format Sales Establishments" and that the affected zoning districts be modified to provide that "Large Format Sales Establishments" shall be allowed, subject to approval of a Special Exception Use Permit by the County Board. This revision limits the scope of the proposed Zoning Ordinance amendment to just those uses that meet the definition of the term "Large Format Sales Establishment", and therefore avoids the unintended impacts on other uses that were the cause of concern.

The proposed Zoning Ordinance amendment language, if adopted, would provide an appropriate level of community review to address any potential negative impacts of big box development. It is staff's view that this level of review is particularly important for sites outside of the Metro corridors, where significant redevelopment is not anticipated. Of the total of 19 grocery stores located in Arlington, eight (8) were built under Special Exception approval (either Use Permit or Site Plan). It is important to note that of the 11 existing by-right grocery stores in Arlington, none exceed 50,000 in total gross floor area, with the exception of the Costco in Pentagon City, which opened in 1993. Given that 10 of the 11 existing by-right grocery stores are below 50,000 square feet in total gross floor area, there are opportunities for significant remodeling and/or expansion of these facilities. The proposed Zoning Ordinance amendment would not preclude the development of grocery stores that are proposed to be either larger than 50,000 square

feet, on any level, or to provide 200 or more designated parking spaces, but rather may provide an opportunity to review creative design solutions that help to better incorporate the proposed development into the neighborhood.

With respect to better clarity on “personal and business services”, the Zoning Administrator may utilize the Retail Action Plan, and other adopted policy documents, as guidance for the purpose of making a determination. The proposed definition for “Large Format Sales Establishments” has been revised to reflect more specific examples of personal and business services as listed in the Retail Action Plan, so that there is greater clarity about the meaning of the phrase. Staff believes that, in the future, the Zoning Administrator will be able to discern and determine, on a case-by-case basis, whether a proposed use is subject to this Zoning Ordinance amendment, should the amendment be adopted by the County Board.

Planning Commission: The proposed Zoning Ordinance amendment was reviewed at the October 5, 2011 Planning Commission meeting. Staff made a brief presentation, reviewing revisions to the proposed Zoning Ordinance language, as well as comments that were previously received from ZOCO and business and development representatives. Two public speakers expressed support for the proposed Zoning Ordinance amendment. After some discussion between Commission members and staff, the Planning Commission voted to unanimously support a recommendation to adopt the proposed Zoning Ordinance amendment. As part of the motion, the Planning Commission recommended that staff review the proposed zoning language found on page 9 of the staff report (lines 29-30; lines 44-46) which seem to be contradictory. Staff agrees with this suggestion and has edited line 44 on page 10.

The Planning Commission also recommended that staff review the proposed definition for “Large Format Sales Establishment,” which is found on page 9 of the staff report (lines 3-11). Based on the definition, which states that a Large Format Sales Establishment is “A use for which one Certificate of Occupancy is to be sought or issued...,” it was unclear to Planning Commissioners as to when staff would know whether an applicant is seeking to develop a use that is in excess of 50,000 square feet or has 200 or more parking spaces, and therefore would be required to seek Special Exception Use Permit approval.

From a procedural standpoint, in filing a by-right development proposal for review by staff, applicants are required to show, in detail, what they intend to build, including the square footage of each use, building setbacks, how parking is to be arranged, etc. In reviewing by-right development proposals, Zoning staff routinely examines proposals in light of what is permitted by-right as per the Zoning Ordinance. It is in this routine review that future by-right proposals incorporating Large Format Sales Establishments, as defined, would be identified and the applicant would be informed that the use being proposed can only be approved through the Special Exception Use Permit process. This being the case, staff believes that any future development of Large Format Sales Establishments will be handled in a manner consistent with the intent of the proposed Zoning Ordinance amendment, should it be adopted by the County Board.

Planning Commissioners also voiced a general concern about the potential adverse traffic impacts of other by-right uses, such as distribution centers (i.e. Fedex and UPS) and shopping centers. Staff indicated that no analysis of these other uses has been completed and therefore there is no recommended action in regard to these uses at this time.

CONCLUSION: Staff recommends that the County Board adopt the attached ordinance to amend, reenact, and recodify the Arlington County Zoning Ordinance, Sections 1, 19, 26, and 27A in order to provide that "Large Format Sales Establishments", as defined, may only be approved by the County Board through Special Exception Use Permit.

AN ORDINANCE TO AMEND, REENACT AND RECODIFY THE ARLINGTON COUNTY ZONING ORDINANCE, SECTIONS 1, 19, 26 AND 27A, IN ORDER TO PROVIDE THAT LARGE FORMAT SALES ESTABLISHMENTS MAY ONLY BE APPROVED BY THE COUNTY BOARD THROUGH SPECIAL EXCEPTION USE PERMIT; AND TO FACILITATE THE CREATION OF A CONVENIENT, ATTRACTIVE AND HARMONIOUS COMMUNITY; TO ENCOURAGE ECONOMIC DEVELOPMENT; AND FOR OTHER REASONS REQUIRED BY THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE, AND GOOD ZONING PRACTICE.

Be it ordained that the Arlington County Zoning Ordinance provisions in Sections 1, 19, 26 and 27A are hereby amended, reenacted and recodified as follows, in order to provide that Large Format Sales Establishments may only be approved by the County Board through Special Exception Use Permit; and to facilitate the creation of a convenient, attractive and harmonious community; to encourage economic development; and for other reasons required by the public necessity, convenience and general welfare, and good zoning practice:

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SECTION 1. DEFINITIONS

Large Format Sales Establishment. A use for which one Certificate of Occupancy is to be sought or issued and that either occupies 50,000 square feet or more on any one level or provides 200 or more parking spaces dedicated to that use. This definition shall include uses where the primary activity is the sale of any combination of food, merchandise, and/or personal and business services (personal and business services include banks, dry cleaners, ticket agencies, hair salons, shoe repair, watch repair, photo copying, fitness centers, and other uses that are similar in character, as determined by the Zoning Administrator) for use or consumption by a purchaser. A Large Format Sales Establishment shall not be deemed to include "vehicle dealership, sales, or rental lot", or "vehicle service establishment".

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SECTION 19. "C-1" LOCAL COMMERCIAL DISTRICTS

The purpose of the "C-1" District classification is to provide locations for low intensity development where retail and personal service uses predominate and where there is also limited opportunity for office uses and business service uses. "C-1" Districts should be located and developed as unified shopping centers consisting primarily of small individual shops of a linear or cluster design. Furthermore, development of "C-1" Districts should result in commercial centers which are compatible with the surrounding development in terms of scale and character.

The following regulations shall apply in all "C-1" Districts:

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A. Uses Permitted.

The following uses are permitted, provided that they are not Large Format Sales Establishments, as defined in Section 1.

1. All uses permitted in "C-1-R" Districts.
2. Antique shop.
3. Art store, including art work, art supplies and framing materials.
4. Automobile accessories and supplies, excluding installation.
5. Bank or other financial institution.
6. Book, stationery or card store.
7. Clothing or wearing apparel shop.
8. Department store restricted to sites that are a minimum of five (5) acres.
9. Dry goods or notion store.
10. Film processing kiosk (photo service).
11. Florist or gift shop. Delivery of flowers to off-site locations is permitted when it involves less than thirty [30] percent of the amount of the sales from these stores.
12. Grocery, fruit or vegetable store ~~without restriction or maximum gross floor area.~~ Delivery of groceries to off-site locations is permitted when it involves less than thirty [30] percent of the amount of the sales from these stores.
13. Hardware, paint or appliance store.
14. Hobby or handcraft store.
15. Home furnishings store.
16. Jewelry store.
17. Locksmith.
18. Medical office or clinic.
19. Office as regulated in subsection C.1., below.
20. Optical store.
21. Pet shop.
22. Photography studio.
23. Photo copy service.
24. Private postal service limited to a gross floor area of twelve hundred (1,200) square feet.
25. Repair shop (small appliance, television, radio).
26. Restaurant, including outdoor cafes associated with such uses (excluding restaurants with drive-through windows and dancing or entertainment, except as provided for in subsection B.6). Delivery of food and beverages to off-site locations is permitted when it involves less than thirty [30] percent of the amount of the sales from these restaurants.
27. Secondhand or consignment shop.
28. Shoe store.
29. Sporting goods store.
30. Variety store.
31. Video tape or record store.
32. Uses and buildings customarily accessory to the above uses.
33. Properties that are located in the Columbia Pike Special Revitalization District may be developed in accordance with Section 20. "CP-FBC" Form Based Code Districts. After such development all uses permitted in Section 20 shall be permitted on the property, subject to all regulations in Section 20.

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B. Special Exceptions.

The following uses may be established subject to obtaining a use permit under the procedures established in Section 36, G. Use Permits:

- 1. Amusement game arcade.
- 2. Food delivery services.
- 3. Health club.
- 4. Indoor and outdoor tennis, racquet or handball courts.
- 5. Public parking area whether with or without improvements deferred, as regulated in Section 33.B.1.b.
- 6. Restaurant providing live entertainment and/or dancing.
- 7. Schools (private, elementary and high), kindergartens, day nurseries and day care facilities.
- 8. Vehicle service establishment, provided that any portion of the use except the sale of gasoline shall be conducted wholly within a building.
- 9. Any use otherwise permitted in this district with a drive-through window.
- 10. Uses permitted and conducted in kiosks in accordance with the requirements of Section 31.A.18.
- 11. Uses in projects that are within the Clarendon Revitalization District and are part of a Unified Commercial/Mixed Use Development as set forth in section 31.A.17.
- 12. Large Format Sales Establishments.

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SECTION 26. "C-2" SERVICE COMMERCIAL--COMMUNITY BUSINESS DISTRICTS

The purpose of the "C-2" District classification is to provide locations for commercial development where the variety in retail, service and office uses is intended to serve a broad-based community. "C-2" Districts should be developed as linear commercial and be located primarily along principal arterial streets as designated in the Master Transportation Plan. The "C-2" District provides for an expanded range of uses, greater density and greater height than the "C-1" District classification.

The following regulations shall apply in all "C-2" Districts:

A. Uses Permitted.

All of the uses listed below are permitted, provided, however, that if a use provides classes or instruction to children and, either twenty (20) percent or more of the total number of students enrolled in classes and/or instruction are children under eighteen (18) years of age or the total number of children under eighteen (18) years of age enrolled in classes scheduled to be held at any one time is ten (10) or more, the use may only be established subject to obtaining a use permit as provided in Section 36, "Use Permits," for each such use. The following uses are permitted, provided that they are not Large Format Sales Establishments as defined in Section 1.

- 123 1. All uses as permitted and regulated in "C-1" Districts.
- 124 2. Amusement enterprises, including a billiard or pool hall, boxing arena, games of skill,
- 125 penny arcade, shooting gallery and the like, if conducted wholly within a completely
- 126 enclosed building.
- 127 3. Animal hospital or veterinary clinic within a fully enclosed structure.
- 128 4. Blueprinting or photostating.
- 129 5. Business college operated as a commercial enterprise.
- 130 6. Catering establishment.
- 131 7. Cleaning or laundry establishment.
- 132 8. Dance studio.
- 133 9. Department store, without restriction on minimum site area as imposed in "C-1" Districts.
- 134 10. Health club.
- 135 11. Hotel or tourist court.
- 136 12. Indoor swimming pool.
- 137 13. Indoor theater or auditorium.
- 138 14. Mailing service, including bulk mailing.
- 139 15. Medical or dental laboratory.
- 140 16. Music conservatory or music instruction.
- 141 17. Nursery, flower or plant store, provided that all incidental equipment and supplies,
- 142 including fertilizer, empty cans and garden tools are kept within a building or in
- 143 designated areas outside as approved by the Zoning Administrator, provided that the
- 144 location does not impede pedestrian or vehicular movement on the property.
- 145 18. Office, without restriction on location within structures.
- 146 19. Palmistry.
- 147 20. Pawnshop.
- 148 21. Plumbing or sheet metal shops, if conducted wholly within a completely enclosed
- 149 building.
- 150 22. Printing, lithographing or publishing.
- 151 23. Public parking area of up to fifty (50) spaces or of a lot area of up to twenty thousand
- 152 (20,000) square feet, when located and developed as required in Section 33.
- 153 24. Public service, including electric distributing substation, fire or police station, telephone
- 154 exchange, and the like.
- 155 25. Retail stores or business in addition to those permitted in "C-1-R" and "C-1" Districts.
- 156 26. Sign painting shop, if conducted wholly within a completely enclosed building.
- 157 27. Trade or commercial school, if not objectionable due to noise, odor, vibration or other
- 158 similar causes.
- 159 28. Upholstery shop, if conducted wholly within a completely enclosed building.
- 160 29. Vehicle dealership, sales or rental lot, provided that the use is located on a site which is
- 161 more than twenty thousand (20,000) square feet in area, and where the use complies with
- 162 the standards identified in subsection C.4., shall be permitted as a matter of right. In
- 163 addition, vehicle dealership, sales or rental lot that is located on a site ten thousand
- 164 (10,000) square feet or smaller shall not be permitted.
- 165 30. Wedding chapel.
- 166 31. Other uses which, in the judgment of the Zoning Administrator, are of the same general
- 167 character as those listed in this subsection and will not be detrimental to the district in
- 168 which located.
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171 **B. Special Exceptions.**

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173 Any of the following uses may be established subject to obtaining a use permit as provided in
174 Section 36. G. "Use Permits," for each such use:

- 175 1. Audio-visual production studio.
- 176 2. Bowling alley.
- 177 3. Car wash.
- 178 4. Carpet and rug cleaning establishments, excluding dyeing.
- 179 5. Food delivery service.
- 180 6. Any use otherwise permitted in this district with a drive-through window.
- 181 7. Indoor and outdoor skating rink.
- 182 8. Massage parlor and the like.
- 183 9. Miniature golf course.
- 184 10. Mortuary or funeral home, including a cremation unit within a mortuary or funeral home.
- 185 11. Reserved.
- 186 12. Nightclubs and restaurants providing live entertainments, including dance halls.
- 187 13. Outdoor swimming pool.
- 188 14. By site plan approval under Section 36.H., use regulations for areas designated as
189 "Special Revitalization Districts" on the General Land Use Plan may be modified
190 under the following conditions, and an additional F.A.R. of .5 may be allowed
191 under the following conditions applicable to such increases in density:
 - 192 a. Height limit: No building, nor the enlargement of any building, shall exceed the
193 height standard in the revitalization area or six (6) stories not including
194 mechanical penthouses.
 - 195 b. Density: The ratio of the total gross floor area of all uses, excluding one- and two-
196 family dwellings, to the total area of the site shall not exceed 1.5 to 1. A building
197 which has solely residential use above the second floor level shall be permitted to
198 have a residential F.A.R. of 1.5 and a first floor retail commercial use F.A.R. of
199 up to .5. In no case shall the total F.A.R. of such a building exceed 2.0.
 - 200 c. The first floor of any office building shall be designed and used for retail
201 commercial uses. A plan specifying the proposed retail commercial uses shall be
202 developed and shall be consistent with the adopted plan for the "Special
203 Revitalization District."
 - 204 d. Automobile parking space is to be provided as required in Section 33, except that
205 parking may be reduced by site plan approval to no less than one (1) off-street
206 parking space per one (1) dwelling unit and one (1) off-street parking space for
207 each five hundred eighty (580) square feet of the total office and retail gross floor
208 area.
 - 209 e. Screening walls and/or landscaping consistent with the goals and standards of the
210 adopted plan for the revitalization area shall be provided where a parking area
211 abuts a street, sidewalk, alley, or other public right-of-way and where a parking
212 area abuts "R" and "RA" districts.
 - 213 f. Streetscape improvements consistent with the standards of the adopted "Special
214 Revitalization District" plan for the area shall be implemented on the periphery of
215 the site fronting on public right-of-way.
 - 216 g. A coordinated sign plan shall be required. Standards for signs shall be those set
217 forth in the adopted "Special Revitalization District" plan for the area.

- 218 h. All aerial utilities in the public right-of-way at the periphery of the site and within
- 219 the site shall be placed underground.
- 220 15. Public parking area of more than fifty (50) spaces or of a lot area of more than twenty
- 221 thousand (20,000) square feet.
- 222 16. Vehicle body shop, so long as such activities are conducted entirely within a building.
- 223 17. Vehicle dealership, sales or rental lots located on-sites of twenty thousand (20,000)
- 224 square feet or less but more than ten thousand (10,000) square feet in area shall be
- 225 permitted by use permit, provided that the use complies with the standards identified in
- 226 subsection C.4.
- 227 18. Vehicle service establishment, provided that any vehicle repairs and storage of
- 228 merchandise and supplies shall be conducted wholly within a building, and that any
- 229 lubrication or washing not conducted wholly within a building shall be permitted only if a
- 230 masonry wall, seven (7) feet in height, is erected and maintained between such uses and
- 231 any adjoining "R" District.
- 232 19. Uses in projects that are not within the Columbia Pike Special Revitalization District or
- 233 the Lee Highway-Cherrydale Special Revitalization District but are part of a Unified
- 234 Commercial/Mixed Use Development as set forth in section 31.A.17.
- 235 20. In addition, if any use permitted under subsection 26.A. includes classes or instruction to
- 236 children and, either twenty (20) percent or more of the total number of students enrolled
- 237 in classes and/or instruction are children under eighteen (18) years of age or the total
- 238 number of children under eighteen (18) years of age enrolled in classes scheduled to be
- 239 held at any one time is ten (10) or more, the use may only be established subject to
- 240 obtaining a use permit as provided in Section 36, "Use Permits," for each such use.
- 241 21. Large Format Sales Establishments.

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245 **SECTION 27A. "C-R" COMMERCIAL REDEVELOPMENT DISTRICTS**

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247 The purpose of the "C-R" classification is to encourage medium density mixed use development;

248 to recognize existing commercial rights; and to provide tapering of heights between higher

249 density office development and lower density residential uses. The district is designed for use

250 within one quarter mile of the Metrorail stations on property designated "Medium Density Mixed

251 Use" on the General Land Use Plan.

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253 The following regulations shall apply to all "C-R" Districts:

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255 **A. Uses Permitted.**

256 All of the uses listed below are permitted, provided, however, that if a use provides classes or

257 instruction to children and, either twenty (20) percent or more of the total number of students

258 enrolled in classes and/or instruction are children under eighteen (18) years of age or the total

259 number of children under eighteen (18) years of age enrolled in classes scheduled to be held at

260 any one time is ten (10) or more, the use may only be established subject to obtaining a use

261 permit as provided in Section 36, "Use Permits," for each such use. The following uses are

262 permitted, provided that they are not Large Format Sales Establishments, as defined in Section 1.

- 263
- 264 1. All uses permitted in the "C-1" District.
- 265 2. Art or antique shop.

- 266 3. Bird store, pet shop or taxidermist.
- 267 4. Department, furniture or household appliance store.
- 268 5. Film exchange.
- 269 6. Hotels and tourist courts.
- 270 7. Indoor swimming pools.
- 271 8. Indoor theaters.
- 272 9. Interior decorating store.
- 273 10. Medical or dental clinics and laboratories.
- 274 11. Music conservatory or music instruction.
- 275 12. Newsstand.
- 276 13. Multifamily dwelling units.

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278 **B. Special Exceptions.**

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280 The following uses may be established subject to obtaining a use permit under the procedures
 281 established in Section 36. G. Use Permits.

- 282 1. Schools: private, elementary and high, kindergartens and day nurseries.
- 283 2. Billiard or pool halls.
- 284 3. Indoor/outdoor tennis, racquet and handball courts.
- 285 4. Dancing studio.
- 286 5. Health clubs.
- 287 6. Nightclubs and restaurants providing live entertainment including dance halls.
- 288 7. Outdoor commercial enterprises including games of skill and science.
- 289 8. Outdoor fair, carnival, circus, trade show.
- 290 9. Animal hospitals within fully enclosed structures.
- 291 10. Unscreened telecommunications equipment.
- 292 11. By site plan approval: Mixed use office, retail and residential development at the
 293 densities set forth in subsection I. below. (Ord. No. 90-20, 7-11-90)
- 294 12. In addition, if any use permitted under subsection 27A.A. includes classes or instruction
 295 to children and, either twenty (20) percent or more of the total number of students
 296 enrolled in classes and/or instruction are children under eighteen (18) years of age or the
 297 total number of children under eighteen (18) years of age enrolled in classes scheduled to
 298 be held at any one time is ten (10) or more, the use may only be established subject to
 299 obtaining a use permit as provided in Section 36, "Use Permits," for each such use.
- 300 13. Large Format Sales Establishments.

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