PHED Committee #2
June 18, 2012

MEMORANDUM

June 14, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: Zoning Text Amendment 12-06,
Commercial/Residential Zones – Transit Proximity Definition

Zoning Text Amendment (ZTA) 12-06, sponsored by Councilmembers Leventhal, Elrich, and Andrews, was introduced on March 6, 2012.

The current definition of transit proximity states the following:

> Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path....

As introduced, ZTA 12-06 would amend the definition of transit proximity as follows:

> Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility....

The intent of ZTA 12-06 is to eliminate the current reduction in amenities and parking spaces required for development near a MARC rail station for projects in CR, CRT, and CRN zones. The sponsors of ZTA 12-06 believe that MARC rail service, which provides relatively infrequent service, in-bound in the morning and out-bound in the afternoon, does not change travel behavior sufficiently to warrant treatment different from any other project.

A public hearing on ZTA 12-06 was held on April 10, 2012. As a general matter, Kensington residents favored the approval of ZTA 12-06. Property owners opposed ZTA 12-06. The supporters of the ZTA sited the minimal utility of MARC for serving transportation needs. Property owners believe that the ZTA undermines the foundations of the Kensington Sector Plan and undoes what the Council accomplished by amending the CR zone to create the CRT and CRN zones to facilitate revitalization under the Kensington Sector Plan. Representatives of the Konterra Property claimed adoption of

ZTA 12-06 would represent a breach of faith. In their opinion it would renege on the implicit agreement among the Council, the Town of Kensington, and Konterra.

Councilmembers asked about the impact of parking requirements on the cost and feasibility of development[1] and the effects ZTA 12-06 might have in the North Bethesda area.

Speculating on Future Events

The trigger for recognizing a transit facility is a master plan designation on a fixed path transit line station. The Montgomery Transit Task Force issued a report on May 22, 2012 that recommended a 160 mile system. A Connecticut Avenue line is in phase 2 of their recommendations. The Planning Board is considering undertaking a transportation master plan to address the recommendations of the task force. If this work results in an approved master plan with a dedicated busway on Connecticut Avenue and a stop near Kensington, Kensington would be near a level 2 transitway, even if MARC rail stations are excluded from the definition of transit proximity.

The Council is expecting to receive the Planning Board's recommendations on a Zoning Ordinance Rewrite before the end of 2012. The Planning Staff's consideration of reduced parking requirements are noted herein. If the Council approves a new Zoning Ordinance, it will have new parking requirements. These requirements will replace the current parking standards.

Parking Standards

Inadequate parking is a nuisance to neighbors. To property owners, inadequate parking is an obstacle to getting tenants to move into a building and extending leases for any tenant who experienced a parking problem. Banks have refused loans in the past because, in their opinion, a proposed development provided an inadequate number of parking spaces. It is not in the developer's interest to provide too few parking spaces. It is not in a nearby neighborhood's interest to have a neighbor with too little parking.

On the other side of the coin, too much parking is not a good thing. Parking is a cost to a developer.[2] Those costs must be covered by parking fees or rent. Higher costs are an impediment to new development, particularly in marginal markets. Banks have refused loans because the economics of a project do not work. Some transit oriented communities do not want too much parking. Easy availability of parking is an incentive for car use over transit use.

Most jurisdictions use the Goldilocks principle for parking requirements: adopt minimum requirements that are too high and not too low. Some jurisdictions that have transit options have maximum parking requirements and no minimum requirement. There is more risk in setting minimum parking standards too high, because the market will build more parking if the minimum required parking is too low.

Parking standards in the CR, CRT, and CRN zones are expressed as a percentage of current code requirements.[3] Parking requirements are reduced the most for land located nearest a level 1 or level 2

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[1] See Appendix.

[2] See Appendix.

[3] **59-C-15.631. Parking Ratios.**

Parking spaces must satisfy the following minimums and maximums unless the minimum number of parking spaces is waived under Section 59-C-15.636. The minimum number of spaces required is equal to the number of parking spaces that

transit facility; however, because one of the categories for reduction is land GREATER than ½ mile from a Metro station, the current standards reduce parking requirements for all CR, CRT, and CRN zoned land.[4] The Planning Board recommended this to the Council because, according to a 2010 parking study, the current parking requirements in the County are excessive. The Planning Department is recommending reducing all parking requirements as part of the Zoning Ordinance Rewrite. Providing a category that includes all property NOT near transit provided a way to generally reduce parking requirements whenever CR, CRT, or CRN zones are applied in advance of the Zoning Ordinance Rewrite. ZTA 12-06 would not eliminate this general reduction on parking requirements. The table below shows the difference in parking requirements.

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would otherwise be required by Division 59-E-3, multiplied by the applicable factor in the table, or at the rate indicated. When a maximum number of spaces is indicated, no more parking than would otherwise be required by Division 59-E-3 may be provided.

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

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

[4] All land is either within ½ mile of a Metro station or more than ½ mile from Metro station.

Parking requirement comparison (Data from MNCPPC)

Use	Metric	Current Parking Requirement within ½ mile of MARC with MARC proximity credit (CRT zoning)	Current Requirement greater than ½ mile from Metro *without* MARC proximity credit (CRT)	Proposed Zoning Rewrite Requirement (outside of a parking district)	Parking Study Finding
General Office	Per 1,000 SF	1.7 min; 2.7 max	2.2 min; no max	2.25 baseline	2.25 baseline
General Retail	Per 1,000 SF	4 min; no max	4 min; no max	4.0 baseline	1.25 baseline
Restaurant	Per 1,000 SF	4 min; no max	4 min; no max	4.0 baseline	1.75 baseline
Residential Multi-Family efficiency	Per Unit	0.7 min; 1.0 max	0.8 min; no max	1.0 baseline	1.2 baseline
Residential Multi-Family 1 bedroom	Per Unit	0.9 min; 1.25 max	1 min; no max	1.25 baseline	1.2 baseline
Residential Multi-Family 2 bedroom	Per Unit	1.1 min; 1.5 max	1.2 min; no max	1.5 baseline	1.2 baseline
Residential Multi-Family 3 bedroom	Per Unit	1.4 min; 2.0 max	1.6 min; no max	2.0 baseline	1.2 baseline

(Office varies from 1.9 to 3.0 spaces per 1,000sf under 59-E. This uses Kensington's existing conditions.)

The minimum number of parking spaces required for multifamily projects that get "credit" for being more than 1/2 mile from metro is 20 percent or more below the minimum number of spaces recommended by the initial staff draft Zoning Ordinance Rewrite; however, there is no maximum on the number of residential parking spaces. If the Council wanted to exclude land near MARC station from the general reductions, it could amend ZTA 12-06 as follows:

> Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; [[excluding a]] <u>however, any site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility is excluded from both transit proximity levels</u>. <u>Any site excluded from both transit proximity levels must satisfy the parking requirements in Division 59-E-3.</u>

Staff does not recommend this alternative. The Council should use this approach with caution. This amendment would require more parking than needed, in the opinion of the Planning Department. As previously noted, too much parking serves no one's interests. The cost of providing parking is detailed in the appendix. The Planning Staff draft Zoning Ordinance Rewrite will recommend reduced parking requirements.

The Planning Board (4-0) recommended granting a parking reduction only when a MARC station is paired with a shared parking program. This would provide more opportunity for off-site parking if insufficient parking was provided on any single site. It would allow an efficient use of parking spaces in the program. The Board recommends the following changes:

> Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; except that for the purposes of calculating parking requirements, MARC stations only qualify as transit stations for development within an area that has a shared parking program established by municipal resolution [excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility]....

Planning Staff did not recommend the proposed changes to the parking requirement that would result from ZTA 12-06 and did not recommend an alternative.

Reduced Amenities

In order to ease the burdens of developing near transit, the Council reduced the amenity points required, based on transit proximity levels and distance from the transit facility. The current provision follows:

> **59-C-15.852. Transit Proximity.**
>
> Development near transit facilities encourages greater use of transit, controls sprawl and reduces vehicle miles traveled, congestion, and carbon emissions, and is eligible for incentive density. The Planning Board may approve incentive density for transit proximity under this section. Transit proximity points are granted for proximity to existing or master planned transit stops based on transit service level and CRT and CR zones in §59-C-15.852 as follows:

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

ZTA 12-06 as introduced would not change this provision, but land close to a MARC station and not near any other transit facility would not get a reduction in amenity points. The Planning Staff memorandum provided maps of the land within ½ mile and a mile of MARC Stations. All land between the White Flint Metro Station and the Twinbrook Metro Station is within a mile of a Metro Station and would still have a reduced amenity requirement.

The majority of the Planning Board (Chair Carrier recommended no reduction in amenity points for MARC proximity) suggested creating a 3rd level of transit proximity and retaining some point reduction for proximity to a MARC Station (level 3 proximity). The Board recommended changes to the definition of transit proximity and the table in §59-C-15.852. A majority of the Planning Board would amend the definition of transit proximity as follows:

> Transit proximity is categorized in [two] three levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a continually multi-directional rail or bus line with a dedicated, fixed path; (3) proximity to an existing or master planned MARC station, except that, for the purpose of calculating the parking requirements, MARC stations only qualify as transit stations for development within an area that has a shared parking program established by municipal resolution. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

The table below indicating the amenity point value of transit proximity, is recommended by two Planning Board members and the Mayor and Council of Kensington.

Proximity	**Adjacent or confronting**			**Within ¼ mile**			**Between ¼ and ½ mile**			**Between ½ and 1 mile**		
Transit Service Level	1	2	3	1	2	3	1	2	3	1	2	3
CRT	25	15	5	20	12.5	2.5	15	10	0	10	7.5	0
CR	50	30	10	40	25	5	30	20	5	20	15	2.5

The amenity point numbers in column 3 have a relationship to MARC use. The number of boardings at the Kensington MARC station represents a ridership of 5% of the population (110 boardings – Kensington population is about 2,200). Most of the commercial areas are within 1/4 mile of the MARC train. Five percent of the 50 points needed is 2.5. The amenity points for projects at the station or more distant than ¼ mile assume more ridership from people closer than ¼ mile from the station and less ridership farther out.

The following table is recommended by the one Planning Board member.

Proximity	**Adjacent or confronting**			**Within ¼ mile**			**Between ¼ and ½ mile**			**Between ½ and 1 mile**		
Transit Service Level	1	2	3	1	2	3	1	2	3	1	2	3
CRT	25	15	7.5	20	12.5	6.25	15	10	5	10	7.5	2.5
CR	50	30	15	40	25	12.5	30	20	10	20	15	7.5

ZTA 12-06 was advertised as only a change to the definition of transit proximity.[5] If the Council wants to pursue this option, it would advisable to re-advertise ZTA 12-06.

This packet contains	© number
ZTA 12-06 as introduced	1 – 2
Planning Board recommendation	3 – 6
Planning Staff recommendation	7 – 12
Area around MARC Stations	13 – 23
Representative testimony	
Lydia Sullivan	24 – 25
William Kominers	26 – 29
Caleb Gould	30 – 35
Lara Akinbami and Gail Dalferes	36

[5] ZTA 12-06 was only advertised as "An amendment to the Montgomery County Zoning Ordinance to amend the definition of transit proximity for CR, CRN, and CRT zones."

Appendix – Parking Cost

Below are costs (per space) from some several recent projects/studies.

Parking cost assumptions based on past studies/projects			
Date	Surface	Structured	Underground
Apr-12		$23,000	$31,000
May-11		$26,300	$37,000
May-11	$2,500		$40,000
Nov-10	$3,000	$15,000	$25,000
Jul-09	$2,700	$29,400	$41,200
Average	$2,733	$23,425	$34,840
Assume	**$2,750**	**$24,000**	**$35,000**

These parking cost assumptions were then used in a rough pro forma of a hypothetical GSA office building. The variables in the analysis are parking ratio (tested from 1.50 per 1,000 net square feet, up to 2.50 per 1,000 net square feet) and parking cost (assuming that all spaces are either in a parking structure at $24,000 per space, or underground at $35,000 per space).

Sensitivity to parking ratio: underground parking example					
Parking Ratio	**1.50**	**1.75**	**2.00**	**2.25**	**2.50**
Parking as % of project cost	15%	17%	19%	20%	22%
Parking cost per gross sq ft	$44.68	$52.15	$59.50	$66.97	$74.43
Parking cost per net sq ft	$52.57	$61.35	$70.00	$78.78	$87.57

Sensitivity to parking ratio: structured parking example					
Parking Ratio	**1.50**	**1.75**	**2.00**	**2.25**	**2.50**
Parking as % of project cost	10%	12%	13%	15%	16%
Parking cost per gross sq ft	$30.64	$35.76	$40.80	$45.92	$51.04
Parking cost per net sq ft	$36.05	$42.07	$48.00	$54.02	$60.05

If the building is parked underground, then parking is 22% of the non-land costs if the parking ratio is 2.5 spaces per 1,000 net square feet. If the parking ratio is lowered to 1.50, then parking is only 15% of the non-land costs.

Also of interest is to compare costs of above and below ground options at different parking ratios. For example, the cost of parking per net square foot at a parking ratio of 2.5 spaces per 1,000 net square feet is slightly lower than the cost of parking underground at a ratio of 1.75 spaces per net square foot ($60.05 compared to $61.35).

Pro forma analyses for each variation are attached. In each pro forma, it is assumed that revenues are not affected by lower parking ratios—this is probably unrealistic in most office markets. In this rough example, only two variations were actually feasible (for these purposes, defined as positive residual land value and leveraged return above 4.00%)—above-ground structured parking at parking ratios of 1.50 and 1.75 spaces per 1,000 net square feet.

Notes

Parking costs

Underground parking can be significantly more expensive than above ground structured parking.

- Underground parking has the added benefit of increasing the amount of developable land, improving pedestrian environment, and creating opportunities for aesthetic improvements. Many of the benefits of underground parking accrue to the area rather than the project, which complicates the public/private dialogue about underground parking.
- Underground structured parking costs can be as high as $55,000 per space. Factors affecting cost include depth, shape, and efficiency of underground garage, depth, water, rock, etc.

Above-ground structured parking costs also vary significantly.

- Garages that feel safe are more expensive to build. However, the returns often justify the additional cost (e.g., conventional wisdom in retail is that women won't shop where they do not feel comfortable in the garage).
- Costs also vary based on the need for sprinkler systems, ventilation, etc. A garage that is enclosed on 3 sides is more expensive than a free-standing garage that is open on all 4 sides.

Parking ratios

Reduced parking requirements can result in increased land value/increased redevelopment feasibility for those projects which can take advantage of the opportunity.

- Holding constant certain variable factors—such as rate of absorption, rents, financing costs—reduced parking ratios result in improved land values.
- In reality, absorption and rent cannot be held constant. Availability of parking is a key amenity for both office and retail users. Each use and user will have threshold parking ratios and, even above that threshold, reduced parking ratios tend to result in lower rents, higher financing costs, and slower absorption.

There are both less flexibility and less variability in residential parking than in commercial.

- It is much easier to influence the decision about how one gets to work or play destinations than it is to influence whether or not one should own a car at all.
- Each employee or patron can drive no more than one vehicle at a time. On the other hand, a household may own more than one vehicle or even more than one vehicle per adult.

Long-term commercial parking is more elastic than short-term commercial parking.

- Consumers need to go to the store, and sometimes they need to do so with a car.
- Workers will feel the daily cost of parking more than consumers feel the cost of feeding the meter.

Zoning Text Amendment No.: 12-06
Concerning: Commercial/Residential Zones – Transit Proximity Definition
Draft No. & Date: 1 – 3/2/12
Introduced: March 6, 2012
Public Hearing:
Adopted:
Effective:

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

By: Councilmembers Leventhal, Elrich, and Andrews

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the definition of transit proximity for CR, CRN, and CRT zones.

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

DIVISION 59-C-15	"COMMERCIAL/RESIDENTIAL ZONES"
Section 59-C-15.3	"Definitions specific to CR zones"

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

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

DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL ZONES.

* * *

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

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

* * *

Transit proximity: Transit proximity is categorized in two levels: 1. proximity to an existing or master planned Metrorail Station; 2. proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; <u>excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility</u>. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

* * *

Sec. 2. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

_____

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

April 9, 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 No. 12-06

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland--National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 12-06 at our regular meeting on April 5, 2012. There was no majority opinion on the text amendment, as a whole. Instead, the Board considered the two impacts of the text amendment, viz., the changes that would result to the parking standards and the public benefits, separately. These are discussed below.

General Considerations

In its deliberation, the Planning Board considered Planning Staff's recommendation (attached), heard testimony from speakers in support of the Zoning Text Amendment ("ZTA"), and speakers recommending rejection of the ZTA. The discussion focused on several topics, including:

- The incentive density points at stake for redevelopment in the recently approved Kensington Sector Plan;
- The increase in parking requirements for affected properties in Kensington entailed by the ZTA;
- Possible implications to properties near MARC stations that may be rezoned in a future master plan or other comprehensive rezoning;

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- MARC ridership statistics and trends;
- The Town of Kensington's deliberations;
- The differences between Metro, transit such as the proposed Corridor Cities Transitway or Purple Line, and MARC, including directional and frequency considerations;
- Concerns about parking standards;
- Implications to recently re-zoned areas that previously only allowed commercial uses, including shifts in residential unit types and demographics; and
- Pedestrian habits with regard to distance from transit.

Consideration of all these topics led Planning Board members to various conclusions.

Impacts on Parking

By a 4-0 vote, the Planning Board recommends a modification to the definition of transit proximity so that municipalities with parking programs could take advantage of the reduced parking requirements that would otherwise be available based on proximity to transit. This could be accomplished by amending the definition to read:

> *Transit proximity:* Transit proximity is categorized in two levels: 1. Proximity to an existing or master planned Metrorail Station; 2. Proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; except that, for the purposes of calculating parking requirements, MARC stations only qualify as transit stations for development within an area that has a shared parking program established by municipal resolution [[excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility]]. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

The intent of this modification is to recognize that access to a MARC station has a lower impact on congestion than access to other types of transit would, but that municipalities may want to establish parking programs to decrease parking requirements for any number of alternative reasons. It was pointed out that flexibility in the range of parking that is currently allowed will permit development to "right-size" their parking to meet market demands as areas change. Further, many areas with small sites and low density zoning may only be able to redevelop with lower parking requirements and where shared parking is provided.

Impacts on Public Benefits

Three of the four Board members at the meeting concluded from the discussion of the topics above that some amount of incentive density should be provided as an

incentive for development around MARC stations. No majority could agree on the specific number of points that should be granted.

The dissenting view, held by Chair Carriér, was that no incentive density points should be granted. This position is based on the relative infrequency of MARC trips and the fact that MARC is only viable as a commuting option (because it is unidirectional, reversing from the morning to the afternoon). As ridership increases and significant reductions in congestion can be shown, however, the issue may be revisited and incentive density points reconsidered.

Commissioners Dreyfuss, Wells-Harley, and Presley agreed that MARC should be separated from the other types of transit listed in the definition and placed in its own category as a "Level 3 Transit Facility". This would allow projects that are proximate to Level 2 Transit, such as master-planned Purple Line and CCT stations, to remain unmodified. In combination with the change to accommodate municipal shared parking programs, this could be accomplished by amending the definition to read:

> *Transit proximity:* Transit proximity is categorized in [[two]] three levels: 1. Proximity to an existing or master planned Metrorail Station; 2. Proximity to an existing or master planned station or stop along a continually multi-directional rail or bus line with a dedicated, fixed path; 3. Proximity to an existing or master planned MARC station, except that, for the purposes of calculating parking requirements, MARC stations only qualify as transit stations for development within an area that has a shared parking program established by municipal resolution [[excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility]]. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

The debate then turned to the number of points that should be granted. A change to the table in Section 59-C-15.852 can accomplish this by adding a column for Level 3 Transit under each of the four divisions of proximity. Commissioner Dreyfuss argued that the potential of MARC stations to expand ridership and the mutually reinforcing dynamics of density and revitalization around transit stations should be encouraged. His recommendation was to allow for fewer, but still significant points for proximity to MARC:

Proximity	Adjacent or Confronting			Within ¼ mile			Between ¼ and ½ mile			Between ½ and 1 mile		
Transit Service Level	1	2	3	1	2	3	1	2	3	1	2	3
CRT	25	15	7.5	20	12.5	6.25	15	10	5	10	7.5	3.75
CR	50	30	15	40	25	12.5	30	20	10	20	15	7.5

Commissioners Wells-Harley and Presley opined that the incentive density points should reflect the existing conditions and that only a few points should be granted for development near MARC at this time:

Proximity	Adjacent or Confronting			Within ¼ mile			Between ¼ and ½ mile			Between ½ and 1 mile		
Transit Service Level	1	2	3	1	2	3	1	2	3	1	2	3
CRT	25	15	5	20	12.5	2.5	15	10	0	10	7.5	0
CR	50	30	10	40	25	5	30	20	2.5	20	15	0

Conclusion

Although none of the Commissioners recommended approval of ZTA 12-06 as introduced, there was consensus that a modification to differentiate MARC service from other transit facilities was appropriate. All Commissioners believe parking should remain reduced below the current requirements in Division 59-E when development is near a MARC station and is within a municipality with a parking program. Three of four Commissioners believe that MARC service warrants some amount of incentive density to encourage development at these nodes, but disagree on the specific amount.

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, April 5, 2012.

Françoise M. Carrier
Chair

FC:JS

MCPB
Item No. 6
Date: 4/5/12

Zoning Text Amendment (ZTA) No. 12-06, Commercial/Residential Zones – Transit Proximity Definition

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Mary Dolan, Chief, Functional Planning & Policy Division, Mary.Dolan@montgomeryplanning.org, 301-495-4552

Completed 3/29/12

Description

ZTA No. 12-06 amends the definition of *Transit Proximity* in Section **59-C-15.3. Definitions specific to the CR zones.** Specifically, the ZTA would exclude MARC stations from the facilities that qualify when measuring a site's proximity to transit.

This amendment impacts two aspects of development in the CR, CRT, and CRN zones:

- The points available for incentive density in the CR and CRT zones; and
- The parking requirements for development in the CR, CRT, and CRN zones.

In the first case, incentive density points would have to be obtained by providing public benefits other than those that would have been available via transit proximity. In the second, parking requirements will be higher than they would have been for the affected properties.

Summary

ZTA 12-06 was introduced to disallow MARC Stations as qualifying transit facilities in the definition of Transit Proximity. This change would impact the ability to receive incentive density for optional method projects in the CR and CRT zones and would result in increased parking requirements in the CRN, CRT, and CR zones for properties that are not within 1/2 to 1 mile of other qualifying transit facilities.

Staff recommends approval of ZTA 12-06 with modifications to disassociate the impacts on public benefits and parking reductions and proceed only with the proposed changes to the public benefits.

Transit Proximity Defined

Current Definition

Transit proximity: Transit proximity is categorized in two levels: 1. Proximity to an existing or master planned Metrorail Station; 2. Proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

Definition Proposed by ZTA 12-06

Transit proximity: Transit proximity is categorized in two levels: 1. Proximity to an existing or master planned Metrorail Station; 2. Proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path; excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

Background

Overview of Relevant Sections of the CR, CRT, and CRN Zones

The Commercial/Residential zones allow density based on a formula of total, non-residential, and residential maximums and maximum height that is mapped for each property or area. In the CR and CRT zones, density above a certain "standard method" base density (and up to the maximums established by the mapped zone) may only be achieved through the provision of public benefits. (CRN-zoned property may only develop under the standard method.) These public benefits are based on a point system, transit proximity being one of many that may be provided. Transit proximity points are based on distance and level of service, as defined above.

59-C-15.852. Transit Proximity.

Development near transit facilities encourages greater use of transit, controls sprawl and reduces vehicle miles traveled, congestion, and carbon emissions, and is eligible for incentive density. The Planning Board may approve incentive density for transit proximity under this section. Transit proximity points are granted for proximity to existing or master planned transit stops based on transit service level and CRT and CR zones as follows:

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

(a) A project is adjacent to or confronting a transit station or stop if it shares a property line or easement line, or is separated only by a right-of-way from an existing or master-planned transit station or stop, and 100 percent of the gross tract area in a single sketch plan application is within ¼ mile of the transit portal.

(b) For split proximity-range projects:

(1) If at least 75 percent of the gross tract area in a single sketch plan application is within the closer of two proximity ranges, the entire project may take the points for the closer range;

(2) If less than 75 percent of the gross tract area in a single sketch plan is within the closer of 2 proximity ranges, the points must be calculated as the weighted average of the percentage of area in each range.

Additionally, the Commercial/Residential zones establish certain development standards and general requirements, including parking. Parking minimums and maximums are established based on transit proximity and no distinction is made between level 1 and 2 transit facilities.

59-C-15.631. Parking Ratios.

Parking spaces must satisfy the following minimums and maximums unless the minimum number of parking spaces is waived under Section 59-C-15.636. The minimum number of spaces required is equal to the number of parking spaces that would otherwise be required by Division 59-E-3, multiplied by the applicable factor in the table, or at the rate indicated. When a maximum number of spaces is indicated, no more parking than would otherwise be required by Division 59-E-3 may be provided.

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

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

ZTA 11-01 Discussions

This question of whether MARC should be included as a qualifying transit facility was raised over the course of the hearings at both the Planning Board and the County Council on the recently approved ZTA 11-01 that

created and incorporated the CRT and CRN zones within the Commercial/Residential zones. Both bodies ultimately approved the current version that includes MARC stations as facilities that qualify when measuring a site's proximity to transit and parking requirements.

In large part, the recommendations of Planning Staff and the Planning Board were based on discussions with the Town of Kensington residents, property owners, and Council. Owners of small properties and those with sites that were mapped at relatively low densities argued convincingly that incentive density would be hard to achieve through provision of other public benefits. Further, strong arguments were made that existing parking requirements are too high and that lower parking requirements would encourage redevelopment. Changes were even made to allow municipalities to establish parking programs for shared public parking that could count towards meeting a development's requirement.

Affected Sites

Kensington

At this point, the only affected sites are within Kensington. Only a few sites in Kensington with CRT or CRN zoning may be considered adjacent to or confronting the MARC Station; about ½ of the properties are within ¼ mile; most of the rest are within ½ mile of the station; and a few are just outside of ½ mile. For the CRT properties, incentive density points may be approved for 15, 12.5, 10, and 7.5 points, respectively.

The larger impact, however, is to parking requirements. The sites within ½ mile of the MARC Station with CRT or CRN zoning would shift from having lower minimums and, in some cases, maximum caps to a higher minimum without any caps. Specifically:

- Minimum residential parking would be increased 10% on CRN-zoned sites and 20% on CRT-zoned sites;
- Retail and restaurant parking would be unchanged;
- Non-residential parking (except retail and restaurant) would be increased 20%; and
- Maximum limits would be removed from the residential parking for CRT-zoned sites and for non-residential (except for retail and restaurant) CRN- and CRT-zoned sites.

Possible Future Implications

Under the Zoning Ordinance rewrite, early drafts of conversions from existing commercial and mixed-use zones to new zones, including CR, CRT, and CRN zones, could have impacts on other properties. For example, in Germantown the predominant mixed-use zoning is TMX-2 and the draft conversion for this zone is to the CR zones (with limits on density and height as recommended in the master plan). While much of the Germantown area will be served by the Corridor Cities Transitway ("CCT"), there are areas near the MARC Station that may not be able to take advantage of the transit proximity public benefit for incentive density if it is removed from the definition. Further, minimum parking requirements would be increased up to 60%.

The MARC Stations in Dickerson, Boyds, and Garrett Park have some commercial-zoned properties nearby; Barnesville has none. These properties would only be affected by the parking changes – some minimum requirements being raised by 20%.

The MARC Station at Washington Grove has some commercial- and industrial-zoned properties nearby; Metropolitan Grove has some industrial-zoned properties. In both cases, the industrial-zoned properties may be affected by both the incentive density and parking changes; the commercial, only the parking changes.

MARC Statistics

The general argument for the ZTA is that ridership is too low to have a significant impact on congestion. This is due to the fact that MARC is used as a commuter line one-way in the morning and the opposite way in the evening with relatively long headway intervals (9 inbound, 9 outbound (10 on Fridays)).

Average Boardings at Stations between July 2005 and April 2006:

Dickerson	11.3
Barnesville	84.2
Boyds	8.3
Germantown	726.5
Metro Grove	205.9
Gaithersburg	422
Wash Grove	31.8
Rockville	634.1
Garrett Park	32.7
Kensington	111.3
Silver Spring	652.2

Trends

The Brunswick line, serving Montgomery and Frederick Counties, has seen ridership increase steadily about 24% between 2003 and 2010.[1] These numbers vary month-by-month, but have been consistently rising. This trend will only be enhanced as new unit types and demographic shifts occur in Kensington due to the revitalization efforts implementing the new Sector Plan.

Town of Kensington Position

As the original debate was guided largely by the Town of Kensington, it seems appropriate to take into consideration the Town Council's recommendation on this ZTA. At the date of this staff report, no resolution has been published on the ZTA, but the Town Council did vote 2-1 in favor of ZTA 12-06. It may require a super-majority of the County Council to overturn this decision.

Recommendation

In summary, although the original argument in favor of retaining MARC Stations is buttressed by the ridership numbers and trends, Staff supports the Town of Kensington's position that it should not be counted as a public benefit. Also, it is reasonable to believe that the points required for any optional method project can be achieved by providing public benefits other than transit proximity. Further, the Town of Kensington will be reviewing regulatory applications and will express their opinion on particular public benefits on a case-by-case basis. The implications regarding parking, however, are in direct contradiction to the Town's position on

[1] http://mta.maryland.gov/sites/default/files/MARC_Ridership_and_Delays_2003_to_2010_20100920_for_web.pdf

decreased and shared parking policies. Staff does not support the proposed change to the parking requirements that would result from ZTA 12-06.

Transit Proximity: Public Benefit vs. Parking Requirements

In order to disallow the incentive density associated with transit proximity for MARC stations, but allow the parking requirement to be unaffected, the definition could be altered to disassociate the two provisions.

> *Transit proximity:* Transit proximity is categorized in two levels: 1. Proximity to an existing or master planned Metrorail Station; 2. Proximity to an existing or master planned station or stop along a rail or bus line with a dedicated, fixed path. For the purposes of granting incentive density, MARC stations do not qualify for the transit proximity public benefit. For the purposes of calculating parking requirements, MARC stations qualify as transit stations [[; excluding a site that is within one mile of a MARC station and that is more than one mile from any other transit station serving a dedicated, fixed path transit facility]]. All distances for transit proximity are measured from the nearest transit station entrance or bus stop entrance.

An alternative approach would be to allow both measures, but add language stipulating that the increased parking requirements do not apply in municipalities with municipal parking programs.

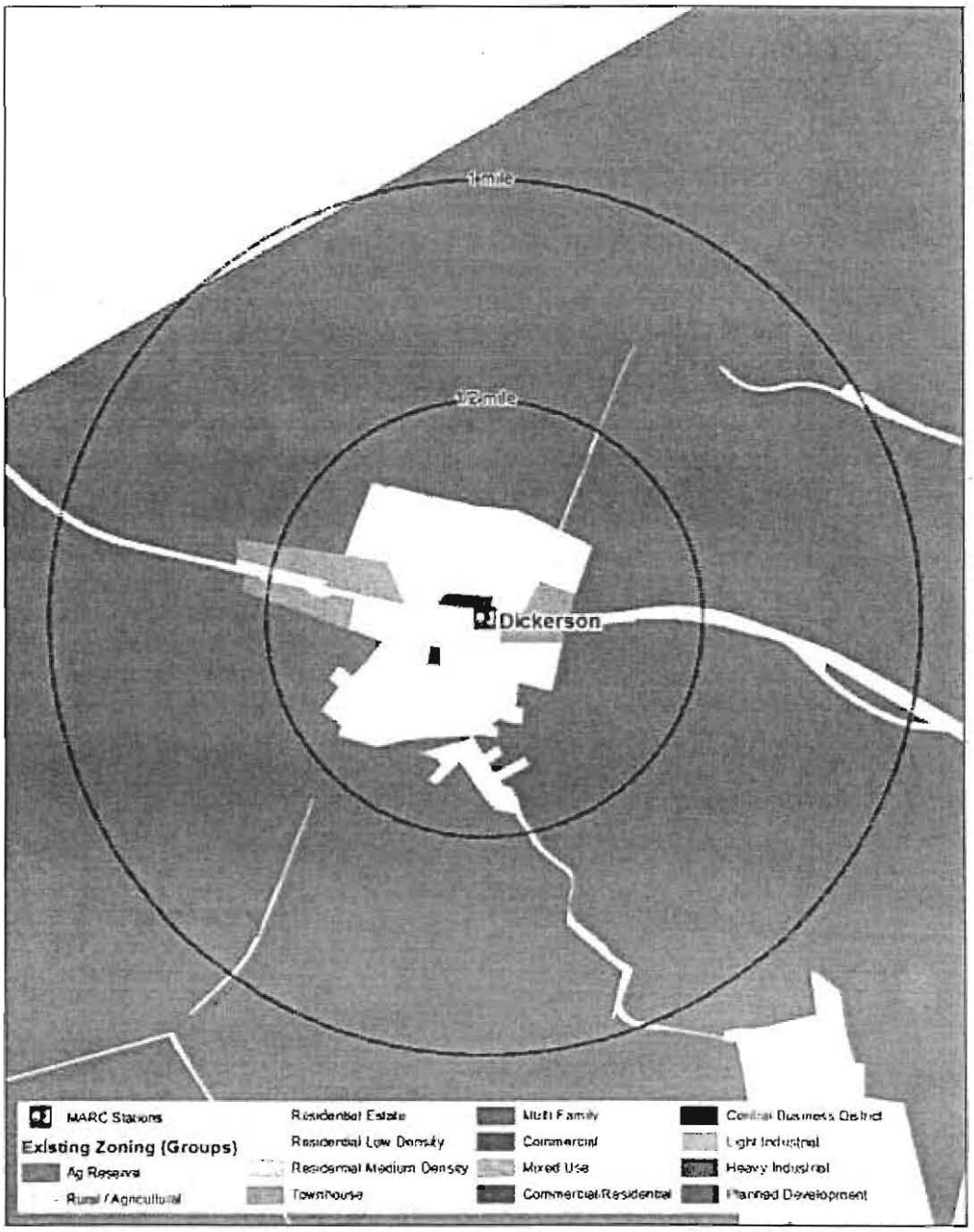
Conclusion

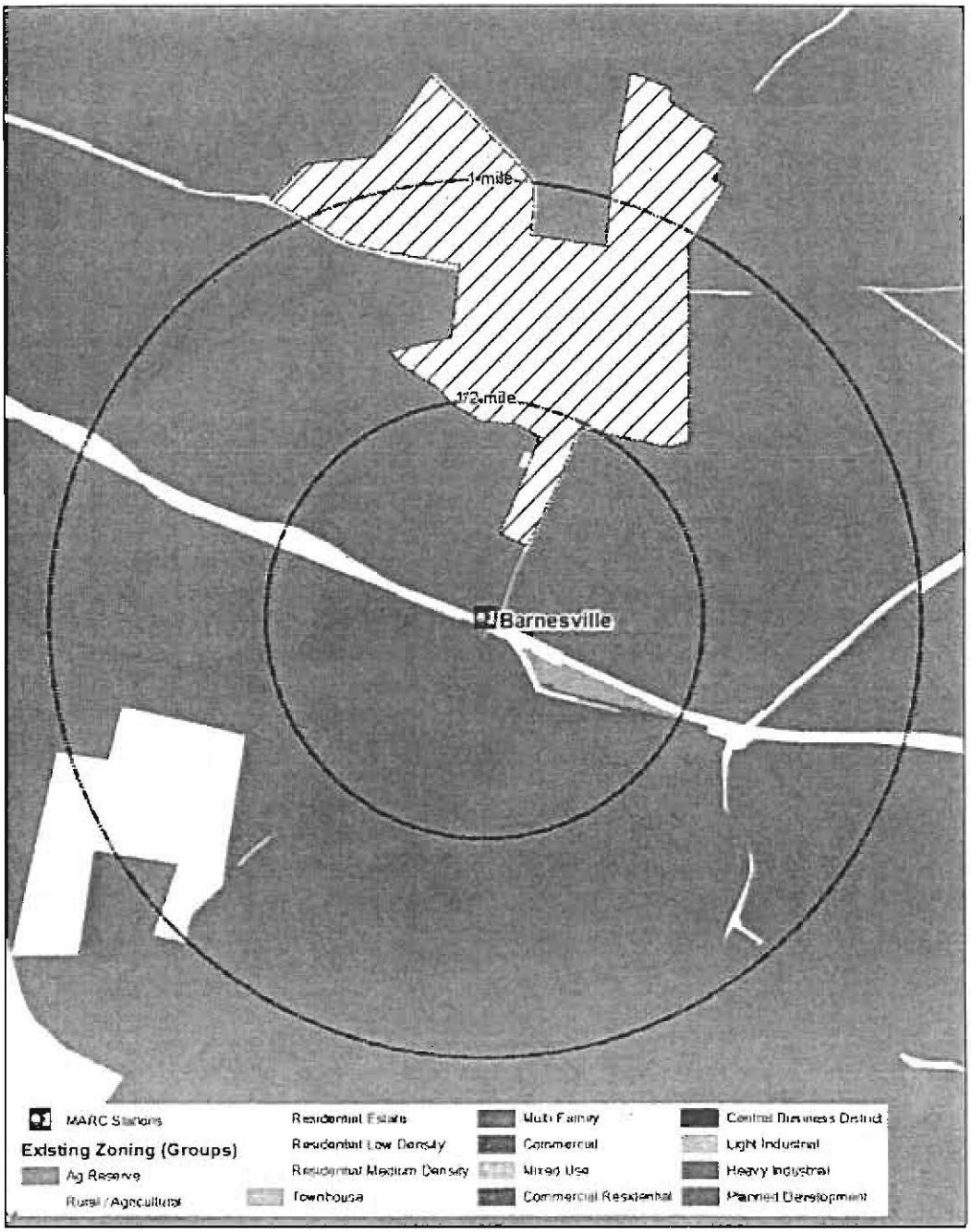
The use of MARC stations for incentive density and parking reductions is supported in the broader context of increasing use, demographic changes, and forthcoming dwelling unit types that may be allowed in current commercial-only areas. As multi-family, mixed-use village and town centers are created – even at low densities, opportunities should be encouraged for multi-modal connectivity. Further, in recognition of the difference between MARC Stations and Metro Stations, the points awarded and parking reductions are appropriately lower for MARC. That said, Staff supports ZTA 12-06, as modified, to encourage the provision of alternative public benefits in Kensington, the only area that will be affected by the change in the Zoning Ordinance for the near future.

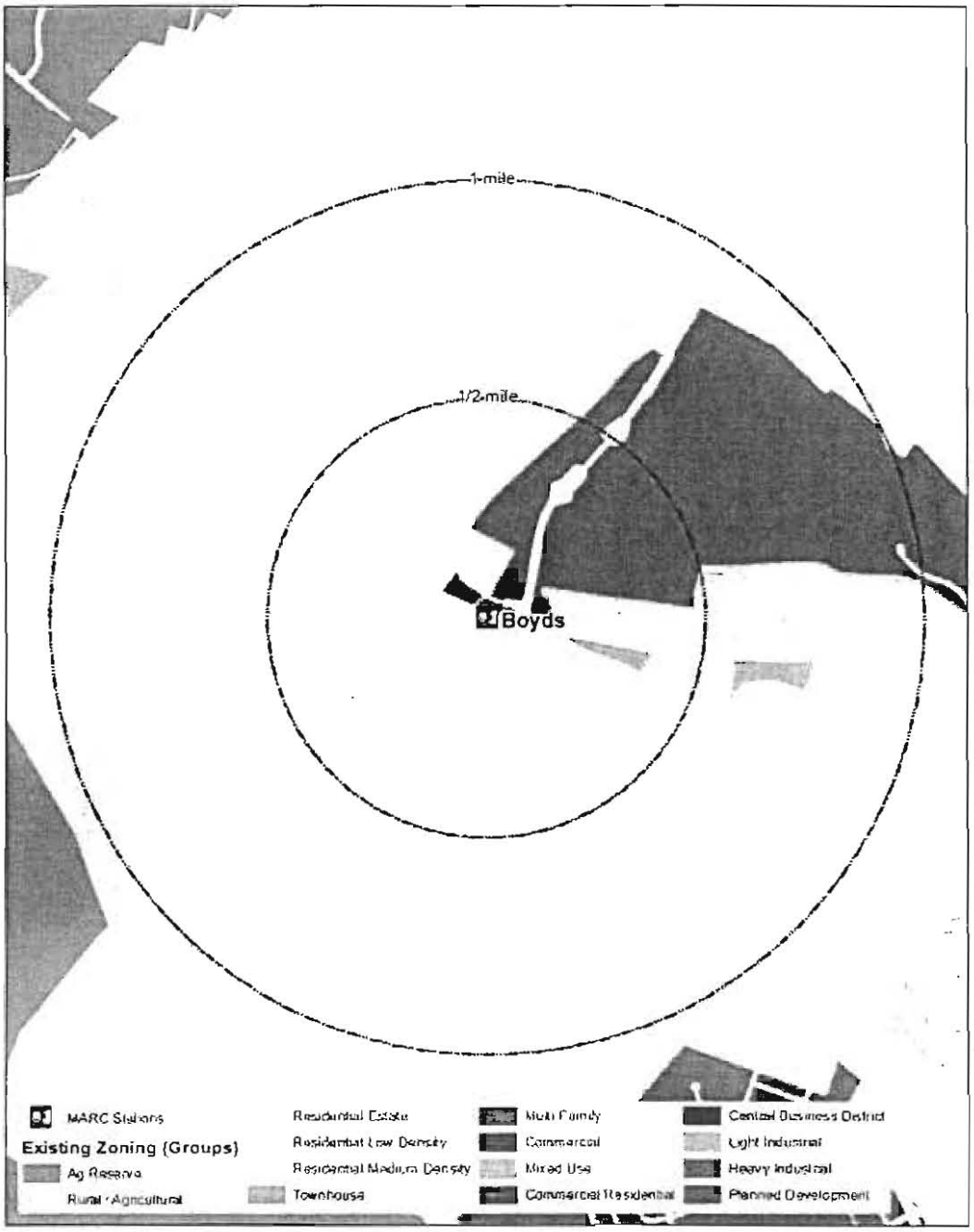
Attachments

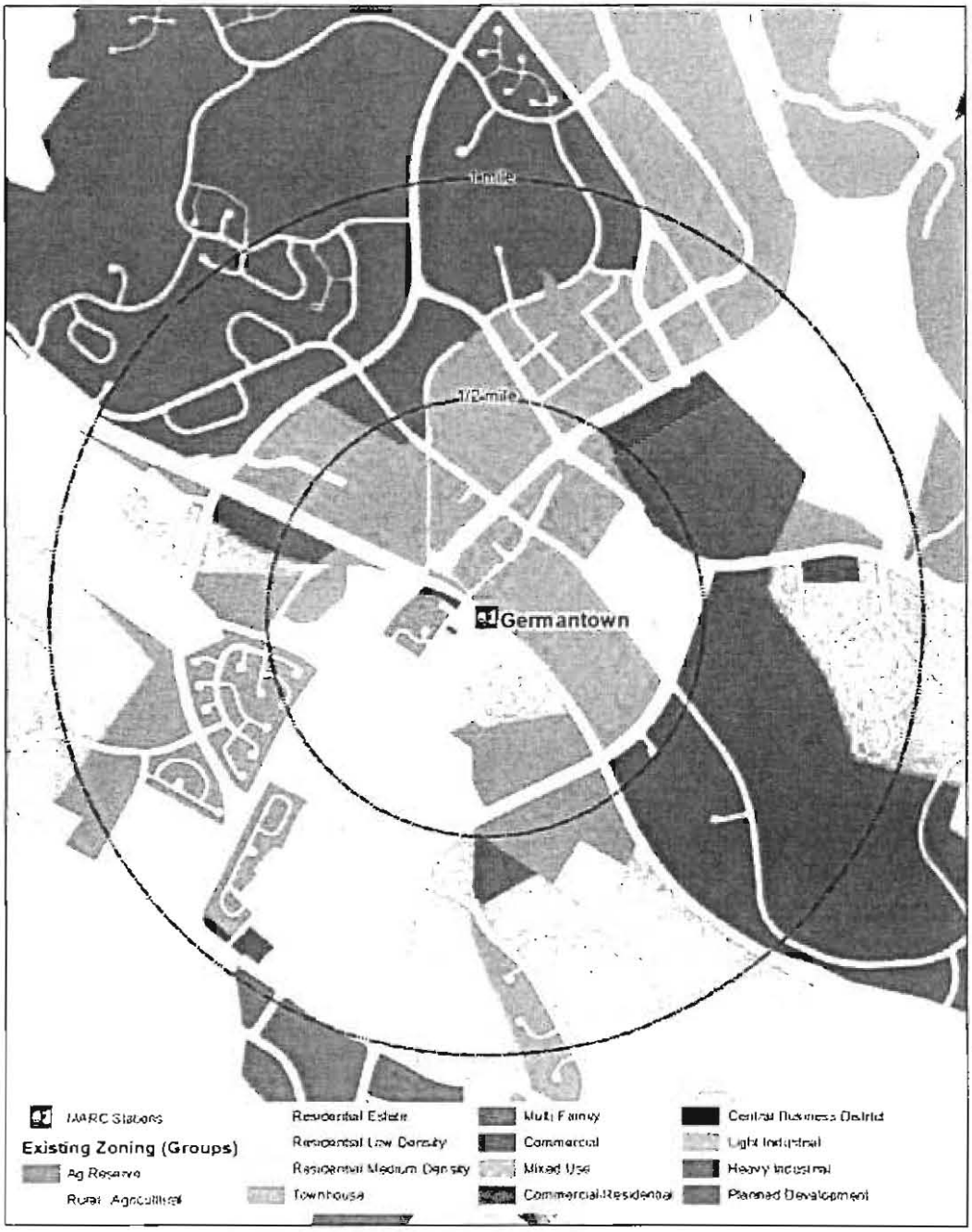
1. ZTA 12-06
2. Maps of MARC stations and zoning

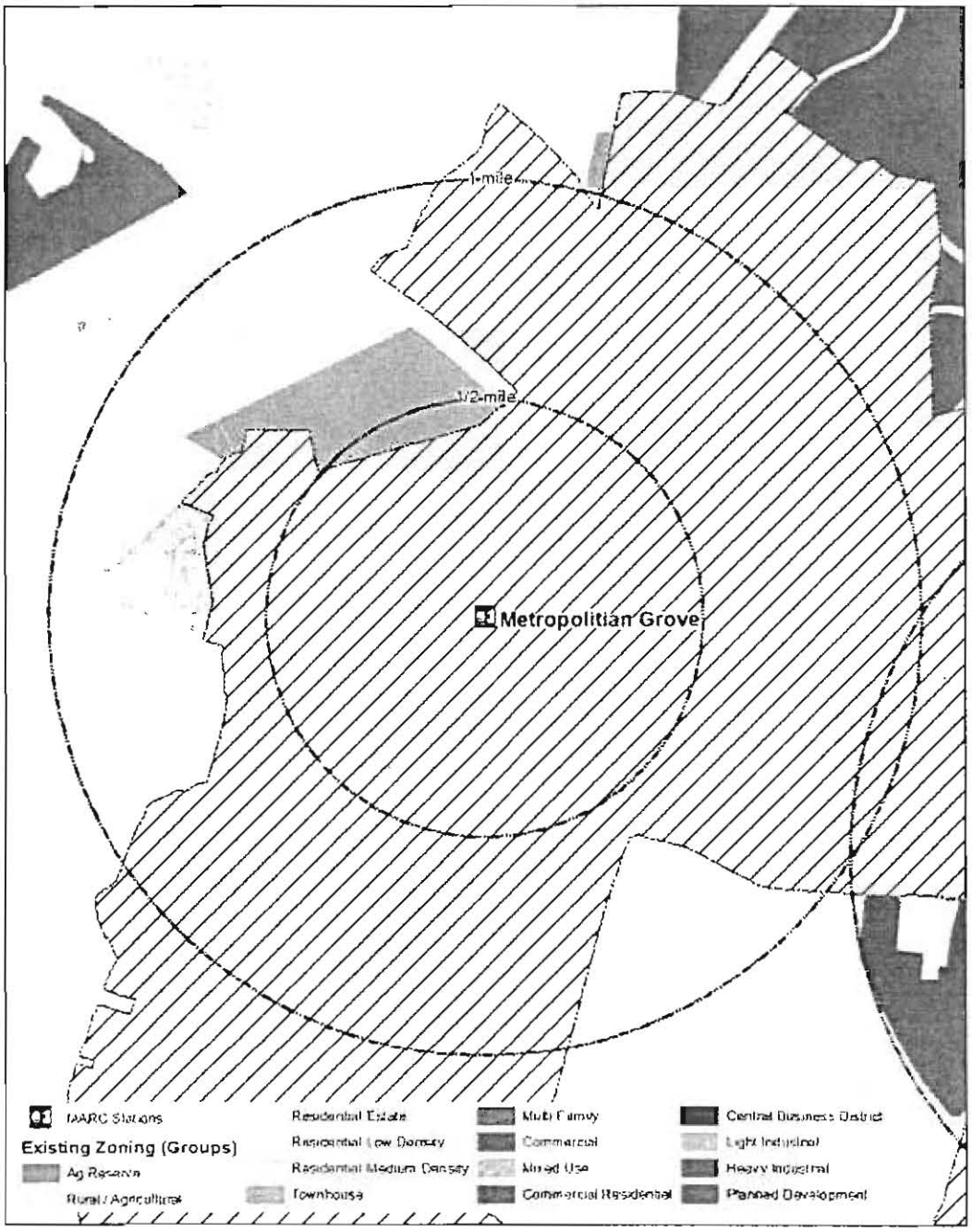
Attachment 2: MARC Stations and Zoning within 1 Mile



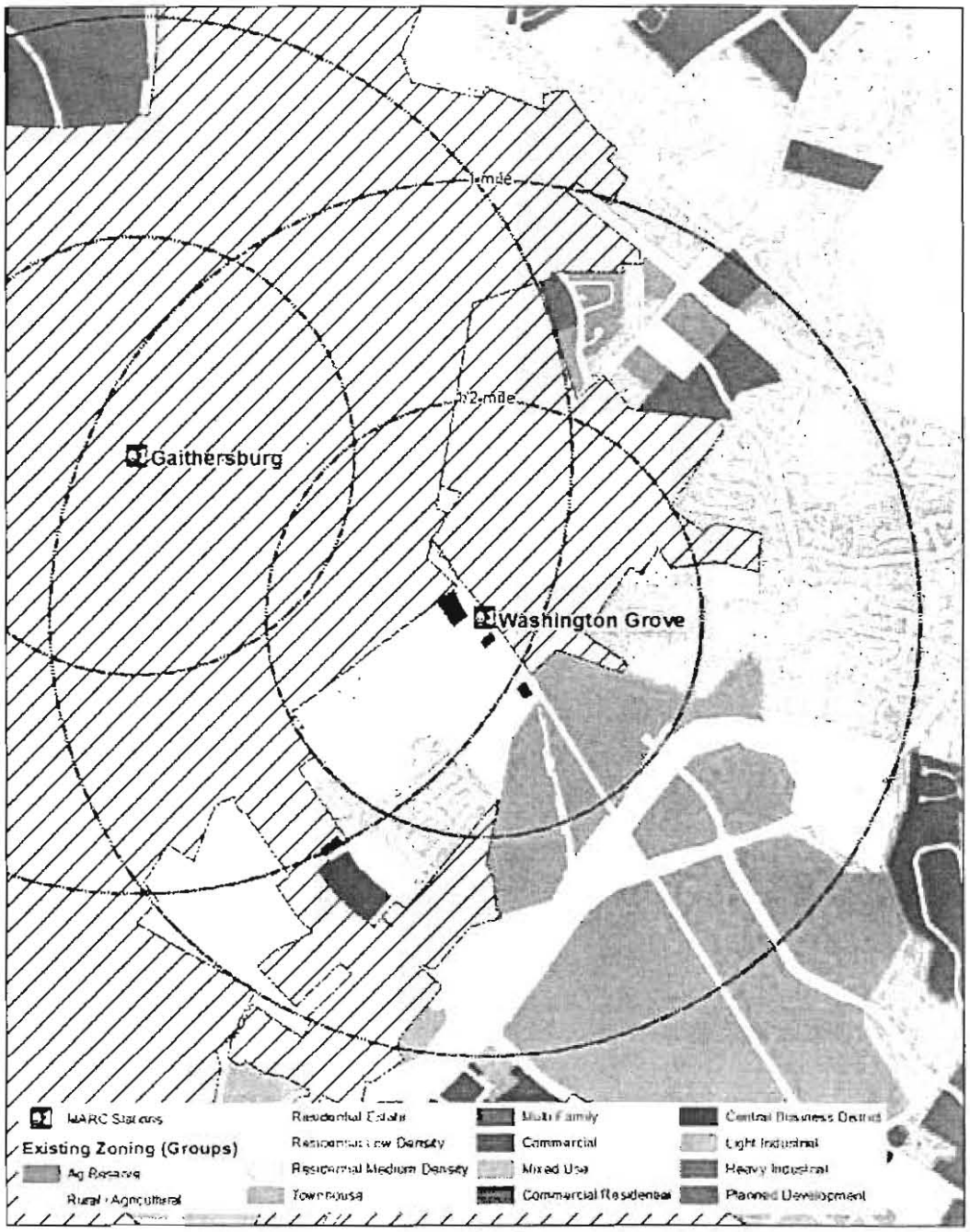

1 mile
1/2 mile
Barnesville
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1-mile
1/2-mile
Boyds
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1 mile
1/2-mile
Germantown
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial-Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1-mile
1/2-mile
Metropolitian Grove
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development

1/2-mile
Gaithersburg
Washington Grove
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural/Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1 mile
1/2 mile
Gaithersburg
Washington Grove
MARC Stations
Existing Zoning (Groups)
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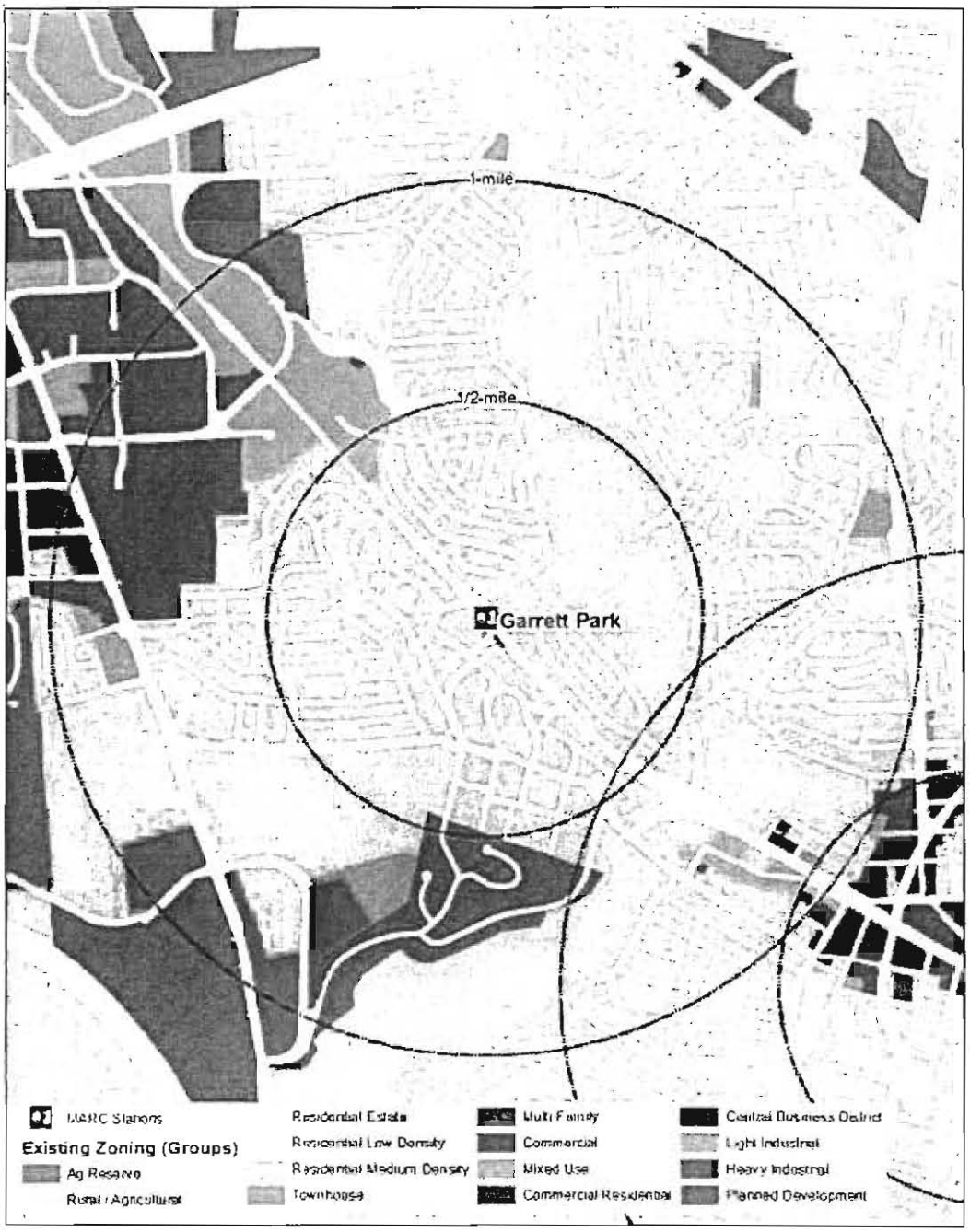
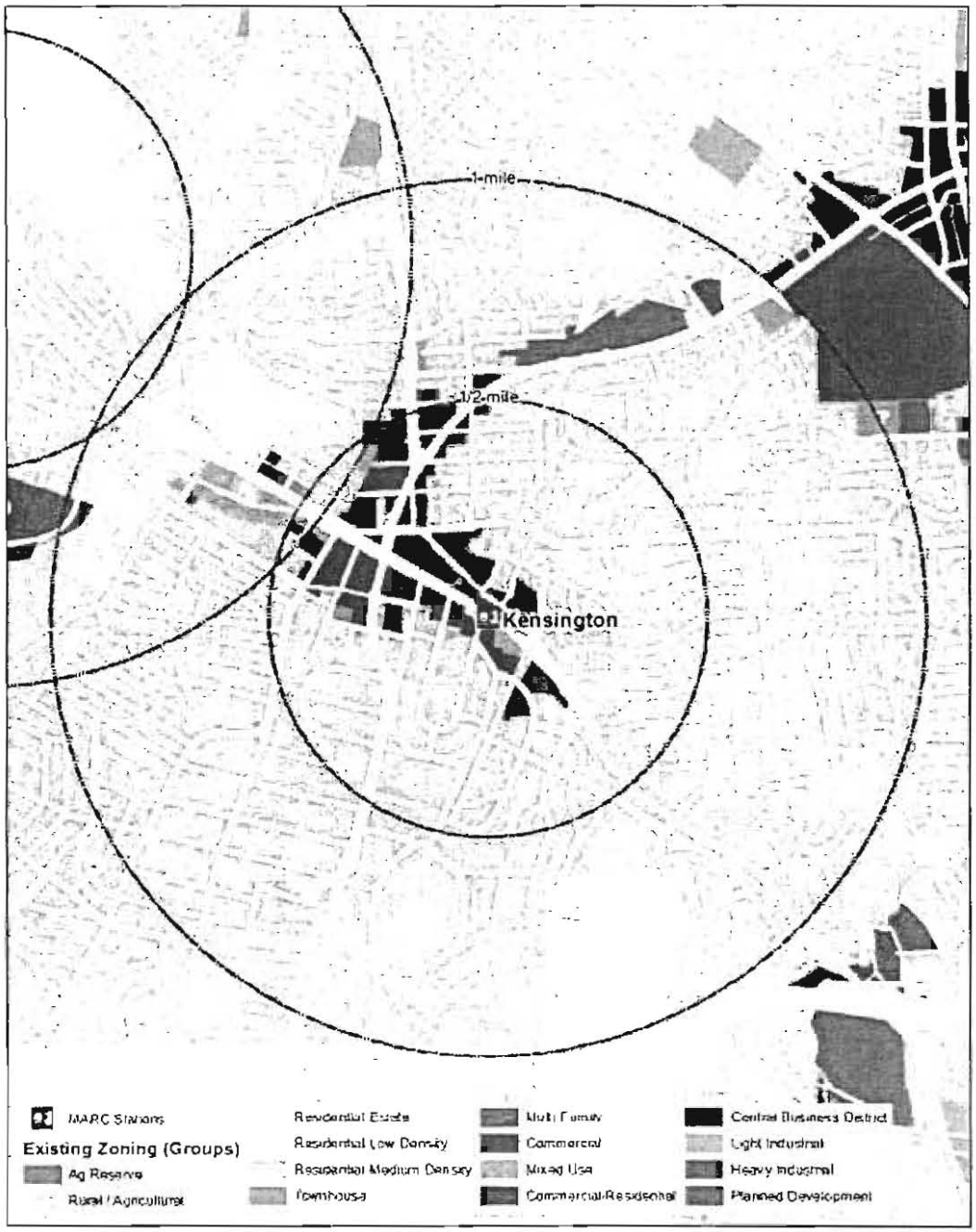
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development

1-mile
1/2-mile
Rockville
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural/Agriculture
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1-mile
1/2-mile
Garrett Park
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouses
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development


1-mile
1/2-mile
Kensington
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Mixed Use
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Central Business District
Light Industrial
Heavy Industrial
Planned Development

1-mile
1/2-mile
Silver Spring
MARC Stations
Existing Zoning (Groups)
Ag Reserve
Rural / Agricultural
Residential Estate
Residential Low Density
Residential Medium Density
Townhouse
Multi Family
Commercial
Mixed Use
Commercial Residential
Central Business District
Light Industrial
Heavy Industrial
Planned Development

April 8, 2012

Lydia Sullivan
10310 Detrick Avenue
Kensington, MD 20895

Roger Berliner, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: ZTA 12-06 – Support 12-06, without modification. (Oppose municipal "shared parking program" until defined.)

Councilmember Berliner and Councilmembers:

I am writing in support of Zoning Text Amendment (ZTA) 12-06, removing MARC from receiving transit proximity in the CR zones. I support the ZTA as written and introduced. The Town of Kensington voted in its late March meeting to approve the ZTA without modification. The Town also voted on a similar provision reducing incentives for MARC in April 2011 [R—02-2011].

The ZTA acknowledges the obvious, that MARC is not equivalent to Metro and therefore does not remove enough cars from the road to warrant parking and public benefit reductions. Development next to MARC is not transit-oriented development.

The Montgomery County Council, in its final deliberations on the CR zones, pledged to ensure the CR zones as promised are the CR zones as delivered. This ZTA is one correction to the zones that will help ensure that there are adequate public benefits and adequate parking in areas that are served only by MARC and not Metro.

However, the Planning Board's April 5, 2012 vote to allow further reductions on CR-zoned new developments if within a municipal "shared parking program" is problematic – essentially a loophole:

- In the CR zones,"shared parking programs" are *not defined* as other more formal parking districts are [see 59-C-15.632, attached]. (Further, "car-share," is defined elsewhere in CR as a car-sharing service, such as Zipcar – but the term is used in 15.632 in the text and in the example. It is unclear why. Are the terms meant to be used interchangeably? This matters because: "Every 'car-share' space provided reduces the total number of required spaces by 6 spaces for a non-residential use or 3 spaces for a residential use.") Without a clear definition in the zones, *it is unclear exactly what these programs are and how the reductions would be applied* in Kensington or other municipalities.

• A shared parking program can be approved *by a mere majority-vote municipal resolution.* [59-C-15.632 (c) (2): "a shared parking program established by municipal resolution"] There is no requirement for such a program to be approved by the Planning Board or County Council – no oversight – thereby opening the door to abuse or lack of clarity.

• Parking is an important issue. The County has spent time and funds on a parking study (2008), and parking was reviewed in the Zoning Rewrite (spring 2011), so each shared parking program should also require *comprehensive*, adequate County review, not merely within site plan findings on specific applications.

• If you retain the Planning Board's addition, Kensington could potentially have an even *worse* parking situation – even after removing MARC from transit proximity – because of the municipal shared parking loophole. Parking was acknowledged as a significant current and future problem during the sector plan process by the Planning Board (and planner Fred Boyd), who added a parking facility on the Burka property, but then later removed it under request by the property owners.

Recommendation:
Approve ZTA 12-06 as submitted, without amendment or modification. (Do not allow any "municipal shared parking program" to be used to further reduce parking until the term is clearly defined by CR zones ZTA.)

Thank you for your consideration of my comments.

With regard,

Lydia Sullivan
sullivan.flyger@verizon.net

Attachment: CR zones 59-C-15.632

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April 10, 2012

The Honorable Roger Berliner
President
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Zoning Text Amendment No. 12-06

Dear President Berliner and members of the Council:

This letter is sent on behalf of our client, the owner of the Antique Village on Howard Avenue in Kensington, in opposition to proposed Zoning Text Amendment No. 12-06 ("ZTA 12-06"). This Text Amendment undermines the foundations of the Kensington Sector Plan and undoes what the Council accomplished by amending the CR Zone to create the CRT and CRN Zones to facilitate revitalization under the Kensington Sector Plan. In short summary, ZTA 12-06 should be rejected because:

1. The Text Amendment is directly contrary to what the Council and Planning Board sought to achieve in creating the new CRT and CRN Zones to facilitate revitalization in Kensington.

2. The Text Amendment ignores the long-term expectations and potential of MARC as a transit system during the life of the Kensington Sector Plan.

3. The Text Amendment undermines the Sector Plan concept of the Village Center as a second node of activity in Kensington, a location focused on the MARC Station.

1. <u>Kensington Sector Plan Revitalization Accounted for Transit Proximity to MARC</u>.

The availability of transit proximity benefits arising from the MARC Station was considered by the Council in the review of the amendments to the CR Zone. At that time, the Council recognized the desirability of providing density incentive benefits for proximity to the MARC Station, both based upon MARC's transit opportunities and the station's physical location in Kensington. This incentive then became part of the underlying economic assumptions for the Kensington Sector Plan. In its proposed

amendments to the CR Zone, the Planning Board recommended retaining the transit proximity benefit for MARC. The question of whether or not the MARC Station should provide transit proximity incentives has already been "asked and answered" in this specific context.

The CR Zone was modified by the Council in Text Amendment No. 11-01 because of a recognition that the CR Zone, as originally constituted, did not achieve its intended purposes in areas where the property sizes were smaller and the heights and densities lower than in the White Flint area (for which the CR Zone was originally created).

The Town of Kensington sought, and the Council accommodated with the CRT and CRN Zones, a mechanism to reduce the economic burden of the CR Zone incentive process in areas with generally smaller properties and lower heights and densities -- such as Kensington. The Town's goal, which was supported by the Planning Board and implemented by the Council, was to facilitate revitalization in Kensington by making the optional method process feasible for smaller properties with lower height and density recommendations. In this way, the revitalization had a greater likelihood of actually occurring. In order to accomplish this, the Council kept the overall framework of the CR Zone, but reduced the number of points required in the CRT Zone and added more incentives that might be appropriate for lower density areas, like Kensington.

Property owners in Kensington relied upon this structure of the CR and CRT Zones in evaluating their ability to actually achieve revitalization under the optional method. The Sector Plan, too, recognized in its recommendations that one could achieve a certain CRT density within a certain height, based upon the economics of the available incentives, <u>including</u> transit proximity. Underlying the Sector Plan was the character and methodology of the CR/CRT/CRN Zones, as they existed at that time (the Council sent the Sector Plan back to the Planning Board to make new recommendations using the CRT and CRN Zones.) The ability to achieve the design recommendations of the Sector Plan was based upon the ability to provide incentives in economical way, given that Kensington has smaller lots and lower heights and densities. The CRT Zone (and similarly, the related CRN Zone) recognizes that small properties simply could not support revitalization if the level of incentive benefits remained at the level of the original CR Zone. As a result, the point system was revised to reflect lesser amounts under the less intense CRT Zone. But, in making that reduction, the points available for transit proximity were also correspondingly reduced.

2. MARC Rail as a Long Term Asset.

ZTA 12-06 ignores the long-term expectation and potential of MARC rail. MARC represents an important part of existing infrastructure that should not be ignored or disregarded. The only place that actual rail transit can occur in Kensington is at the MARC Station; that is where the tracks are located. Attempts to facilitate easy change of modes must also focus on the MARC Station. MARC rail itself is an integral part of the overall transportation and transit plan by the State and an important benefit that the State provides for County residents. Whenever and whatever additional transit that is rail-based arises in Kensington, it will likely focus on the MARC Station by necessity. Further, as residential development increases in Kensington under the Sector Plan, the demand for use of MARC is likely to increase, as proximity of higher density residential development supports greater utilization.

This ZTA 12-06 seeks to make MARC service a negative self fulfilling prophecy. Because MARC is not heavily used today, and currently has a limited schedule, the Text Amendment dismisses it as a transit resource. Instead, the ZTA should promote and thereby elevate the level of MARC as a transit tool -- support it with appropriate density and incentive benefits, and thereby make it a positive self-fulfilling prophecy, encouraging utilization and thereby encouraging the State to expand the service. Only by treating MARC as a long-term transit element, by providing the density and intensity around it, can it advance to reach its full potential.

The prior Kensington Master Plan was in place for over 30 years. If the new Sector Plan continues for similar period, one could reasonably expect that MARC will play a larger and larger role as a part of the planned network of public transit options as Kensington and the County evolve. Thus, the incentives for creating density near this kind of transit station should be preserved and encouraged.

3. MARC Station and the Village Center.

The MARC Station is surrogate for the location of a node of activity under the Sector Plan. The Sector Plan embraces the Village Center concept that was proposed by residents of the Town and the Revitalization Committee. This postulates a node of activity and related public space on the Johnson Nursery property. In the Council's Resolution, this area is referred to as a "center of community and business activity" and plays a "role as a center of town life." (See Page 8 of Resolution No. 17-371, attached.)

The Village Center concept focuses on the MARC Station area not only because of the MARC Station being a focal point of transit, but because of its physical location within the Town. The railroad station is a part of the traditional heart of Kensington that the Village Center concept seeks to enhance. (The station forms the front cover of the Village Center concept materials. See copy attached.) The Sector Plan makes zoning and density recommendations to support the Village Center.

Thus, the Sector Plan provides Kensington with two different nodes of activity: first, at Connecticut Avenue, and second at the MARC Station/Village Center. The Plan then encourages pedestrian activity along Howard Avenue between and connecting those two nodes. The incentive density for MARC as a Level 2 transit facility assists in creating that focal point for activity by encouraging revitalization in areas near the Village Center and MARC Station. But retaining the transit proximity incentive for MARC is needed to make that revitalization economical and therefore encourage development surrounding the Village Center node, so as to allow the Village Center to function as intended in the Sector Plan.

The transit incentive bonus for the MARC Station helps encourage development where infrastructure investment has already been made. The zoning incentives should support that infrastructure investment. In Kensington that area is the MARC Station, serving both as a transit function and as the focal point for the Village Center and its related activity.

Thank you for your consideration of these comments. We look forward to participating at the work sessions.

Very truly yours,

LERCH EARLY & BREWER, CHTD.

William Kominers

William Kominers

WK/lyn
cc: Mayor Peter Fosselman
Mr. Joshua Sloan
Mr. Gregory Russ
Susan M. Reutershan, Esquire

KONTERRA

14401 Sweitzer Lane
Suite 200
Laurel, MD 20707

Phone: 301-953-9870
Phone: 410-792-9231
Fax: 240-294-5738

June 12, 2012

The Honorable Nancy Floreen
Chair, Planning Housing and Economic Development Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20852

Dear Madam Chairman:

Konterra appears to be the target of ZTA 12-06, as only a few properties in Kensington zoned CR abut a MARC station. No other properties in the County outside of Kensington which abut a MARC station are currently zoned CR. As for those few properties in Kensington that abut the MARC station, only Konterra has the means and ability to develop their property within the next few years.

Adoption of 12-06 represents a breach of faith as well as reneges on the implicit agreement between the Council, Town and Konterra. The County Council through the Kensington Sector Plan forced the proffers of a Covenant Agreement and public amenities on Konterra if Konterra hoped to realize 75' for its proposed apartment project on Metropolitan Avenue. Konterra agreed to the Covenant Agreement and the extraction of public amenities with the Town and County for the additional 15 feet with the understanding that up to 15 public benefit points would be awarded for transit proximity. Konterra would not have agreed to the proffer of both public benefits and public amenities had we known that transit proximity points would be eliminated afterward.

Konterra is also uniquely disadvantaged by ZTA 12-06 by virtue of the fact that the County Council has required Konterra to provide not only public benefits, but public amenities as well, in order to possibly achieve 75' in height. No other property in the CR zone is saddled with this requirement. If ZTA 12-06 is adopted, ZTA 12-06 will make it more expensive for Konterra to achieve 50 points under the optional method of development in the CRT zone. If ZTA 12-06 becomes law, then Konterra will be forced to offer less in public amenities by the same amount or more of the increased cost to Konterra to provide public benefits. The package of public benefits and public amenities that Konterra is required to offer to achieve 75' is finite. Konterra will weigh the cost of any proposed package of proffers and decide what is affordable and that which is not. To the extent the cost of providing public benefits is increased, the ability to provide public amenities to the Kensington community is decreased. With this being the case, I don't see how ZTA 12-06 truly benefits the Kensington community. In fact, ZTA 12-06

disadvantages the Kensington community as the community will receive less in public amenities if ZTA 12-06 is adopted.

It makes no economic sense to discourage now and in the future increased development around MARC stations. Who can tell the levels of service on MARC lines as the corridors abutting the MARC lines become more congested and other transit options remain static. The County is considering investing billions of dollars in a rapid transit system; yet wants to stifle development along existing rail lines. In time, as service is increased on the Brunswick line, Kensington MARC will qualify for State-designated TOD status. The Brunswick line also connects to Metro.

The Montgomery County Department of Transportation recognized the importance of the MARC station within the planning area.

Montgomery County Department of Transportation
Comments on Kensington and Vicinity Sector Plan - Planning Board Draft
(MNCPPC, October 2009)

More emphasis needs to be given to the MARC station within the planning area. The station has played a major role in the development of Kensington and the plan should recognize this role and project how the commuter service can be used to help accomplish the plan vision. There is no discussion as to how the presence of the station, and commuter train service, can leverage development and aid in achieving transit modal shares. There also needs to be an analysis of how much commuter parking is existing (the station currently has 125 - 150 daily boardings) and how much additional parking might be needed to support higher ridership.

The State of Maryland also recognizes the importance of concentrating development at MARC stations. Governor O'Malley has been designating MARC stations for development. See the article appearing below. ZTA 12-06 is inconsistent with the State's forward looking approach to TOD development at MARC stations and state wide land use policies.

Finally, the importance of the Kensington MARC station to the community was highlighted by the overwhelming surge of opposition to a recent MTA proposal to reduce service on the Brunswick line. This is testament to the support that MARC has within and without the Kensington community.

For these reasons, Konterra requests that the Montgomery County Council disapprove ZTA 12-06. In the alternative, Konterra requests that ZTA 12-06 be amended to exempt properties that abut a MARC station where the developer of the site is required to provide both public benefits and public amenities.

Respectfully,

Caleb Gould
Managing Partner
Konterra Limited Partnership

Cc: The Honorable George Leventhal, Montgomery County Council
The Honorable Roger Berliner, Montgomery County Council
The Honorable Peter C. Fosselman, Mayor, Town of Kensington
The Honorable Mackie Barch, Kensington Town Council
The Honorable Sean McMullen, Kensington Town Council
The Honorable Lydia Sullivan, Kensington Town Council
The Honorable John Thompson, Kensington Town Council

O'Malley to designate rail stations for development

Seven in Baltimore area in line for state funds, tax incentives

By Michael Dresser, The Baltimore Sun

8:35 PM EDT, June 17, 2010

Gov. Martin O'Malley will designate 14 rail stations as the state's initial sites for mixed-use development connected with transit projects, making them eligible for state spending and tax incentives.

The governor plans to announce the list of transit-oriented development projects, including seven in metropolitan Baltimore, receiving that legal authorization at a news conference today in Prince George's County.

Most of the projects have been publicly discussed as potential sites for mixed-use development, but the governor's action will allow the state Department of Transportation to devote money and staff time to moving them forward, said Chris Patusky, the agency's real estate director.

With the certification, local governments will also be able to arrange funding for the projects by creating special tax districts or issuing bonds underwritten by future property taxes on the projects, Patusky said. He also noted that under a law passed by the General Assembly this year, designated transit-oriented development sites are eligible for the state's historic tax credit program even if none of the existing structures is historically important.

The idea behind transit-oriented development is to concentrate office, retail and residential activities around transportation hubs, reducing the need for commuters to use privately owned vehicles. Patusky said that to qualify, developments must be within a half-mile of a transit hub and be accessible to bicycles and pedestrians.

"We're trying to create these ... green transit communities," he said.

Projects receiving the designation that are furthest along are those planned around the Owings Mills Metro Station, where a developer has been selected and a garage already built, and Baltimore's State Center, where groundbreaking on the first phase is expected early next year. The city project draws on a Metro station, light rail station and bus routes.

Other Baltimore-area stations receiving the designation are the Aberdeen Amtrak and

MARC station, the Odenton MARC, Savage MARC, Reisterstown Road Plaza Metro and the Westport light rail.

In suburban Washington most of the projects are located around Metro stations: Branch Avenue, Naylor Road and New Carrollton (also a MARC/Amtrak station), Wheaton, Shady Grove and Twinbrook. Also on the list is the MARC station in Laurel.

Some stations that have discussed as potential development sites — notably West Baltimore MARC and Dorsey MARC — did not make the cut. Patusky said that to be eligible for the first round of designations, a project had to have a conceptual framework in place.

He said that all of the selected sites have the land necessary for the project under the control of the state government, localities or the project developer.

The designation also gives the sites priority status when state agencies decide where to locate. O'Malley is expected to announce Friday a decision to locate a yet-unnamed agency to Prince George's, which has long felt slighted in the distribution of state jobs.

History of Konterra's Metropolitan Ave Property in Kensington

An affiliate of Konterra purchased the property in Kensington in 1982. The property had been, prior to purchase, improved by a ready mix concrete plant. The Kensington ready mix concrete plant had been a nonconforming use since 1978 when the underlying zone was changed to C-2. In 1997, the County Council terminated the nonconforming use with a four year amortization period (ZTA 97022). At the time, then County Council President Ike Leggett offered to assist Konterra in its efforts to locate a new site in the down county area for a ready mix concrete plant. Unfortunately, no site was ever identified and no real compensation was ever offered to Konterra for the amortization of their plant.

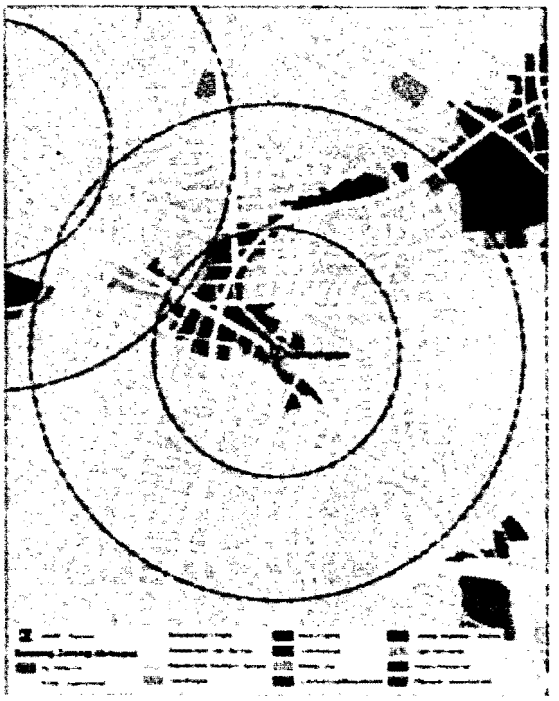
Sometime between the enactment of ZTA 97002 and the end of the amortization, a representative of Konterra was approached by then Economic Development Director, Dave Edgerly, with a proposal to swap a County owned parcel on Southlawn Lane that is zoned industrial for the Konterra owned site in Kensington. Both the State and County were interested in converting the Kensington site to a MARC and/or County parking lot. In time, the State lost interest in this site; but, the County and Town of Kensington expressed serious interest in moving ahead with the proposed swap. In 2001, the County, Kensington and Konterra began working in earnest to negotiate a reciprocal exchange of the property in Kensington for the County owned property in Rockville. In 2010, the various agreements were finally executed.

Throughout the negotiations, Konterra demonstrated fairness and flexibility. At the same time, Konterra agreed to certain changes at the wish of both the County and the Town, most notably, the siting on the Konterra property of a perpetual parking lot easement specifically to serve MARC commuters. The best part of the Konterra site was taken by the County and Town for the parking lot. The residual Konterra property on Metropolitan Avenue is a narrow, irregularly shaped site sandwiched by Metropolitan Avenue and the CSX railroad. It slopes to an elevation as much as 30 feet below the railroad station and proposed public parking lot. It is a site that is quite difficult to economically develop as any other use other than apartment housing. Even as a luxury apartment building at 75', the proposed Konterra development is a marginally profitable development at best. Konterra has corroborated that assertion by providing The Bozzuto Group's economic feasibility study to the County Council, the PHED Committee and the Town of Kensington during the work sessions on the Kensington Sector Plan.

We urge you to support Zoning Text Amendment 12-06 as originally proposed to exclude development near MARC stations from transit proximity benefit credits and parking requirement reductions. MARC operates only during weekday mornings and evenings for 150 daily round trips from/to Kensington.

ZTA 12-06 proposes two measures to ensure development on a scale compatible with current and planned infrastructure, and that new projects will continue to provide the elements essential to good development:
1. Restores the possibility of greater public benefits with new development by removing transit proximity credit for building within 1 mile of a MARC station, and even more critically,
2. Makes adequate parking for new residents and retail customers more likely by removing parking requirement reductions granted for building within 1 mile of a MARC station.

Most of the Kensington Sector Plan area is within 1/2 mile of the Kensington MARC station and would qualify for the higher transit proximity benefits and parking requirement reductions. **Our main concern: the provision of adequate parking to help ensure the sustainability of new commercial development.**



Source: 4/5/2012 planning staff memo

Most new development is projected to be residential:

- As is true now, the majority of Kensington residents will likely commute out of town to work.
- Kensington does not have a funded transit alternative to automobiles other than MARC.
- MARC does not provide sufficient flexibility for many workers, e.g., those with small or school-aged children.
- Insufficient parking is likely to spur overflow parking in neighboring streets, and increased traffic congestion as new residents and visitors circle to search for parking.

The envisioned retail development will depend on support from consumers outside the Town of Kensington:

- Retail in Kensington is and will likely remain, during the life of the Sector Plan, primarily accessible by car.
- Kensington is already a traffic bottleneck between the Bethesda/White Flint corridor on Rte 355 and Chevy Chase/Wheaton corridor on Rte 185.
- Combined with traffic congestion, parking scarcity could jeopardize the viability of new retail in Kensington.

Each developer only has incentive to maximize their own residential and retail space, and may rely on Town-funded parking facilities or overflow parking into residential neighborhoods to supply needed parking not provided on site. But when a critical mass of development occurs, all development in the area suffers if the TOK is unable to raise the substantial funds needed for shared parking, and/or neighborhoods put parking restrictions into place. ZTA 12-06 helps ensure the Kensington Sector Plan becomes the reality we all envisioned instead of an expensive burden on the community.

Disregard the March 29th planning staff recommendation to "approve ZTA 12-06 with modifications to disassociate the impacts on public benefits and parking reductions and proceed only with the proposed changes to public benefits."
Do not award transit proximity points or parking reduction for MARC that does not provide the transit benefits of Metro. Kensington is and will remain accessible primarily by car for the foreseeable future.

- However, if the PHED committee believes that some compromise must be made, transit proximity credits should be given in an amount proportional to the ridership of MARC compared to Metro, that is:
  300 per day trips at Kensington MARC / 9000 per day avg Metro stop = 3.3% of Metro credit

Thank you for your attention and consideration, Lara Akinbami and Gail Dalferes, Kensington residents