

MEMORANDUM

June 25, 2009

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

FROM: Marlene L. Michaelson, Senior Legislative Analyst

SUBJECT: Germantown Sector Plan

This is the Planning, Housing, and Economic Development (PHED) Committee's third worksession on the Germantown Sector Plan. This meeting will cover all remaining individual properties (including the North End, Cloverleaf, Gateway, and Town Center Districts). A final worksession to address all follow-up issues is scheduled for July 7. **Committee Members should bring a copy of the Sector Plan to the worksession.**

TS Versus TMX Zoning

One of the issues that will impact several properties is whether the Town Sector (TS) or Transit Station Mixed-Use (TMX-2) zone would be the better zone for mixed-use properties. This issue was discussed in the Staff memorandum for June 15 and is repeated here. In summary, Staff questions whether the TS zone is the best zone to achieve the Plan's visions for the following reasons:

- The TS zone was conceived as a suburban mixed-use zone for overall modest densities of development. It limits population to 15 people per acre, which equates to approximately 5 units per acre or up to 7.5 for multi-family, less than is appropriate for a transit station area. These population limits are problematic for some property owners.
- Since these limits apply to the entire area zoned TS, the only way to understand what may be allowed on a specific property is to know the amount of population capacity already used up and what other TS property owners are considering. The zone has worked well where there is a single property owner, but there could be various problems with multiple property owners. In theory, one TS development could use population capacity to the detriment of another property owner.

- There is nothing in the zone to indicate that the Planning Board may allocate this capacity among property owners or is required to adhere to a master plan recommended allocation.
- The TS zone limits total commercial development to 10% and industrial development to 6%; it is not truly a mixed-use zone appropriate for a higher density, mixed-use transit center.
- The zone provides no limits on floor area ratio (FAR), density, height, or setback.
- It does **not** require consistency with the master plan and, therefore, Staff questions whether the Planning Board would have the basis to implement many of the Sector Plan provisions that limit FAR, height, etc.
- It does not include requirements for transferable development rights or building lot termination rights.
- It does not require the provision of amenities, although several are identified in the Sector Plan.
- It does not allow bonus market units for those who exceed the minimum requirement for MPDUs, nor does it have a workforce housing provision.

Given all these factors, Staff concludes that the TS zone is no longer appropriate for application in the Employment Corridor and Town Center areas of Germantown, where transit-oriented development should be more intense and where public amenities and policies need more focus and application. The Planning Board reached a different conclusion and an e-mail from the Chair attached at © 1-2 argues for the TS zone. Staff does not agree with his conclusion that the densities would be more restricted under the TMX zone, because the Sector Plan calls for average densities over properties of no greater than 2 FAR, and this is consistent with the TMX zone. The Chair's e-mail also indicates that changes to state law will require development to be consistent with master plan recommendations, even if consistency is not required by the zone. However, Council legal staff has reached a different conclusion, detailed in a memorandum attached at © 3 to 5. Finally, Staff does not recommend any amendments to the TS zone (other than allowing a TS area to be less than 1,500 acres if rezoned by a sectional map amendment.) More extensive amendments to the TS zone could have unintended impacts on areas outside the Sector Plan, including Montgomery Village.

In Germantown, there is considerable merit to rezoning all commercial mixed-use properties to the same zone. This promotes uniformity of administration and design implementation. It avoids inadvertent anomalies in the implementation of the master plan as well. It will also allow for an easier transition to any possible future zone developed and applied in the zoning ordinance rewrite program. The land uses, mix of uses, and recommended amenities in the Sector Plan would work very well with the TMX-2 zone, which is recommended for parts of Germantown. TMX-2 is intended for mixed-use development near transit stations; the densities are consistent with the recommendations in the Plan; and the zone requires conformance with the master plan, as well as the provision of amenities and the purchase of BLTs. This issue is addressed below for each property zoned TS.

NORTH END DISTRICT - EAST OF I-270

Milestone North (NE-6)

Size of property: 44 acres

Location Map: 60

Existing Zoning: I-3

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 48): In Stage 1, develop the Milestone North property at an average density of 0.75 FAR with a mix of research and development, employment, technology, street level retail, restaurants, and new housing. Orient up to 225 new multifamily housing units to the existing residential areas. Residential uses are not to exceed 20 percent of total development on this site. Development in Stage 2 may proceed to 1.0 FAR if the Town Center transit station properties have achieved an average density of 1.5 FAR.

Testimony: The Council received testimony from Trammell Crow expressing concern with several elements of the Sector Plan and the TMX-2 zone in particular. They believe the Sector Plan does not provide for any viable interim development and that there is no market at this time for structured parking or ground floor retail. The Sector Plan provides too many bureaucratic obstacles, including staging, requirements for minimum height, and design guidelines. They object to the TMX-2 zone's BLT purchase requirements and the maximum height allowed under the standard method of development. They further object to the Land Use map's depiction of where residential should be located, and want the entire property designated as commercial-mixed use. They also recommend that height be described in stories, not feet.

Staff Comments: The Committee addressed many of the comments in the testimony at its June 15th meeting, and those issues are not addressed again here. Given the Committee's decision to eliminate staging from the Plan, the limitations on FAR connected to staging for this property should be reconsidered. It would still be possible to state that development on this property should be limited to 0.75 FAR until the Town Center achieves a certain density. A similar recommendation appears for the Symmetry/Totah property in the North End District on the west side of I-270. The Committee should consider if these recommendations are still advisable if all other staging requirements are being removed from the Sector Plan.

The Land Use map on page 47 does show a potential location for residential development closest to existing residential development, and the owner has an approved plan for a commercial building at that location. Staff does not believe that the Sector Plan map would prevent Trammell Crow from building its approved project and that the Sector Plan recommendations are appropriate if they decide not to use the existing approval and submit a new plan. The Council has previously determined that height should always be described in feet and not stories, given the variation in the height of a story.

NORTH END DISTRICT - West of I-270

Symmetry/Totah property (NE-1)

Size of property: 19 acres

Location Map: page 60

Existing Zoning: I-3

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 48): In Stage 1, develop at an average density of 0.75 FAR and a mix of uses with a minimum of 60 percent employment and a maximum of 40 percent residential. Permit a limited amount of street level retail near transit and along Century Boulevard. Design employment uses and a hotel to take advantage of the site's visibility from I-270. In Stage 2, allow development up to 1.0 FAR if the Town Center transit station properties have achieved an average density of up to 1.5 FAR.

Testimony: The Council received testimony from Nicole Totah on behalf of Symmetry LLC. Ms. Totah objected to the Plan's staging recommendations, the minimum 3-story height recommendations, and design guidelines, issues that were addressed at previous Committee worksessions. Ms. Totah also opposed the 0.75 FAR limit connected to the first stage and the Plan's recommendation that the maximum density be 1.0 FAR (only allowed once the Town Center reaches 1.5 FAR). She would prefer to be allowed 1.0 FAR by right with the possibility of going to 1.5 if transportation allows. She believes that the density on this property should not be linked to another property and that the Plan should not have the ability to dictate where companies may go. Finally, she requests use flexibility among different blocks.

Staff Comments: The issue of linking development of the North End properties to development of the Town Center is discussed in the context of the Milestone North (NE-6) property above. Planning Department staff believe that the recommended FAR of 0.75 would allow this property to achieve the Plan objectives and goals regarding form and mix-of-uses and are prepared to address this issue at the worksession. Allowing "use flexibility among blocks" is more a regulatory issue than one that should be addressed in a master plan.

Lerner Property (NE-2)

Size of property: 130 acres

Location Map: page 60

Existing Zoning: TS

Proposed Zoning: TS

Summary of land use recommendations (see page 48): Orient signature office buildings and employment uses along I-270 on NE-2. Allow up to 1.5 million square feet of employment uses, a hotel, and up to 110,000 square feet of retail space. Allow a 1,425 residential population as defined in the Town Sector zone with a mix of high-rise and low-rise residential units.

Testimony: The Council received testimony on behalf of Lerner Enterprises requesting the TMX zone instead of the TS zone to allow them to build a residential community of 1,500 housing units (including 1,200 for an active adult retirement community), a change in the alignment of Crystal Rock Drive, elimination of or changes to the staging requirements, and a

change in the forest preservation recommendation to reduce it from approximately 24 acres to 17-18 acres.

Staff Comments: This property highlights one of the shortcomings of the TS zone, which focuses on population rather than density. The FAR and the potential impact of residents on public facilities probably have a greater impact on the surrounding area than population. TS zoning, with its population limits, appears to be an inappropriate zone for a senior housing community. Moreover, Staff believes that the TMX zone is generally preferable to the TS zone, and cannot identify any reason to not grant the property owner's request for TMX zoning, but with the same 0.75 limit on FAR recommended for other North End District properties.

Since the Plan only includes general recommendations regarding the forest to be protected and does not specify a need to protect 24 acres, Staff does not see a need for a change to the Sector Plan. The specific acreage to be protected should be determined during the regulatory review process. The property owner expressed concern that Planning Department staff would be inclined to adhere to the delineation of the area to be protected shown as private open space on page 47, but Staff believes this land use map shows the general boundaries for uses, rather than specific boundaries for forest protection.

CLOVERLEAF DISTRICT LAND USE

Century Technology Park, 270 Corporate Center, Cloverleaf South, First Federal Property)

Size of property: 125 acres (entire district)

Location Map: page 59

Existing Zoning: I-3

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 46): The entire Cloverleaf District is recommended for TMX-2 zoning with an average density of 1.0 FAR and heights of 125 feet (approximately 10 stories) or up to 143 feet (approximately 12 stories) at the transit station. The Sector Plan recommends that the land uses be 50 to 60 percent commercial and 40 to 50 percent residential, but there are no requirements for the individual specific properties. The Sector Plan also recommends employment uses and a hotel along I-270, as well as street level retail near the transit station and a small grocery store.

Testimony: The Council received testimony from Trammell Crow, the developer of Century Technology Park (see area number 1 on page 59). They raised a number of general concerns regarding the Sector Plan and TMX zone that are summarized in discussion of their other property (Milestone North - NE-6). In addition, they raised the following concerns:

- They object to the reference to permeable pavement (p.45) to reduce imperviousness because they believe it is too specific.
- They believe the calculation of heights was incorrect and that the Plan should just refer to stories.
- They object to the recommendation for a grocery store.

- They object to the requirement to provide a half-acre green common at the heart of the neighborhood (p.46).

Staff Comments: Staff supports the zoning recommendation for this property. While Staff does not object to the mix of uses proposed by this area, it is unclear whether these standards are meant to apply to each property or to the entire area and, if the latter, how the Planning Board would handle individual applications as they come in. Planning Department staff will be prepared to address this issue at the worksession.

Many of the comments in the Trammell Crow testimony were discussed at previous worksessions or in the above comments regarding its other property (Milestone North - NE-6). Since permeable pavement is described as an example of a way to reduce imperviousness rather than a requirement, Staff does not recommend any change to the Sector Plan wording. Trammell Crow correctly noted that there are some inconsistencies on the height limits, and Staff will work with Planning Department staff to correct these before Council review of the Plan; however, as noted above, the Council believes feet should be used instead of stories to measure height. Staff is unclear why it would be necessary for the Sector Plan to recommend a hotel and grocery store. Both are permitted uses in the TMX-2 zone, and the only time Staff recommends identifying specific uses in master plans is when the zone requires a master plan recommendation for a certain use. Finally, Staff believes it is important for master plans to describe the size and location of potential open space, but would not object to a clarifying statement that indicates the final location will be determined during the development review process.

TOWN CENTER CORE

Bellemead TC-1 and TC-9

Size of property: 9 acres and 8 acres.

Location Map: page 57, # 1.

Existing Zoning: TS

Proposed Zoning: TS

Summary of land use recommendations (see page 38): Redevelop with up to 2.0 FAR of mixed-use development with a minimum of 70 percent residential use, and include a 0.3 acre public use space at the transit station.

Testimony: The Council received a letter from Bellemead immediately prior to the preparation of this memorandum supporting the Sector Plan’s recommendation for TS zoning and opposing the Council Staff recommendation to consider this property for TMX zoning. They have approvals for 255,000 square feet of retail development, and 180,000 square feet have been constructed thus far. They believe that the TS zone has served them well and do not want to change zoning in the middle of this project. They believe that changing the zoning would “create confusion and force renegotiation of our contractual commitments in the midst of challenging economic times.”

Staff Comments: Staff continues to believe that TMX zoning is the right **long-term** zone for this property, but would only recommend applying it if Bellemead could be guaranteed that it

would have no impact on the build-out of their approved project. Since Staff just received Bellemead's e-mail, Staff will continue to explore whether it would be possible to rezone the property without any negative consequences for Bellemead.

Police and Fire Station (TC-2)

Size of property: 7 acres

Location Map: page 57

Existing Zoning: I-3

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 38): The Plan recommends redeveloping the Police and Fire Station property at an average density of 2.0 FAR of mixed-use development, including residential uses. It recommends expanding police facilities, retaining the fire and rescue facility, and providing structured parking for all uses on the property. Mixed-uses should include street level retail, restaurants, and a significant amount of affordable or workforce housing.

Testimony: The County Executive submitted testimony expressing concerns for the Plans' recommendations for mixed-use development and public open space immediately adjacent to the fire station. He indicates that "Mixed-use development, including high-density residential occupancies near the fire and police station, would add to vehicular and pedestrian traffic near both stations, and potentially have a negative impact on response time. Residential use on that block would likely result in complaints about noise from the emergency vehicles next door." The Executive also objects to the public open space immediately to the rear of the fire station over an area that is presently used by Station 29 units to access Crystal Rock Drive. He strongly recommends that public space not be placed in this location unless a street access plan for emergency vehicles is maintained.

Staff Comments: Staff supports the concept of mixed-use development at this site and believes the specific uses can be evaluated at the time of redevelopment, provided that access issues can be addressed. While housing could be problematic, it might be ideal if it is workforce housing for the police and fire employees working at those stations. This may also be a good site for the parking district to provide parking, provided that access will not conflict with police and fire access to the stations. Staff does recommend revising the language to indicate that potential uses should be evaluated at the time of redevelopment to ensure that they would not impede the operation of the stations.

Cinema (TC-3) and Century XXI properties (TC-4)

Size of property: 7 acres

Location Map: page 57

Existing Zoning: TS and I-1

Proposed Zoning: TS and TMX-2

Summary of land use recommendations (see page38): The Plan recommends redeveloping the cinema and Century XXI properties at an average density of 2.0 FAR, consisting of housing and entertainment uses.

Testimony: None.

Staff Comments: Staff supports the recommended land use but recommends clarifying that the full build out of the property would allow commercial office, entertainment, and housing since the Plan appears to limit uses to just entertainment and housing, and there are already commercial uses on the property. TC-3 is recommended to retain its TS zoning, while TC-4 to its east and TC-2 to the west are recommended for TMX zoning. For the reasons outlined above, Staff recommends rezoning TC-3 to TMX.

Properties along MD118/I-270 (TC-5 to TC-10)

Size of property: approximately 35 acres

Location Map: page 57

Existing Zoning: I-1, I-3, and TS

Proposed Zoning: TS and TMX-2

Summary of land use recommendations (see page 38): Redevelop properties along MD 118/I-270 at an average density of 2.0 FAR with mixed commercial uses including hotels.

Testimony: See Bellemead comments under TC-1 above.

Staff Comments: Town Center properties 4, 5, 6, 7, 8, 10, and a small part of 9 are recommended for TMX-2, while 3 and the remainder of 9 are recommended to keep their TS zoning. However, there is a single land use recommendation for properties 5 to 10. It is unclear to staff what rationale exists for keeping areas 3 and most of 9 in the TS zone (other than ensuring that existing and approved developments are held harmless from the change in zoning). Moreover, Staff remains unconvinced of the Planning Board's ability to limit density on the TS properties to 2.0 FAR.

A small sliver of land (area 10 and part of 9) is recommended for TMX zoning, even though it is surrounded by TS zoning on either side. If the Committee supports the Plan's TS recommendations, Staff recommends making this small area TS as well.

Since the TMX zone does not have any upper limit on height or density, it is important to provide master plan guidance on these issues. The Plan addresses density but not height. Staff has asked Planning Department Staff for height recommendations for these properties.

Safeway (TC-14) and EuroMotors (TC-15)

Size of property: 15 acres

Location Map: page 57, #s 14 and 15

Existing Zoning: TS

Proposed Zoning: TS

Summary of land use recommendations (see page 38): Allow up to 1.0 FAR on the Safeway (TC-14) and EuroMotors (TC-15) properties between Century Boulevard and MD 118. Redevelopment should be primarily commercial uses with street level retail. Retain a grocery

store as street level retail. Although page 40 of the Plan (middle column, first bullet) indicates that height along MD 118 should be up to 143 feet (12 stories), Planning Department staff indicate that the correct height along MD 118 should be 100 feet.

Testimony: The Council received testimony from the Artery Group, LLC expressing concern with the Plan's density recommendations, conflicting recommendations as to the mix of uses on the property, requirement for a grocery store, and prohibition of single-use buildings. They believe that a density of 1.6 to 2.0 FAR as opposed to the 1.0 recommended by the Sector Plan is necessary to provide the catalyst for redevelopment and achieve the Sector Plan vision. They are also concerned that various comments and graphics in the Sector Plan could be interpreted to restrict the construction of additional residential development, which they believe will be essential for their planned mixed-use development. They are concerned about language in the Plan that prohibits single purpose retail development and requires the retention of a grocery store on the property. In addition, they have asked that if the site is rezoned to TMX-2, there is clarification that Artery has already met its public open space requirement in its earlier phase of development (with the land dedicated for BlackRock and Town Center Commons). If the property is rezoned to TMX-2, they believe the price of a BLT should be linked to land values, as previously suggested by Council Staff. Finally, they ask that Urban and Parking District fees not place an unequal burden on existing developments.

Staff Comments: Artery questions why the property designated as the core neighborhood would have a lower FAR than other properties equally close to a transit station. This site serves as a transition to the lower densities to the west and, therefore, Staff would not support a 2.0 FAR, but believes that a 1.5 FAR may be appropriate if the property is rezoned to TMX-2, since it requires consistency with master plan density specifications. (If the property retains its TS zoning, there is no requirement for consistency with the master plan, and Staff would be reluctant to support a greater density.) Staff has asked Planning Department Staff to assess the impact of a 1.5 FAR and they will be prepared to address it at the worksession.

Artery has expressed concern that Sector Plan language and graphics could be interpreted to prohibit housing, and although Staff does not share their interpretation, the language is somewhat vague and should be clarified to indicate that residential development may be part of the mix of uses on this site. As noted in earlier worksessions, Staff recommends modifying language that prohibits single-use structures.

Artery has also asked to delete the statement that requires them to retain a grocery store. As with other properties, Staff sees no reason to require this specific land use at this location. The market should determine the number and location of grocery stores in Germantown. (The presence of street level retail, preferably with a destination anchor, is important, but it need not be a grocery store. For example, a bookstore could be just as successful in drawing people to Town Center.) Like other properties in Town Center, Staff believes that TMX-2 zoning would be more appropriate and provide greater flexibility. If the Town Center is the last of the TS properties to redevelop, it is possible that other sites will have used up the residential population capacity or limits on commercial development, thereby limiting the development potential on this important site.

TOWN CENTER - West of Middlebrook Road

Germantown Commons Shopping Center (TC-17)

Size of property: 19 acres

Location Map: page 57

Existing Zoning: TS

Proposed Zoning: TS

Summary of land use recommendations (see page 38): Redevelop the Germantown Commons Shopping Center (TC-17) at up to 0.5 FAR with a maximum of 40 percent residential uses. Create a new private street pattern that is walkable and street-oriented.

Testimony: None

Staff Comments: Staff believes this property should be considered for TMX-2 zoning.

Trevion Property (TC-18)

Size of property: 16 acres

Location Map: page 57, # 18

Existing Zoning: C-O

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 38): Develop at an average density of 1.0 FAR of mixed uses with an employment emphasis that achieves at least 65% office uses, a hotel and service retail, and a maximum of 35 percent residential uses located along the Wisteria Drive end of the site.

Testimony: The Council received testimony from the Gunners Lake Thirteen Ltd. Partnership, which owns and manages the Trevion Property. In place of the Sector Plan's recommendation for TMX-2 zoning, they have requested alternative zoning since they believe the TMX-2 represents a downzoning from the existing C-O (which they indicate would permit 1.5 FAR by right or up to 3.0 FAR or 450,000 square feet with site plan review). They have requested PD-60 zoning or the retention of the existing C-O zoning, and have expressed concerns about the complexities and uncertainties of the TMX zone, including the required purchase of BLTs.

Staff Comments: Staff believes that PD-60 zoning would not provide any of the public benefits of alternative high density residential or mixed-use zones and has consistently recommended against this zone. Although the C-O zone allows up to 1.5 FAR, it has a far more narrow range of uses and less flexible development standards. Staff believes the TMX zone will increase the opportunities for additional development and redevelopment on this site and supports the Sector Plan recommended zoning.

Sugarloaf Shopping Center (TC-20)

Size of property: 12 acres

Location Map: page 57

Existing Zoning: C-2

Proposed Zoning: RMX-2C

Summary of land use recommendations (see page 38): Redevelop the Sugarloaf Shopping Center at an average density of 0.6 FAR of mixed uses with a retail emphasis that includes housing; the optional method of development is recommended. Provide a public street through the property from Germantown Town Commons to Wisteria Drive.

Testimony: None

Staff Comments: Support the Sector Plan recommendations.

Properties along the southeast side of Locbury Drive Extended (TC-21)

Size of property: 4 acres

Location Map: page 57

Existing Zoning: C-2

Proposed Zoning: RMX-2C

Summary of land use recommendations (see page 38): Redevelop properties along the southeast side of Locbury Drive Extended (TC-21) at an average density of 0.5 FAR if assembled under optional method.

Testimony: None

Staff Comments: Support the Sector Plan recommendations

TOWN CENTER WEST END

North of MD 118

Martens property (TC-22) and Waters Road Triangle property (TC-23)

Size of property: 27 acres

Location Map: page 57

Existing Zoning: RMX-2

Proposed Zoning: RMX-2

Summary of land use recommendations (see page 41): Redevelop the Martens (TC-22) and Waters Road Triangle (TC-23) properties with a maximum of 420,000 square feet of employment and retail and 400 dwelling units with TDRs. Density should be distributed to permit up to 200,000 square feet of commercial uses and 300 units on the Martens property and up to 220,000 square feet of commercial uses and 100 units on the Waters Road Triangle properties.

Testimony: The Council received testimony on behalf of Vernon Martens opposing the Plan's staging recommendations and the recommended density. Mr. Martens believes the density caps should be eliminated or, at a minimum, set at 360 dwelling units, 240,000 square feet of commercial uses, and 0.5 FAR. In a subsequent e-mail, he also objected to the private open space shown on pages 36 and 37.

The Council also received testimony on behalf of Mr. Wildman. The 1989 Germantown Master Plan rezoned his property to RMX-2, making the existing commercial uses non-conforming. Subsequently, the RMX-2C zone was created which would have allowed the existing commercial development while providing for redevelopment opportunities. Mr. Wildman believes that his properties would have been zoned RMX-2C if that zone existed at the time of the 1989 Germantown Master Plan. He has asked for a rezoning to RMX-2C at this time to accommodate the commercial uses. He further notes that the land use map on page 39 designates the property with a "C" to indicate mixed-use, commercial development, while recommending a zone that is focused on residential development.

Staff Comments: Staff has asked Planning Department staff to address Mr. Martens' request for additional density on his site. They will be prepared to address this issue at the worksession on the 29th. Regarding the private open space, Staff believes it is useful to include this in the Sector Plan, but language can be added to indicate that the exact location will be determined during the development review process.

Staff reviewed the minutes from the discussion of the Waters Road Triangle property during the 1989 Master Plan and found that the Council discussed the fact that existing businesses were an integral part of the Germantown Plan and directed that the RMX zone be amended to ensure that these structures on the Waters Triangle site not become non-conforming. It appears that the text amendment was not amended to achieve this goal. Staff concurs with Mr. Wildman's assessment that the 1989 Master Plan would have probably recommended RMX-2C if it had existed at the time. Staff has asked Planning Department staff what the impact would be of a rezoning to RMX-2C, since the Sector Plan already limits the number of residential units and square feet of commercial development. If the sole impact is to make the existing structures conforming, Staff supports the requested rezoning.

South of MD 118

Marc Station – TC-24

Size of property: 5 acres

Location Map: page 57

Existing Zoning: R-200

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 41): Redevelop the County-owned MARC station parking lot with street level retail facing MD 118 and a parking structure for MARC riders set into the slope of the property. The parking structure's location and design should be compatible with the nearby historic district.

Testimony: There was no testimony on the garage, but significant testimony opposing having the construction of the garage as a staging trigger.

Staff Comments: This is one of several properties in this area recommended for rezoning to TMX-2. Although Staff does not disagree with the recommendation, there is no discussion of the recommended rezoning or rationale for the change.

County-owned property east of the Pumphrey-Mateney House (TC-25)

Size of property: 0.3 acres

Location Map: page 57

Existing Zoning: O-M

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 41-42): Create two additional single-family detached lots on County-owned property east of the Pumphrey-Mateney House fronting Walter Johnson Drive, to create a compatible setting for the historic property.

Testimony: None

Staff Comments: Support the Sector Plan recommendations, but add rationale for rezoning.

Properties south of MD 118 between the MARC station and Wisteria Drive

Shaw/Haddad property (TC-26) and Walter Johnson property (TC-27)

Size of property: 10 acres

Location Map: page 57

Existing Zoning: O-M

Proposed Zoning: TMX-2

Summary of land use recommendations (see page 41): Redevelop the properties south of MD118 between the MARC Station and Wisteria Drive (TC-26) with mixed uses up to 0.5 FAR. Orient commercial uses to MD118 and single-family attached residential uses along Walter Johnson Drive.

Testimony: None

Staff Comments: The zoning map on page 57 indicates that these properties are to be rezoned to TMX-2, but there is no mention of the rezoning or the rationale in the text. Since the TMX-2 zone does not have any upper limit on FAR, it is important that limits are included in the Sector Plan. There is an FAR limit for TC-26 but it does not appear to apply to TC-27.

Medical Office Park (TC-28) and Post Office property (TC-29)

Size of property: 10 acres

Location Map: page 57

Existing Zoning: R-200 (TC-28) and C-T (TC-29)

Proposed Zoning: RMX-2/TDR

Summary of land use recommendations (see page 41): Redevelop the Medical Office Park (TC-28) as mixed-use with a residential emphasis, up to 18 units per acre. If the post office (TC-29) relocates, redevelop the site for residential uses at 18 units per acre.

Testimony: None

Staff Comments: While Staff supports the land use recommendation for this site, Staff asked Planning Department staff whether they had considered TMX zoning for these properties to make the zoning consistent for this entire area. Given the flexibility of the TMX zone, it would be possible to achieve the Plan's land use objective with the TMX zone and the language in the Sector Plan. Planning Department Staff will be prepared to address this on Monday. The Committee may also want to consider whether 18 units per acre is the correct density, since the site to the south, further from Town Center is recommended for RMX zoning at 25 units per acre. Staff has asked Planning Department Staff to be prepared to address whether a density of 25 units per acre is appropriate for these properties as well.

Unidentified Town Center Properties

There are several properties with the Town Center shown on the zoning map on page 57 that are not discussed in the Sector Plan and do not have a number identifying them in the property reference map on page 57. Staff presumes that these are properties that do not have additional development capacity and were therefore not studied during the Sector Plan review. Many of them are zoned TS. If the Committee supports the Staff recommendation to change other TS properties in Town Center to TMX, then these properties should also be considered for rezoning to create a consistent zoning pattern in Germantown Town Center.

GATEWAY DISTRICT

Rolling Hills property (GA-5)

Size of property: 40 acres

Location Map: page 58

Existing Zoning: R-H, PD-9, R-30, C-T

Proposed Zoning: RMX-1

Summary of land use recommendations (see page 44): Although the Plan indicates on page 43 that it does not recommend any changes in land uses from the current commercial and industrial uses, the Rolling Hills property is recommended for a change in zoning from R-H, PD-9, R-30, and C-T to RMX-1 with housing at 25 units per acre. The Sector Plan recommends placing high-rise residential buildings on the portion of the property with lower site elevations to avoid incompatible relationships with the nearby historic district, while still placing density

closest to the MARC station. It also recommends a range of unit types, including single-family attached units. Planning Department staff have indicated the Plan should have included a height limit for this property, and will be prepared to address this issue at this meeting.

Testimony: The Council received testimony on behalf of Clark Enterprises, Inc., owner of the Rolling Hills property, supporting the recommended zoning but objecting to the Staging Plan and design guidelines. They ask that the Council remove the staging requirements and recommendation for specific unit types in the Sector Plan. They have also addressed specific recommendations in the Draft Design Guidelines (including building height and an illustrative concept plan). Although this was not in their written testimony, they subsequently indicated to Staff a request for 30 units per acre instead of the 25 recommended in the Sector Plan.

Staff Comments: The Committee has already addressed the Staging Plan and design guidelines in a previous worksession. Staff supports the RMX-1 zoning recommendation for this property. Planning Department staff do not believe that the property should develop at 30 units per acre due to concerns regarding intensity, potential height, and traffic, and will be prepared to address this issue in greater detail at the meeting. Staff believes the master plan should always recommend a mix of housing types whenever possible and supports the language in the Sector Plan that recommends a range of unit types, including single-family attached.

Oakwood Properties

The Oakwood Properties is the owner and developer of the Churchill Senior Housing community, which is located in Germantown outside the boundary of the Sector Plan. It is zoned TS and was previously approved for 300 senior independent and assisted living units, but they are currently considering requesting additional density on the site. They have asked the Council to ensure that there is adequate development potential under the population cap applicable to the Churchill Town Sector, to allow for the development of additional senior housing in Germantown to serve the needs of the County. The only options to insure this would be either to limit residential growth in the Sector Plan area or amend the TS zone to either change the way the population cap is calculated (Oakwood has recommended excluding senior communities) or eliminate the need to be within a population limit. Staff does not recommend limiting residential growth in the Sector Plan area to less than recommended in the Sector Plan. While amendments to the TS zone related to the calculation of the population cap appear to be appropriate, there would have to be a separate process to thoroughly evaluate the impact of alternatives, and this clearly could not be done before completion of this Sector Plan.

Michaelson, Marlene

From: Hanson, Royce [Royce.Hanson@mncppc-mc.org]**Sent:** Saturday, June 20, 2009 10:28 PM**To:** Knapp, Mike; Floreen's Office, Councilmember; Elrich's Office, Councilmember**Cc:** Michaelson, Marlene

PHED Committee:

After the discussion last Monday concerning the retention of the Town Sector Zone for town center and Lerner properties I had an opportunity to revisit the decision made by staff and Board in recommending staying with the T-S Zone instead of recommending the TMX zone. Because of the length of time since we made the decisions, I did not recall the details during the discussion, which tended to focus on the characteristics of the zone and the legality of severing part of it by SMA. Here is the policy rational for why the Board retained it and continues to recommend its use:

A central objective of the plan is to make possible the creation of a vibrant town center, with an overall density of 2.0 FAR for the area from the MARC station in the West End to the CCT station at Aircraft and Century plus a few other tracts proposed for the T-S and TMX-2 zones. This level of overall FAR is important, both to support the CCT and to provide the level of activity necessary for a strong mixed use center. While development at the other CCT stations should be more dense than the broader areas surrounding them, none should equal the density of the town center.

Achieving an overall density of 2.0 FAR for the entire town center will require that some of the parcels now in the T-S Zone develop at higher densities, since today, the entire town center, running from the Up County Service Center to the transit hub is developed at about 0.3 FAR. Much of this area will not redevelop during the life of this plan. It is important, therefore, that the developable land be allowed somewhat higher densities than 2.0 if the overall average is to be approached, let alone reached. ***That will not occur if the TMX-2 zone is used because it establishes the maximum allowable density for each parcel at 2.0 FAR, and it is probable that some of those parcels will not attain full density.*** The analysis the staff prepared, using an optimistic assumption about the number of parcels in the town center that would develop if each of them attained the full 2.0 FAR under TMX-2, the highest overall density that could be achieved in the Town Center is about 1.3 FAR. This is not enough to create and sustain a place that is clearly identifiable as the center of Germantown.

It is possible, however, to achieve both the density needed to make a great place of the town center and provide the boost in density in that area sufficient to bring the overall average up to 2.0 by using the Town Sector Zone. This is because the T-S Zone does not have an FAR limitation for non-residential uses. It is even more flexible than the TMX, it is in the right place to have the right effect, and its continued use does not raise any of the issues associated with severing it from the rest of the T-S zoned property in Germantown.

There are limitations respecting its use, which have been discussed. It has a different method of calculating the MPDU requirement. It lacks an explicit BLT or master plan consistency requirement. Both of these deficiencies are relatively easy to resolve. Both could be provided by a text amendment. Master Plan consistency is required under the subdivision regulations, and new state law, effective July 1, also requires master plan consistency. While the latter excludes density and use from the consistency requirement, it does require consistency with master plan policies, staging, and development patterns. In short, we have sufficient regulatory authority to achieve the development objectives of the plan.

Council Member Knapp may remember a conversation we had during the development of the sector plan, when

6/25/2009

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I expressed my concern that the TMX-2, as enacted by the Council after the Twinbrook Plan discussion, would not provide sufficient density for the appropriate development of the town center. While one solution might have been the creation of a TMX-3 or TMX-4, the Board has been reluctant to recommend creating a "family" of TMX zones in light of the further work that is being done on revision of the zoning code. A more comprehensive and better approach to mixed use zoning is being developed that we will propose in conjunction with the White Flint and West Gaithersburg plans and it is conceivable that this new zone can replace many if not all other mixed use, transit-oriented zones and some other commercial zones. In any event, since the objectives of the Germantown Plan can be achieved without creating any new zones through continued use of the T-S zone, we recommend its use.

With respect to the Lerner tract, also in the T-S zone, we dealt extensively with it during the work sessions for the Germantown plan. The 0.75 FAR recommended for the site is appropriate for it for several reasons. First of all, it permits fairly intense development in the vicinity of a CCT station, but at less density than the Town Center or Cloverleaf, maintaining the plan's policy of permitting the greatest density at the town center and progressively less density at other stations as their distance from the center increases. The density proposed for the tract appeared to consistent with the owner's intentions for the future development of the tract at that time, and allowed protection of the important forest stand on the property, which is important to retaining the percentage of tree cover and level of natural resource protection recommended by the plan.

Royce

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June 23, 2009

MEMORANDUM

TO: Marlene Michelson

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: The Smart and Sustainable Growth Act of 2009's effect on requiring consistency between development and master plans

The Planning Board recommended the use of the Town Sector (TS) zone in the Germantown Sector Plan. The Sector Plan purports to guide development in the TS zone even though the text of the TS zone does not require consistency with a master plan. In the opinion of the Planning Board, changes to state law will require development to be consistent with master plan recommendations even if consistency is not required by the zone. Staff researched the subject, consulted with the Council Attorney's office, and came to a different conclusion.

The Article 28 controls zoning in Montgomery County.

Montgomery County is a charter county. Article 66B does not apply to charter counties except for specific provisions listed in Article 66B §1.03 (b). Section 1.02 applies to charter counties. This new code section lists the actions that must be consistent with master plans. All of those actions listed in §1.02 are authorized by Article 66B.¹ Some charter counties get authority to act under Article 66B. Montgomery County is authorized to adopt plans and implement those plans through ordinances and regulation under Article 28, not under Article 66B. Given this different source of authority, the adoption of the Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009 (Growth Act) has no effect in Montgomery County. Montgomery County's ordinances and regulations are not actions within the scope of the Growth Act.

Ordinances and regulations must be consistent

Under Maryland Code §66B-1.02, as amended by the Growth Act, the phrase "consistent with" is given a new meaning if it appears in an ordinance or a regulation.² The provision that requires

¹ §66B-1.02(A):

In this section, "action" means:

- (1) The adoption of an ordinance or regulation under:
- (I) §1.00(k) of the Article
 - (II) §1.04(F) of this Article; or
 - (III) §4.09 of this Article....

² §66B-1.02 (c):

ordinances and regulations to be consistent with the comprehensive plan, Article 66B §4.09, did not change.³ **Ordinances and regulations must be consistent with the master plan but not development.** Development is only required to satisfy ordinances and regulations unless an ordinance or regulation requires development to be consistent with the plan. If the General Assembly wanted development to be consistent with a master plan it could have directed that requirement by amending §4.09.

Special exceptions must be consistent

The Growth Act requires consistency between special exceptions and the relevant master plan.⁴ “Development” is a defined term in the same subsection as “special exception”; the Growth Act does not require development to be consistent with a master plan.⁵ If the General Assembly wanted to require that development be consistent with a master plan it could have amended the definition of “development” in §66B-1.00 in the same way as it amended the definition of “special exception.”

Intent to overturn Terrapin Run

The General Assembly’s preamble to the Growth Act indicated a concern for the broader implications of the Terrapin Run decision; it did not indicate an intent to overturn other court decisions. Requiring development to be consistent with a master plan is permissible but not required.⁶ The weight accorded to a master plan depends on the language of the ordinance or regulation and the type of decision involved.⁷ When a zoning ordinance indicates that a specific zone is applicable only where indicated as appropriate on a master plan, the master plan is controlling.⁸ Only when county subdivision regulations require that a subdivision plan comply with the master plan, that plan is considered more than a mere guide.⁹

Except as provided in subsection (D) of this section, when a provision in a statute listed under subsection (B) of this section requires that an action be “consistent with” or have “consistency with” a comprehensive plan, the term shall be defined to mean an action taken that will further, and not be contrary to, the following items in the plan...” An action is defined as the adoption of an ordinance or regulation.

³ § 4.09. Implementation of economic growth and resource protection provisions:

On or before July 1, 1997, and subsequently at intervals of no more than 6 years which correspond to the plan revision under § 3.05(b) of this article, a local jurisdiction shall ensure that the implementation of the provisions of the plan that comply with §§ 1.01 and 3.05(a)(4)(vii) and (ix) of this article are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and **other land use ordinances and regulations that are consistent with the plan.** (Emphasis added.)

⁴ §66B- 1.00 (k):

“Special exception” means a grant of a specific use...based on a finding that...the use IS CONSISTENT WITH the plan and is compatible with the existing neighborhood.

⁵ § 66B -1.00 (c):

“Development” means any activity, other than normal agricultural activity, which materially affects the existing condition or use of land or structure.

⁶ Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore, 128 Md. App. 294 (1999).

⁷ Richmarr Holly Hills, Inc. v. American PCS, 117 Md. App. 607 (1997) - this court opinion was published 5 years after the adoption of §66B-4.09.

⁸ Boyds Civic Association v. Montgomery County Council 309 Md. 683 (1987).

⁹ Coffey v. M-NCPPC, 293 Md 24 (1982).

Consistent does not mean strict compliance

Development in the TS zone requires the approval of a development plan. Development plans must “substantially comply with the use and density of the adopted plan.”¹⁰ Development plans are not required to be consistent to any other aspect of the adopted master plan. The draft Germantown Sector Plan recommends such urban design elements as minimum building height and maximum building heights. Germantown is in the County’s priority funding area. Ordinances and regulations concerning priority funding areas need not be consistent with the land uses, densities or intensities of a master plan.¹¹ Even if the Growth Act required development to be consistent with the adopted master plan it would only be consistent to policies, timing; and development patterns. One could argue that development would not be required to be consistent with height recommendations of the master plan.

¹⁰ Currently subdivisions and project plans must be consistent with the adopted master plan. There is no requirement for site plans to be consistent with master plans. The Growth Act does not require consistency with land uses, densities or intensities.

¹¹ §66B-1.02(c)(3).

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