

**MEMORANDUM**

September 20, 2012

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyortz,  Legislative Attorney  
SUBJECT: ZTA 12-06, Commercial/Residential Zones – Transit Proximity Definition

**Prior PHED Recommendation:** On June 11, the Committee (2-1, Councilmember Floreen dissenting) recommended approval of ZTA 12-06 as introduced.

**Public Hearings**

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 cited 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<sup>1</sup> and the effects ZTA 12-06 might have on the North Bethesda area.

On June 26, 2012, the Council held a worksession on ZTA 12-06. Councilmember Floreen proposed an amendment to ZTA 12-06 that would create a different level of transit proximity for the purpose of parking and public benefit points. Without re-advertising and conducting a new public hearing, that amendment may not be considered by the Council. The Council advertised a second public hearing with a scope that allowed for creating a 3<sup>rd</sup> tier of transit proximity with different parking reductions and public benefit points.

A new advertisement and the announced public hearing allows the Council to consider an amendment to the Zoning Ordinance to amend the definition of transit proximity for CR, CRN, and CRT zones and to generally amend the parking requirements and amenity points associated with transit proximity. On

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<sup>1</sup> See Appendix.

September 11, 2012, the Council conducted a second public hearing. The testimony from the second public hearing generally mirrored the testimony from the first public hearing. There was one notable difference. The representative of the Antique Village, William Kominers, supported the amended ZTA.

### **ZTA 12-06 as introduced**

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

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....

### **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 the Task Force's 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. 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 experiences 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.<sup>2</sup> 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.<sup>3</sup> Parking requirements are reduced the most for land located nearest a level 1 or level 2 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.<sup>4</sup> 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

<sup>2</sup> See Appendix.

<sup>3</sup> **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			
	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
<b>(a) Residential</b>								
Maximum:	None	None	59-E	None	59-E	59-E	59-E	None
Minimum:	0.8	1.0	0.7	0.8	0.6	0.7	0.8	0.9
<b>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</b>								
Maximum:	None	None	None	None	59-E	59-E	59-E	None
Minimum:	4 per 1,000 square feet							
<b>(c) All other non-residential uses</b>								
Maximum:	59-E	None	59-E	None	59-E	59-E	59-E	None
Minimum:	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.

<sup>4</sup> All land is either within ½ mile of a Metro station or more than ½ mile from Metro station.

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.

**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 <i>without</i> 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 1,000 sf 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 a 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]] 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. Any site excluded from both transit proximity levels must satisfy the parking requirements in Division 59-E-3.

*The Committee did not recommend this alternative.* The Council should use this approach with caution in any event. 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 amendments proposed by Councilmember Floreen include this provision.

**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	
	1	2	1	2	1	2	1	2
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 3<sup>rd</sup> 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, was re-advertised for the Council’s September 11 public hearing. The concept of adding a tier of transit proximity was endorsed by a majority of the Planning Board and Kensington Town Council. The numbers in the re-advertisement were 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		
	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>
Transit Service Level	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>
CRT	25	15	<u>5</u>	20	12.5	<u>2.5</u>	15	10	<u>0</u>	10	7.5	<u>0</u>
CR	50	30	<u>10</u>	40	25	<u>5</u>	30	20	<u>5</u>	20	15	<u>2.5</u>

The amenity point numbers in 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 Committee found that this formula was unrepresentative of MARC’s impact on transit use. As a percentage of Metro ridership at any station, MARC’s ridership is an even lower percentage.*

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		
	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>
Transit Service Level	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>
CRT	25	15	<u>7.5</u>	20	12.5	<u>6.25</u>	15	10	<u>5</u>	10	7.5	<u>2.5</u>
CR	50	30	<u>15</u>	40	25	<u>12.5</u>	30	20	<u>10</u>	20	15	<u>7.5</u>

The Committee did not recommend creating a transit level 3. *The Committee rejected this option and recommended ZTA 12-06 as introduced.*

<u>This packet contains</u>	<u>© number</u>
ZTA 12-06 with re-advertised revisions	1 – 3
Planning Board recommendation	4 – 7
Planning Staff recommendation	8 – 13
Area around MARC Stations	14 – 24
Representative testimony	
William Kominers	25 – 26
Patricia Mulready	27 – 28
Stowe Locke Teti	29 – 33
Gail Dalferes	34 – 37
Caleb Gould	38 – 44

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
<b>Assume</b>	<b>\$2,750</b>	<b>\$24,000</b>	<b>\$35,000</b>

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.

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

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

3   \*   \*   \*

4   **59-C-15.3. Definitions specific to the CR zones.**

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

7   \*   \*   \*

8   *Transit proximity:* Transit proximity is categorized in ~~[[two]]~~ 3 levels: 1.

9       proximity to an existing or master planned Metrorail Station; 2. proximity to an  
10      existing or master planned station or stop along a rail or bus line with a  
11      dedicated, fixed path; ~~[[excluding a site that is within one mile of a MARC~~  
12      station and that is more than one mile from any other transit station serving a  
13      dedicated, fixed path transit facility]] 3. proximity to an existing or master  
14      planned MARC station, except that, for the purpose of calculating the parking  
15      requirements, MARC stations only qualify as transit stations for development  
16      within an area that has a shared parking program established by municipal  
17      resolution. All distances for transit proximity are measured from the nearest  
18      transit station entrance or bus stop entrance.

19   \*   \*   \*

20   **59-C-15.631. Parking Ratios.**

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

26 more parking than would otherwise be required by Division 59-E-3 may be  
 27 provided.

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Use	CRN		CRT		CR			
	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
Distance from a <u>transit proximity</u> level 1 <u>or</u> 2 <sub>2</sub> <u>or</u> 3 transit station or stop								
<b>(a) Residential</b>								
Maximum:	None	None	59-E	None	59-E	59-E	59-E	None
Minimum:	0.8	1.0	0.7	0.8	0.6	0.7	0.8	0.9
<b>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</b>								
Maximum:	None	None	None	None	59-E	59-E	59-E	None
Minimum:	4 per 1,000 square feet							
<b>(c) All other non-residential uses</b>								
Maximum:	59-E	None	59-E	None	59-E	59-E	59-E	None
Minimum:	0.8	1.0	0.6	0.8	0.2	0.4	0.6	0.8

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31 **59-C-15.852. Transit Proximity.**

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

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

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

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45 This is a correct copy of Council action.

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48 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;

- 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		
	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>	1	2	<u>3</u>
Transit Service Level												
CRT	25	15	<u>7.5</u>	20	12.5	<u>6.25</u>	15	10	<u>5</u>	10	7.5	<u>3.75</u>
CR	50	30	<u>15</u>	40	25	<u>12.5</u>	30	20	<u>10</u>	20	15	<u>7.5</u>

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:

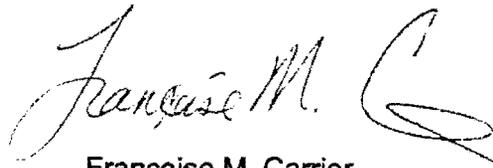
Proximity	Adjacent or Confronting			Within ¼ mile			Between ¼ and ½ mile			Between ½ and 1 mile		
	1	2	3	1	2	3	1	2	3	1	2	3
Transit Service Level												
CRT	25	15	5	20	12.5	2.5	15	10	0	10	7.5	0
CR	50	30	10	40	25	5	30	20	2.5	20	15	0

### 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



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



Joshua Sloan, Supervisor, Area 2 Division, [Joshua.Sloan@montgomeryplanning.org](mailto:Joshua.Sloan@montgomeryplanning.org), 301-495-4597



Mary Dolan, Chief, Functional Planning & Policy Division, [Mary.Dolan@montgomeryplanning.org](mailto: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	
	1	2	1	2	1	2	1	2
Transit Service Level								
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			
	Up to ½ mile	Greater than ½ mile	Up to ½ mile	Greater than ½ mile	Up to ¼ mile	¼ to ½ mile	½ to 1 mile	Greater than 1 mile
<b>(a) Residential</b>								
Maximum:	None	None	59-E	None	59-E	59-E	59-E	None
Minimum:	0.8	1.0	0.7	0.8	0.6	0.7	0.8	0.9
<b>(b) Retail and restaurant non-residential uses (gross leasable indoor area; no parking spaces are required for outdoor patron area)</b>								
Maximum:	None	None	None	None	59-E	59-E	59-E	None
Minimum:	4 per 1,000 square feet							
<b>(c) All other non-residential uses</b>								
Maximum:	59-E	None	59-E	None	59-E	59-E	59-E	None
Minimum:	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
Galthersburg	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.<sup>1</sup> 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

<sup>1</sup> [http://mta.maryland.gov/sites/default/files/MARC\\_Ridership\\_and\\_Delays\\_2003\\_to\\_2010\\_20100920\\_for\\_web.pdf](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.

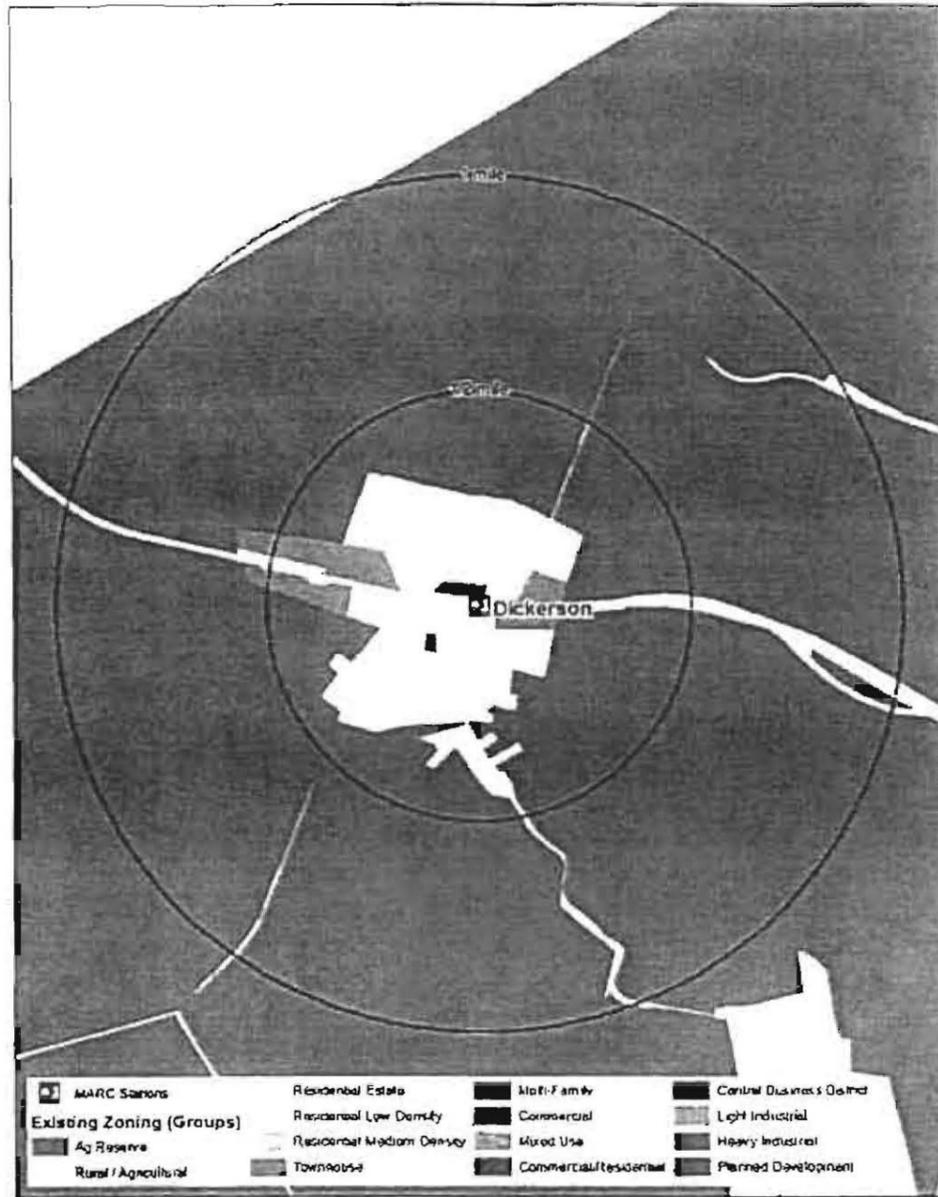
#### Conclusion

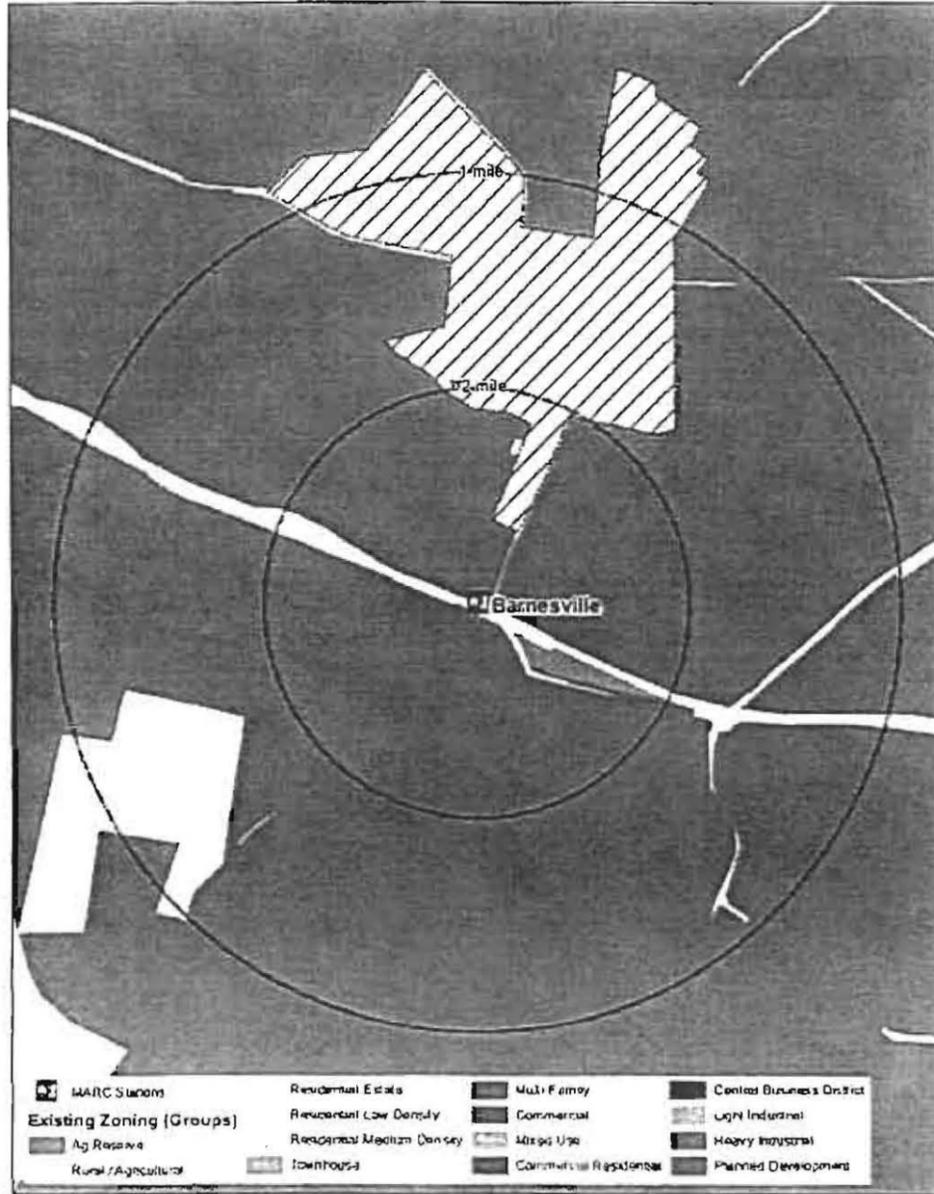
The use of MARC stations for incentive density and parking reductions is supported in the broader context of increasing use, demographic changes, and forthcoming dwelling unit types that may be allowed in current commercial-only areas. As multi-family, mixed-use village and town centers are created – 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.

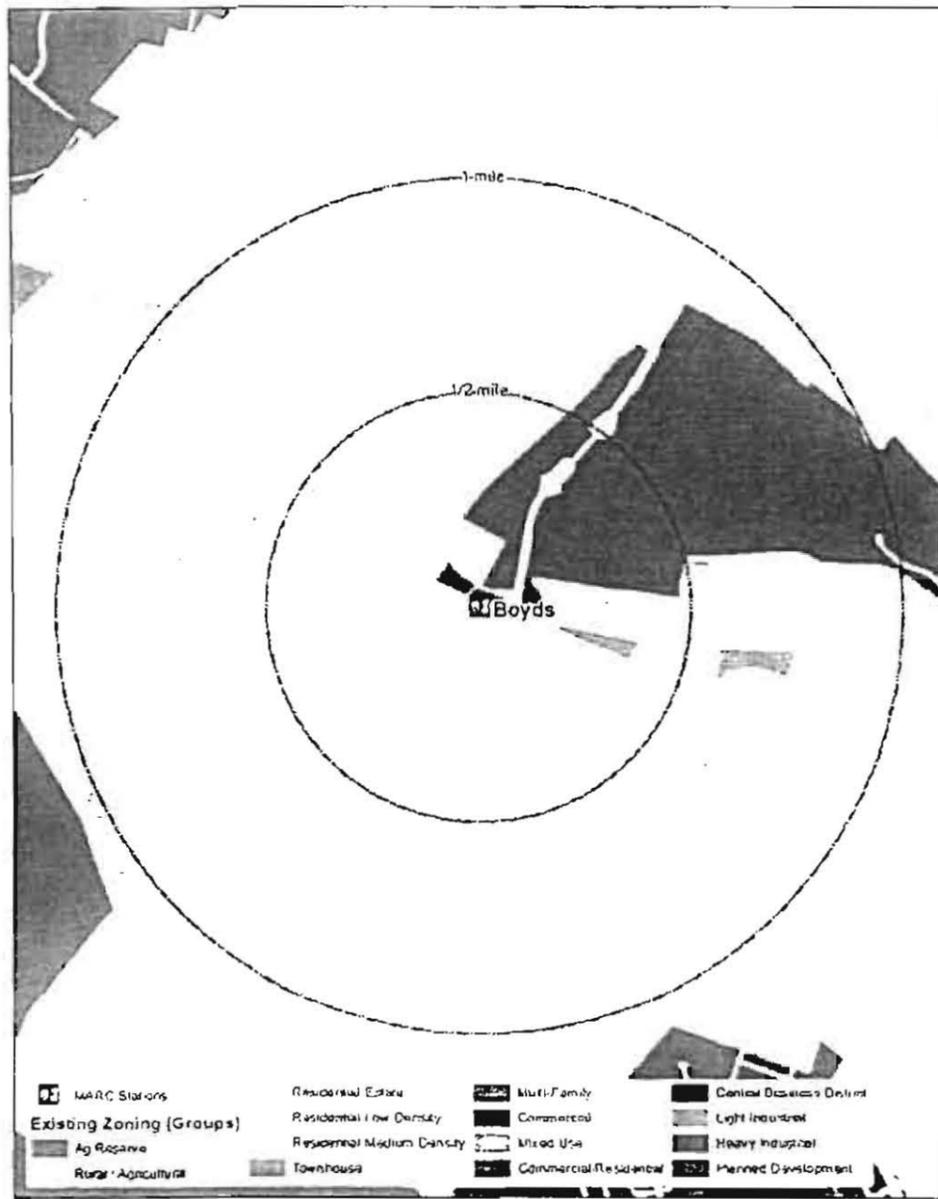
#### Attachments

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

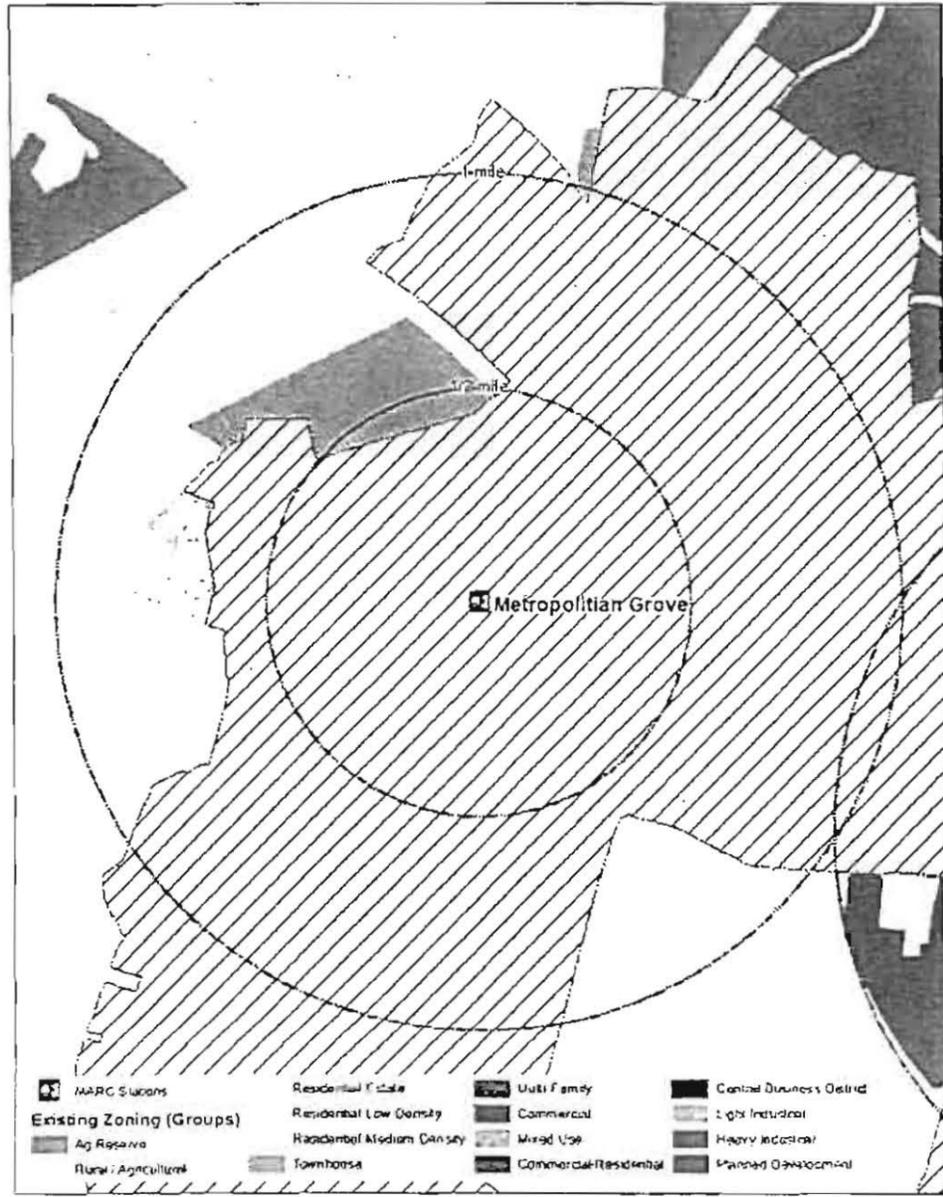
Attachment 2: MARC Stations and Zoning within 1 Mile



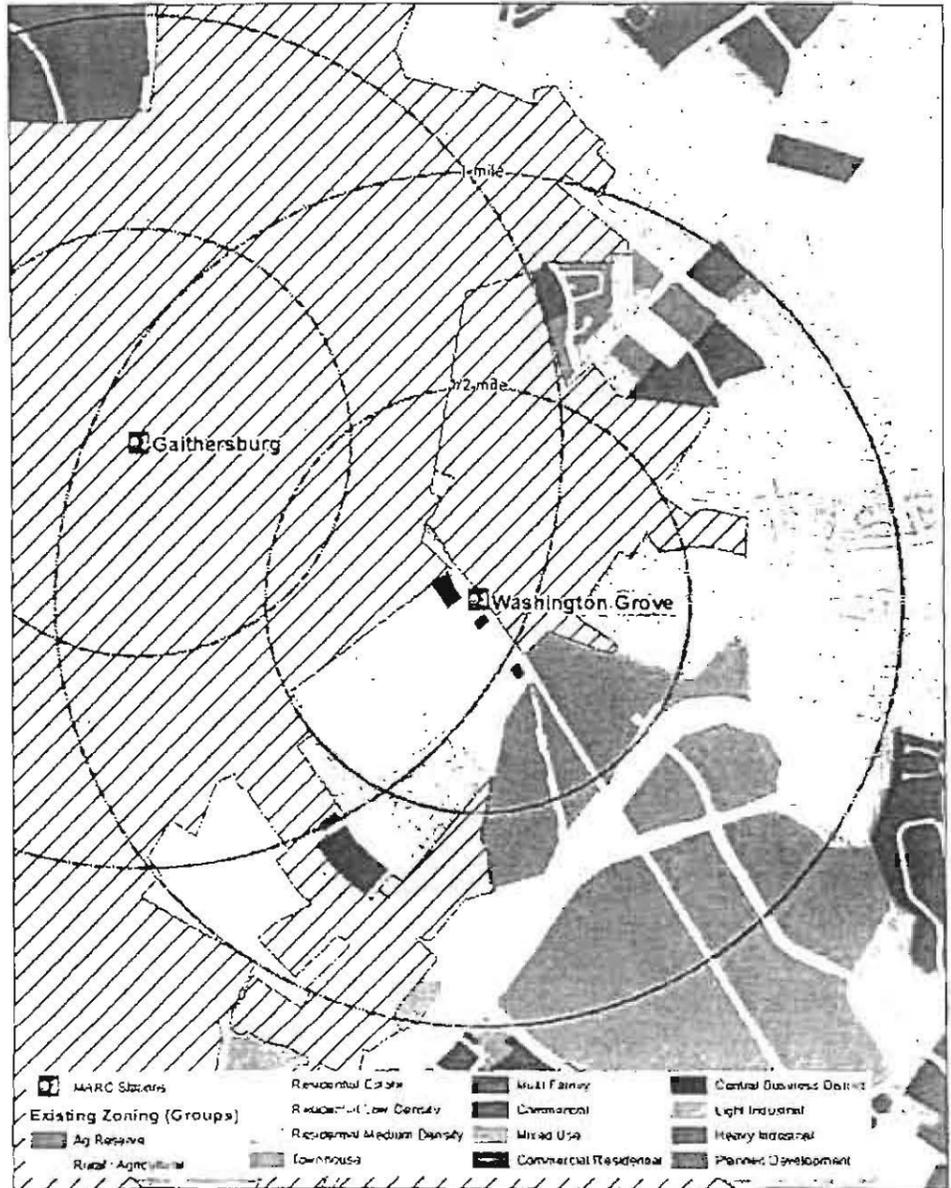




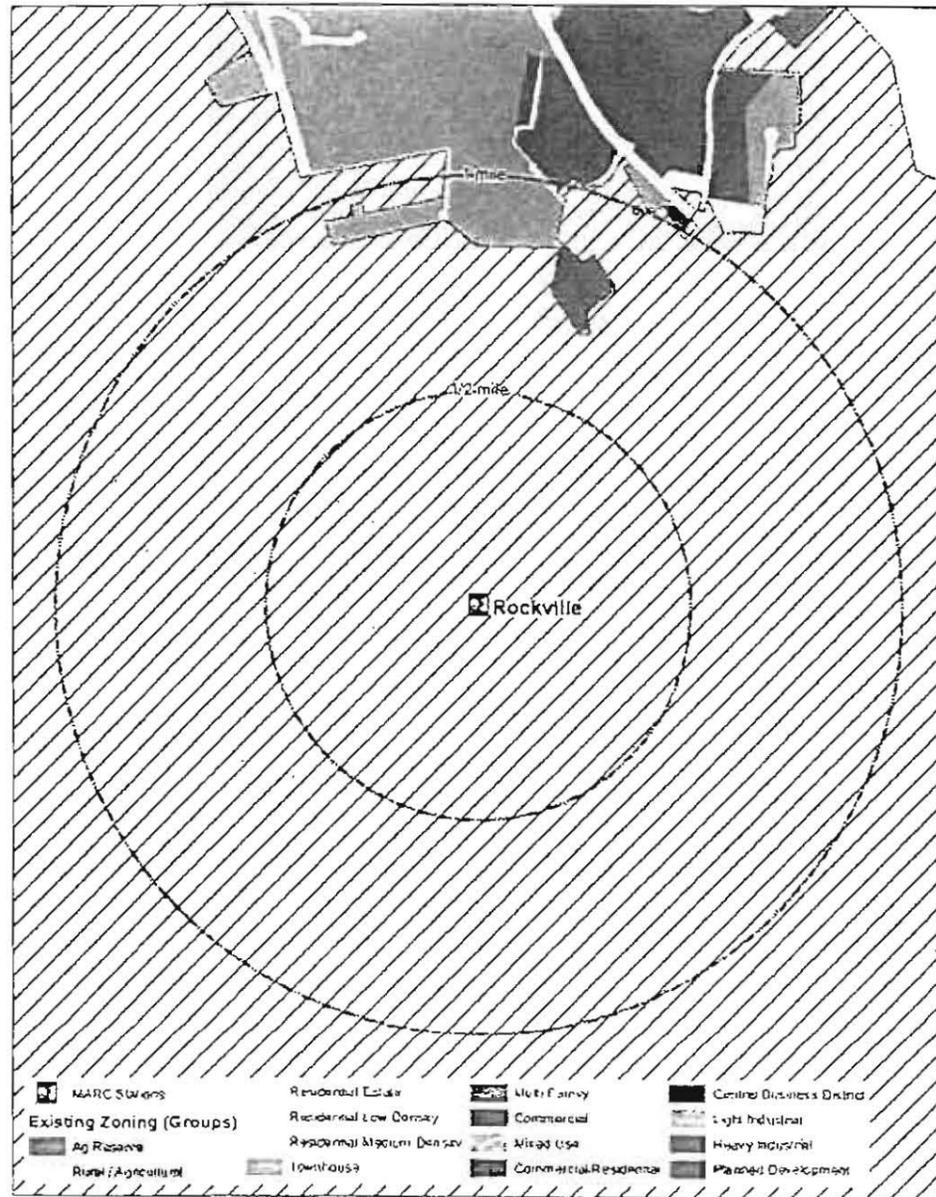


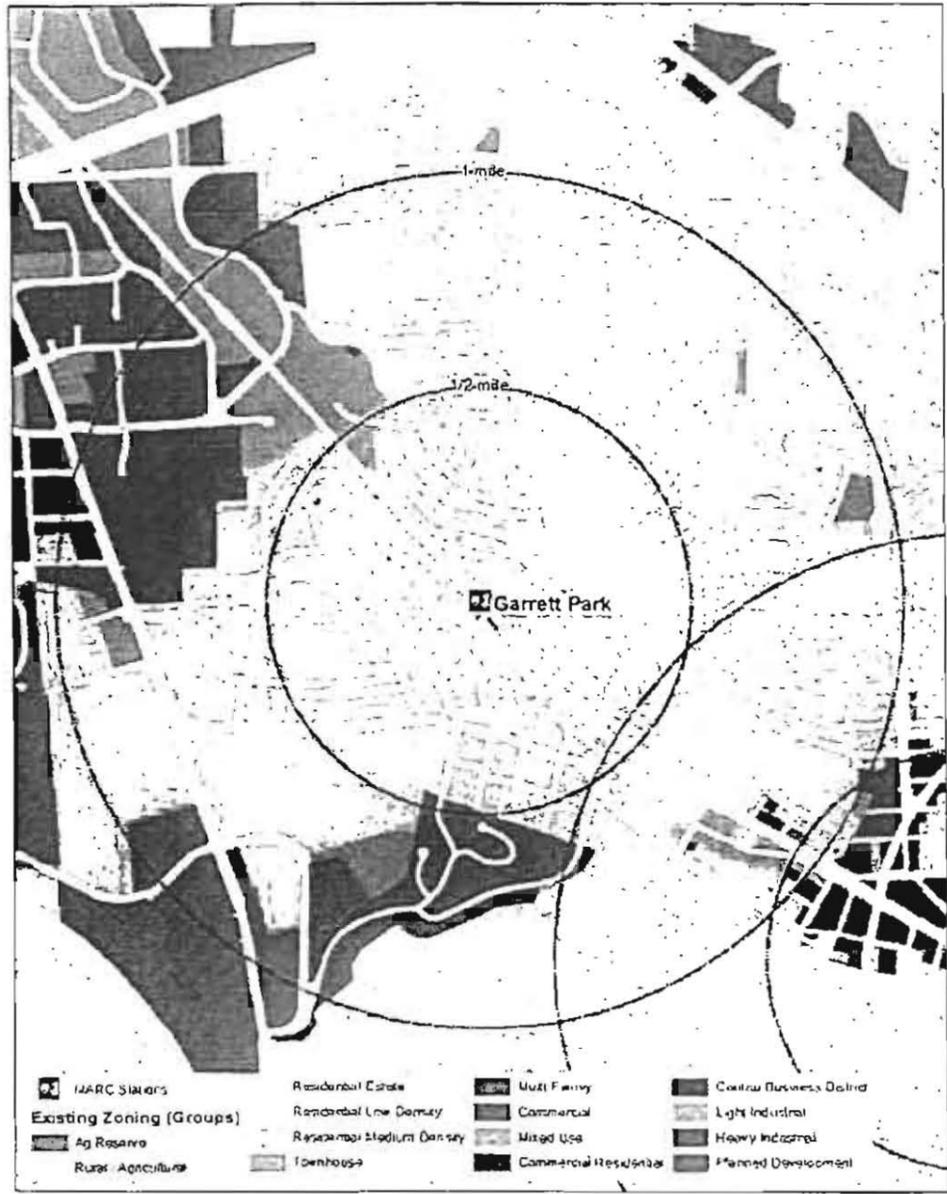






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ideas that work

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2

September 11, 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 (Revised)

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, to comment on the amended version of Zoning Text Amendment No. 12-06 ("ZTA 12-06") that came out of the work session on June 26, 2012.

Attached is a copy of my letter of April 10, 2012, in opposition to the Text Amendment as originally introduced. The reasons why the Text Amendment as originally introduced should be rejected are as strong today as they were in April.

However, as amended by Councilmember Floreen, the Text Amendment takes a giant step toward addressing many of the concerns and this letter supports ZTA 12-06 as now amended. The amended ZTA 12-06 supports treatment of the MARC Station as a new Level 3 transit facility so as to provide some degree of "transit proximity" incentive to the CR and CRT Zones.

While not a perfect solution, the amended ZTA 12-06 is far superior to the Text Amendment as originally introduced. The Text Amendment now provides the framework to recognize the potential of MARC to expand as a transit system during the life of the Kensington Sector Plan. The Text Amendment also now recognizes and supports the Sector Plan concept of the Village Center as a second note of activity, a location that is focused on the area around the MARC Station.

This amended ZTA is consistent with the recommendations of the Town of Kensington on this issue. The Town supported creation of the new Level 3 transit category, after much discussion about the current and future character of MARC. Creation of the Level 3 transit category will give a small, yet significant, incentive benefit that will help encourage revitalization in the Town. Having some transit proximity incentive for MARC will also keep the CR and CRT zones more consistent with the

September 11, 2012  
Page 2

character of the zones as they existed at the time the Kensington Sector Plan was approved and upon which the parties relied. This will assist the Town's goal to facilitate revitalization by making the optional method process more feasible and accessible for smaller properties with lower height and density recommendations. This way, revitalization can have a greater likelihood of actually occurring.

The amended ZTA 12-06 acknowledges the future potential of the MARC System and allows the points available to evolve as MARC's service and usage expands over time. ZTA 12-06 also provides an opportunity to promote the usage of MARC as a transit tool and thereby encourage the State to expand service. Over the life of the Sector Plan, one can reasonably expect that MARC will play a larger role as part of a broader network of public transit options as Kensington and the County evolve.

The MARC Station is a part of the Village Center focal point created by the Sector Plan. Providing some amount of incentive density points for proximity to the MARC Station, and by implication, the new Village Center, supports the concept of creating the Village Center as a node of activity. In conjunction with the other node at Connecticut Avenue, the Sector Plan then encourages pedestrian activity along Howard Avenue between, and connecting, those two nodes.

We support ZTA 12-06 as amended, with the MARC Station as a Level 3 transit facility.

Thank you for your consideration of these comments.

Very truly yours,

LERCH EARLY & BREWER, CHTD.



William Kominers

WK/lyn  
Enclosures

cc: Mayor Peter Fosselman  
Mr. Joshua Sloan  
Mr. Gregory Russ  
Jeffrey L. Zyontz, Esquire  
Susan M. Reutershan, Esquire

DATE: September 11, 2012

TO: Montgomery County Council

FROM: Patricia M. Mulready, M.S., M.Ph.  
10233 Capitol View Avenue  
Silver Spring, MD 20910  
mulreadyp@earthlink.net

RE: SUPPORT ORIGINAL ZTA 12-06

I am here today to support the original ZTA 12-06. It is important to protect residential and historic neighborhoods built along the now CSX train tracks. In my opinion modifying it would have serious repercussions in the future.

I live in historic Capitol View Park—the train tracks are the southern boundary to our neighborhood. The Kensington Train Station is several hundred yards from my house. Our neighborhood would come under the ¼ mile distance.

I agree with the testimony—written and oral—given to you by the Committee to Save Kensington. But I am going to use my time to address the concerns and fears of people who live near the present train stations. These may be considered paranoid—but the presence of major developers indicates to me there is far more going on in the background than just the proposed Konterra Building in Kensington.

If the train stations--many of which are considered historic in their own right and/or abut historic neighborhoods—are considered transit areas it changes the basic nature of their locations. It may seem simple today—let developers build less parking or have other amenities in this bad economy.

However, what will happen when economic growth returns? I have read many of Park and Planning’s pro-urbanization documents which discuss the transit areas—some of them suggest bus stops as transit zones, thereby allowing CR designation in what are now residential neighborhoods . Others—shown only to “insider” developers but reported on to civic groups, show entire neighborhoods eliminated and replaced by high rises around not-yet-funded Metro stops such as Langley Park.

As the Zoning Code Rewrite continues areas never considered for CR zones now have them proposed. For example, in CVP the historic “Castle Building” and General Store have already been designated CRN to allow 45’ town houses--in direct opposition to Historic Preservation Commission mandates. The existing buildings are two stories maximum. If in the future the Forest Glen Station is revitalized, this area could be allowed to have even higher heights and densities or even be changed to CRT.

Then there are areas like Garrett Park, already within the 1 mile radius of a Metro Station. How will it continue to be protected from urbanization if its train station is made a transit zone—since there is continued movement by some planners to remove historic protections?

Urbanization is often done step by step—first residential only is modified to allow just a small amount of development. Then this is allowed to expand. Then the residential properties become worth far more as commercial land and one by one homeowners sell out. The Park Avenue mansions could not forestall such urbanization in Manhattan. Areas outside New York City, such as White Plains, were changed in less than a generation.

Enacting the original ZTA 12-06, which was carefully analyzed and voted out of the PHED Committee by 2-1, is a prudent beginning to maintaining the quality of life in Montgomery County. Thank you.

September 11th, 2012

From: Stowe Locke Teti  
3500 Dupont Avenue  
Kensington, MD, 20895  
240-997-1337

Re: ZTA 12-06, and the Amendment thereto

Councilmembers:

As I sat down to write you about Marc ≠ Metro issue, I found myself at a bit of a loss; it is so patently obvious to me that the Marc is not, to any degree, a Transit-Oriented Design (TOD) hub, and thus proximate developments cannot be Transit Proximal (TP), that I didn't know where to begin framing the argument.

Clearly a more fully articulated definition of TOD was needed to make my case, along with established and generally accepted metrics by which differing planning scenarios are evaluated if I was to convince you that "Level 3" TP is totally without justification in Kensington. I sought guidance from the MNCPPC, and quickly found the following:

TOD strategies yield a number of positive results, particularly with respect to the transportation network, including increased number of transit riders and significantly reduced vehicle trips. The five D's of TOD guide the development process – density, diversity, design, destinations, and distance. (US 29/Cherry Hill Transit Oriented Development Scenario, June 2011, p. ii)

The "five D's" mentioned above seem to be the means by which the MNCPPC evaluates TOD development. Thus, Density, Diversity, Design, Destinations, and Distance are centrally important to determinations of TP. Most are self-explanatory, but for the present discussion I would like to point out one in particular, *destinations*; plural, indicating that MNCPPC believe a plurality of destinations are a necessary component of TOD development, and thus TP. Describing the Marc as providing transit to multiple destinations is simply false.

Further, the benefits of TOD outlined above provide some guidance as to what TOD centers are and do, namely:

- TOD centers access a transportation network
- They yield increased numbers of transit riders
- They significantly reduce vehicle trips

This is the basis by which you should evaluate TOD and thus TP. In the situation before you, the Metro clearly is a network. The Metro Bus is a system. The Marc is neither a network, nor is it a system. This is not an issue of degrees of qualification- something either qualifies or it does not; no one says, "the building is partially compliant with building codes so here's a partial permit." But that is exactly the distinction Councilmember Floreen has proffered. It is a *fact*, however inconvenient, that the Marc is not a transport network.

Supporting the possibility of the growth of Marc was cited by Mr. Dreyfus, et al., in support of Transit Level 3 on April 9 (Board Recommendation re: ZTA 12-06, 4/9/12, p. 5). But even if Marc service were to increase, there are other definitive characteristics of TP that Marc cannot meet.

Further clarification of what TP is has already been provided by the MNCPPC in the aforementioned US 29/Cherry Hill Transit Oriented Development Scenario. Consider:

A *mandatory* requirement in the formation of a TOD is the provision of transit. Nationally, most TODs are constructed around rail stations (either light-rail transit (LRT) or heavy-rail transit (HRT)), but can also be based

around commuter rail, bus rapid transit (BRT), or high-frequency regular bus service. (p. 6, emphasis added)

And:

The ability to access destinations (such as homes, restaurants, and shops) within the station area or within a reasonable travel time from the transit station is a *key* to reducing auto mode share at a station. (p.7, emphasis added)

And:

In addition to the five D's of TOD, there are often factors beyond the control of a developer, local agency or transit agency that also affect the success of a TOD. These factors include the relative travel time of transit vs. auto, regional context, *and the extensiveness of the transit system.* (p.7, emphasis added)

This section of the study concludes this:

Section 2.2, Best Practices:

Some of the general best practices identified by research that analyzed national examples of TOD are:

Limit parking, and avoid too much free or low-cost parking.

*Make transit service fast, frequent, and comfortable, with headways of 15 minutes or less. -FAIL*

Design a pedestrian-friendly environment .

Employ traffic calming measures.

Provide a mixture of land uses. – There isn't even a track crossing, so a mixture of uses isn't available.

Create compact development within the first 1/2 mile of the transit station and particularly within the first 1/4 mile .

Flexible, but predictable, development controls.

Marc service in Kensington may be "comfortable" to some, but it is by no means "*fast, frequent...with headways of 15 minutes or less.*" This statement alone, authored by the MNCPPC, illuminates what they mean by TP.

Worse, the third benefit of TOD, *significantly* reduced vehicle trips is an even greater hurdle for Marc. Is anyone even making such an argument? The ridership numbers speak for themselves, so at this point in my argument I would like to revisit some facts that have been presented to you before. The argument proffered that Marc is not a TOD center and thus development around it is not TP has gone something like this: Metro ridership is on the order of 18-20,000 people per day, whereas Marc ridership is at most about 200. Adding the deductions in public benefits, these numbers convert to the following ratios:

20,000 Trips Per Day = 25 pts. of community benefits so,

200 Trips Per Day (= 1/100<sup>th</sup> of Metro) = .25 pts. of community benefits.

For me, and many of my neighbors, this argument is sufficient. Logically, it is both valid and sound. However inconvenient, there is an indisputable issue here with the numbers. Additionally, this comparison is simplified *in favor* of a Level 3 Transit because the calculation equates the utility of Marc and Metro. We know this is not the case, and again I refer you to the "Best Practices" provided by the MNCPPC:

*Make transit service fast, frequent, and comfortable, with headways of 15 minutes or less.*

Marc service, at two trains two times per day, is at best 1/24<sup>th</sup> of this specification, in addition to being 1/100<sup>th</sup> of the ridership! Add the lack of destinations (on either end) and Marc service equivalencies to Metro, Metro Bus, or full rail service are mere atoms of the former. 5 points? Why?

One answer is *innumeracy*, which is to numbers what *illiteracy* is to words. There are common psychological heuristics that attempt to explain problems quantifying equivalencies, but the County Council is charged with far to serious matters to fall pray to such fallacies.

In sum,

**1/24<sup>th</sup> the transit frequency with 1/100<sup>th</sup> the ridership = no points. Period.**

So how can you, in good faith, justify any level 3 Transit points with such an infinitesimal return? Sure, you have the power to give the points thereby degrade my neighborhood, which I invested in in good faith along with many hundreds of others for the benefit of a couple of developers and land owners, but how then can you consider yourself representatives of myself and other residents? My worry is that when the development comes, the number of people on my side of this argument will grow, but then it will be too late to fix it. I have seen over 200 projects and 100 million square feet of space built- I know what I'm talking about here; I'm an expert in maximizing buildable envelopes, arguing variances, etc., and I see gigantic holes in what you have already allowed with the Sector Plan. Despite their protestations, Konterra and Antique Village know what I know, or will hire someone like me to find out. *They will succeed in building beyond your intentions, and I know this because I have done it myself.*

But I have more to buttress my argument. As I have shown, the MNCPPC's own criteria renders Marc in Kensington totally insufficient as a TOD center based on the facts. If you think my argument is not conclusive in this regard, consider another example, again authored by the MNCPPC:

MARC and TransIT services are very limited. MARC caters to the work population traveling south to Montgomery County and the District of Columbia in the morning peak hours, bringing those commuters back in the evening. Mid-day and reverse commute service is non-existent. Frederick County TransIT service provides Meet-the-MARC shuttle and Connector Route feeder service to the downtown Frederick MARC Train Station with limited timed transfers to the Monocacy MARC Train Station. TransIT's system ridership remains predominately transit dependent in nature. (MD 355/MD 85 Transportation Oriented Design Study, April 6, 2010, p.33)

The interesting thing about the Transportation Oriented Design Study is that the Station offers massively more transport options than Kensington, and moves many more people; several orders of magnitude more. Still, the MNCPPC did not see the Marc fit for TOD; nowhere in the study is an expansion of Marc service planned for, only *wished* for. If that marc is insufficient to be TOD, indeed it was cited as an *impediment*- how can the Kensington Marc be considered so?

Only by raising appeasement of a tiny minority of secondary stakeholders (residents are the *primary* stakeholders) over not only the wishes of residents, but contrary to established MNCPPC planning policy and good TOD practices, broadly cited herein.

And we can go deeper, behind the MNCPPC's reasoning, by looking to their sources. One in particular is the *Performance Based TOD Typology Guidebook* (Reconnecting America, 2010; also see Center for Transit oriented Development at: [ctod.org/portal/contact](http://ctod.org/portal/contact)). This is a principle source of information on TOD that the MNCPPC draws policies, insights and methods directly from, including case studies posted on their own website. I am raising this because I think the Council should stick to the numbers on your deliberations on ZTA 12-06, and use an established analytical approach to make your decisions. I'm not alone; the very first paragraph of the aforementioned text states:

Transit-Oriented Development is a community development model that when successfully implemented can

produce significant economic, environmental and social benefits... These benefits can best be realized through the utilization of analytical tools that can provide all TOD stakeholders with the ability to make fully informed decisions. (p. i)

The Executive Summary of the text goes on to state:

TOD in particular can benefit from using a performance-based typology to define and differentiate different types of TOD. Some of the questions a performance-based TOD typology might answer include: What outcomes can we expect from investments in transit and TOD? What differentiates transit-oriented development from transit-adjacent development? What standards should be utilized in evaluating zoning for TOD or other policy interventions?

Reconnecting America and the CTOD have a methodology for evaluating the effectiveness of implementing TOD in different settings:

The Center for Neighborhood Technology developed a model of household travel behavior as a part of its Housing and Transportation (H+T<sup>®</sup>) Affordability Index. The model is based on a multidimensional regression analysis, in which a formula describes the relationship between three dependent variables (auto ownership, auto use, and transit use) and nine main independent household and local environment variables. Neighborhood level (Census block group) data were utilized as the independent, or predictor variables, includes:

- household income (both average and median),
- household size,
- journey to work time (for all commuters, transit commuters, and non-transit commuters),
- household density (both residential and gross),
- block size,
- transit access,
- job access.

The end result is a measure of *household* VMT. (p. 9)

**I have used their methodology and calculated where Kensington fits into their matrix. At 320 Acres, 600 homes, 1995 people (2009 census) Kensington is in the highest VMT category, which is the lowest-performing TOD type. (p. 15) This means that Kensington is a type of location that has been shown to respond least favorably to *real* TOD implementations. That means that even a Metro in Kensington would not perform as well as it would in any other listed typology. The metric central to the calculation is VMT, as described above. How many VMTs (household Vehicle Mile Trips) per person, per year, will Marc reduce? Not many. Consider the study results:**

This finding suggests that low VMT transit zones are also characterized by urban form that is generally more pedestrian-friendly than high VMT transit zones. Block sizes and pedestrian connectivity are difficult to change, a challenge for high VMT transit zones that want to transition into lower VMT places. (p. 18)

This means that the existing plan of Kensington is not conducive to TOD. I wish it were, but this yet another empirical fact to add to the long list of reasons that awarding anti-public benefit points to projects around Marc is a poor precedent, and unlikely to win you votes from those affected- and most do not even know it yet- but eventually will. Returning to the analytics, there is another strike against Marc, namely that the Kensington station is not an *employment hub*. Here is why it matters:

Previous research by CNT and CTOD has found that households that are near many jobs, or have higher employment proximity, have lower VMT than those with lower access to employment. (p. 8)

Employment proximity:

There are at least two factors that may reduce the need for driving in the presence of greater employment: 1) Because there are a more jobs near the transit zone, residents are more likely to have shorter commutes than people who live in places with low employment access. 2) Places with high employment access may also have many local services and shopping opportunities that residents can access without driving long distances. (p. 7)

Here is the calculation in use:

The total employment access is defined as the sum of all of the jobs in a region, weighted by the inverse square of their distance from a given station area. For example, a block group with 100 jobs that is 2 miles from a station area would contribute  $100/2^2 = 100/4 = 25$  jobs to the employment access for that station area, whereas a block group with 100 jobs that is 10 miles away would only contribute  $100/10^2 = 100/100 = 1$  job. (Performance Based TOD Typology Guidebook, p. 16)

If we did this calculation for Kensington, what would be the transit intensity of the Kensington Marc station? I do not have the numbers to make the calculation, but when one considers a comparison with one of Transport America's Case Studies, Rockville Center, clearly Kensington is again magnitudes of order less:

Rockville:

Zone Intensity: 13,630 people

Total Residents: 3810 residents

Total Workers: 9820 workers

Compared to the average high-moderate VMT, employment place, the Rockville transit zone has many more residents and workers. The typical populations (workers + residents) is about 6,000 people, and this area has more than twice that. With more people, the transit zone has the potential to be in a lower VMT category.

Case Studies, p. 4, Performance Based TOD Typology Guidebook, 2010

So a typical population around a transit hub is 6,000 people, or three times Kensington's entire population. How many people can you envision living and working around the Marc? If we count all of Kensington as within 2 miles of the Marc, perhaps 500 people, at most  $1/26^{\text{th}}$  of the Rockville Zone intensity, and  $1/13^{\text{th}}$  of a typical population. To review:

**Kensington Marc has:**

**$1/24^{\text{th}}$  the transit frequency**

**$1/100^{\text{th}}$  the ridership**

**$1/13^{\text{th}}$  the total population of a typical area ( $1/26^{\text{th}}$  of Rockville)**

So, let's talk about Transit Proximity points! Is it fair to give Caleb, Pete, and a few others 20% of the benefits developers in Rockville earn by building hugely larger transit system accommodations at vastly more than 5 times the costs? What will that do to land value equity? In considering the argument that developers are 'counting' on cutting these community benefits, you must consider the larger implications to area land valuation. If you do not support ZTA 12-06 in its original, unadulterated form, you will be pulling the rug out from under hundreds or more investors who studied and carefully chose properties to invest in, assuming the County Council would adopt coherent and fair land-use regulations.

In summation, I have argued that a systemic and coherent analytical approach is not only the best way to make the determination before you, but the only one supported by established practices. Furthermore, I have illustrated through varied examples of work authored by the MNCPPC that Chair Carrier is correct in asserting that Marc should not qualify as a TOD hub for the purpose of awarding neighborhood degradation points to developers. It is my hope that you will see the great preponderance of data and fact supports my conclusion that proximity to the Kensington Marc Station is in no way credibly deserving of a Transit Proximity designation *of any level*.

**Public Hearing Testimony on September 11, 2012**

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

Good afternoon. My name is Gail Dalferes. I am a resident of Kensington, MD. I am speaking to request the Council pass ZTA 12-06 (Commercial/Residential Zones – Transit Proximity Definition) as it was originally proposed and without modification. I do not support a credit to developers for what MARC might become while there are no plans to expand MARC service and it provides 3.5% of the ridership of Metro service. I do not support giving away proximity credits to developers who are just passing through on their way to urbanize the County.

Developers oppose ZTA 12-06. I can see why. Parking is expensive. On April 5, Montgomery County Planning staff weakened the original ZTA language to again restore reduced parking for new development near MARC. The question that needs to be addressed is “if commercial property owners near MARC, not Metro, are given proximity - not service - credit, who will pay for the parking needed to support their development?”

The Town of Kensington - in some undefined and unfunded ‘shared parking program’?

The commercial property owners - whose patrons can’t stop in because they can’t find a place to park and there is no alternative in the non-transit oriented Town of Kensington?

The tax payers – should the tax payers foot the bill for the developers?

In the discussion leading to the vote on the Kensington Sector Plan (KSP) on March 20, Council members promised the community to protect the uniqueness of Kensington while encouraging revitalization.

What was striking to me during the March 20 discussion was that Councilmember Leventhal, in responding to resident concerns about ‘not counting MARC as Metro’ seemed confident in his understanding that this issue was already resolved. It was handled in the CR Zone legislation, right? No – we learned – a day-of-CR Zone-vote amendment, submitted by Councilmember Floreen, removed, among other things, this provision. That amendment was neither vetted with the community nor, it seems, with the rest of Council. Yet the CR Zones passed that day. Likewise, the Kensington Sector Plan was approved on March 20. We in the community were encouraged when Councilmembers Leventhal

and Elrich vowed to amend the zoning code to right this wrong. We were encouraged when it seemed Kensington's own Councilmember Roger Berliner was on board.

And now, many, many hours and many, many resources later, here we are. Back to the question of developer credits for 'MARC not as Metro'. Councilmember Floreen is consistent and persistent in her desire to give developers more credit than the MARC service warrants. When I met with her at my home in Kensington earlier this year, she told me and my two neighbors that ZTA 12-06 was simple. We can have it (as it was originally drafted) and get no development, or accept the amended text (basically gutting the legislation) and get development. I strongly disagree. This sort of 'all or nothing' argument is a false choice used too often in politics today. The facts do not support this level of developer credit for this level of transit service.

*"All residential is NOT the vision of this Plan."* - February 28, 2012 KSP hearing, Councilmember Leventhal.

*"There is a chart [in the audience] that reads 'size matters'. That's right. It does matter."* - March 6, 2012 KSP hearing, Councilmember Floreen.

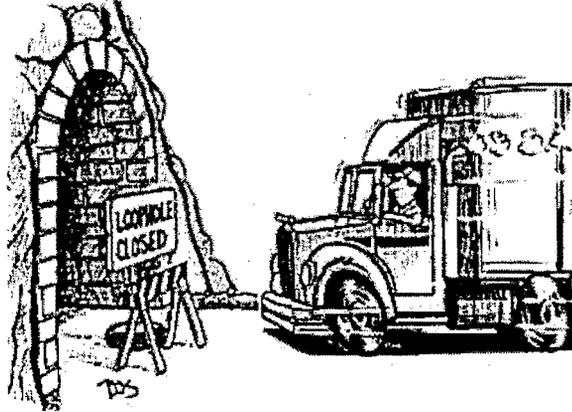
*"I am confident that the mixed use provision will result in mixed use."* - March 6, 2012 KSP hearing, Fred Boyd, Montgomery County Planner.

Included in my written testimony are the two prior written testimonies submitted by me and my neighbor, Lara Akinbami, on this ZTA.

To quote Councilmember Rice in the March 6 Kensington Sector Plan hearing, *"The uniqueness of Kensington need not be lost"* as we revitalize Kensington. One size legislation does not fit all communities. Please do this the hard way – the right way. Support ZTA 12-06 as it was originally proposed and without modification.

Thank you for your time, again.

## Close the truck-sized loophole in amended ZTA 12-06



## Support ZTA 12-06 as originally drafted on March 6, 2012

ZTA 12-06 was proposed in recognition that MARC stations do not serve the same public transit benefit as Metro. However, Planning Staff opposed the proposed change to the parking requirements, and the Planning Board (PB) proposed new language to allow parking reductions. Councilmember Floreen introduced an amended ZTA 12-06 that adopted the PB language *after* the original ZTA 12-06 was approved by the PHED Committee. The amended version of ZTA 12-06 establishes a large loophole, introduces the undefined concept of a shared parking program, and is based on the uncertain premise that shared parking will compensate for parking reductions granted to developers for MARC proximity. Essentially, the recently introduced language guts the intent of the original ZTA (see attached testimony in support of the original ZTA 12-06, noting the service MARC provides is ~3% that of Metro).

- *Loophole:* The phrase "...established by municipal resolution..." can be interpreted as meaning that a municipality need only pass a resolution to establish a shared parking program. *Actual establishment* of a program is literally not a requirement in allocating parking reductions to developers.
- *Uncertainty:* ZTA 12-06 should define or refer to a definition for a "shared parking program" and require such parking to exist in advance of developer credits being awarded, or at least to be fully funded. No definition exists in the CR zones, nor has any oversight been defined for determining if a shared parking program will adequately meet the needs of the area(s) for which it is proposed. Furthermore, there is no requirement that municipalities follow through with needed funding or provide a parking program in tandem with the development relying on it to thrive.
- *Non sequitur:* The amended text recognizes that MARC is not Metro by introducing the concept of a shared parking resolution as a requirement for parking reductions. However, this proposal may actually create a parking shortage without providing alternatives to automobiles for uses beyond commuting during limited hours. Neither the ZTA nor CR zones require that a shared parking program compensate for MARC parking reductions. Shared parking does not address the low impact of MARC in removing cars from the roads. Retail patrons unable to use uni-directional, time-limited MARC will still need parking if no other transit options are available.

The original ZTA 12-06 will help guarantee that development in non-transit oriented areas will be adequately scaled to the existing and currently funded transit infrastructure over the next 10 to 15 years. Close the loophole and avert the inadequate reliance on shared parking programs to address the low service levels and limited uses of MARC. Reject the amended ZTA and pass the original text as recommended (2-1) by the PHED committee in June. Stop the parking gap before it begins.

Lara Akinbami and Gail Dalferes, Kensington residents

## Support ZTA 12-06 as originally proposed and without modification

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.**

### ***Most new development is projected to be residential:***

- As is true now, the majority 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 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.



Source: 4/5/2012 planning staff memo

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. This ZTA helps ensure the Kensington Sector Plan becomes the reality we all envisioned instead of an expensive burden on the community.

**Disregard the March 29<sup>th</sup> 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

# KONTERRA

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September 17, 2012

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

Dear President Berliner and members of the Council:

Konterra Limited Partnership (KLP) remains unalterably opposed to ZTA 12-06, even as revised, as long as ZTA 12-06 reduces the current number of incentive points awarded due to transit proximity in the CR Zones. The reasons for KLP's opposition were spelled out in our previous correspondence with the Council and the PHED Committee during deliberations on ZTA 12-06 earlier this year.

Sincerely Yours,



Caleb Gould

Enclosure

# KONTERRA

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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

The Honorable Nancy Floreen  
June 12, 2012  
Page 2 of 6

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.*

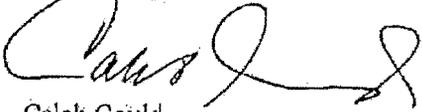
The State of Maryland also recognizes the importance of concentrating development at MARC stations. Governor O'Malley has been designating MARC stations for development. See the article appearing below. ZTA 12-06 is inconsistent with the State's forward looking approach to TOD development at MARC stations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

The Honorable Nancy Floreen  
June 12, 2012  
Page 3 of 6

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

The Honorable Nancy Floreen  
June 12, 2012  
Page 5 of 6

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.