

MEMORANDUM

September 18, 2014

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Legislative Attorney

SUBJECT: Zoning Text Amendment 14-09,
Zoning Ordinance Rewrite – Updates, Clarifications, and Corrections

Background

The Zoning Ordinance Rewrite was approved by the Council on March 4, 2014 with an effective date of October 30, 2014. ZTA 14-09, sponsored by Councilmember Floreen and introduced on July 29, 2014, addresses a number of circumstances that warrant changes to the code before it becomes effective:

- 1) The Council has approved a number of zoning text amendments in the current code that must be enacted into the new code if the provisions are intended to have a long-term effect on development.¹
- 2) District Map Amendment G-956, approved on July 15, 2014 with an effective date of October 30, 2014, raised issues that the Council may wish to address in the text of the code.²
- 3) Some changes are advisable to remain consistent with State and County law.³
- 4) Some topics may have been overlooked by the Council.⁴

¹ZTA 14-01, Require charging ready parking spaces for large new parking facilities;
ZTA 14-02, Allow solar panels in setbacks;
ZTA 14-03, Add Clarksburg Overlay zones;
ZTA 14-05, Size of health clubs in the C-1 zone;
ZTA 14-06, Remove site plan requirement for some parcels exempt from platting;
ZTA 14-07, Allow larger accessory commercial kitchen.

Note: ZTA 14-04 concerning small cell antennas on existing structures was approved as a revision to the Zoning Rewrite, so additional revisions are not necessary.

² Revisions to Takoma Park/East Silver Spring Overlay zone to address NR zones issues used for the historic area;
Require prior zone minimum green space areas for properties approved by floating zones (issues raised during the Pooks Hill Marriott site deliberations);
Revise development plan amendment process after the October 30, 2014 effective date for properties with existing approvals (issue raised during the Grove site deliberations);
Allow pre-existing outdoor storage in the EOF zone (White Oak issue);
Allow hospitals as part of the Life Sciences use in addition to hospital as a separate land use (White Oak).

³ Maryland Code, Land Use Article §22-115 - Add the Hearing Examiner and Clerk of the Circuit Court to those receiving physical digital maps; Montgomery Code §19-21 - Revise the definition of permeable surface/impermeable surface to be consistent with Chapter 19.

⁴ The treatment of current illegal structures and registered living units under the new code; Provisions for allowing mining and extraction; Using digital maps to determine the zoning on October 29, 2014.

5) In Staff's opinion, some provisions of the new code are in need of corrections or clarifications.⁵

Zoning Text Amendment (ZTA) 14-09 was the subject of a public hearing on September 9, 2014. There were 10 speakers in addition to submitted testimony. The Planning Board and Planning Staff recommended a number of corrections and clarifications which they viewed as non-substantive changes.⁶ The Planning Board reviewed revisions suggested by the Board of Appeals and the Hearing Examiner in addition to ZTA 14-09 as introduced. A number of these changes were viewed as non-substantive corrections to the Zoning Rewrite.⁷

Issues

1) *Should the grandfathering provision be expanded to allow development plan amendments for all applied floating zones with such plans (for the next 25 years)?*

ZTA 14-09 would amend Section 7.7.1.C (Expansion of Floor Area Existing on October 30, 2014) to allow the Council to approve a development plan amendment under the zoning code in effect on

⁵ Correct the status of retail uses in industrial zones (limited uses, NOT permitted uses); Clarify the applicability of compatibility standards; Add an equivalency table for floating zones recommended in master plans when the recommended zoning no longer exists in the new code; In the LSC zone, provide for height and density flexibility for workforce housing as is currently allowed; Add cross references where applicable (floor area, residential care facilities); Use the term "primary residential" road where the term "primary" was previously used; Clarify FAR averaging rules; Add current child lot provisions for RE-2C, Rural, and Rural Cluster zone into the grandfathering provisions.

⁶ Plain English language edits and necessary updates to section references.

Modification of Section 4.1.8.A.2 (Setback Compatibility Requirements) to clarify that the minimum setback required is as noted in the table.

Modification of Section 4.1.8.B (Height Compatibility) to remove the angular plan requirement when abutting a Residential Multi-Unit zone, since the height for apartment buildings in some of the Residential Multi-Unit zones can be as high as 80' or 100'.

Addition to Section 4.4.2.A.4 (Optional Method MPDU Development) to allow developments of less than 20 units that voluntarily provide 12.5% MPDUs to not have to meet the minimum usable area requirement. This is consistent with Optional Method MPDU development in the current zoning code.

Modification of Section 4.4.1.A (Established Building Line) to clarify how to proceed when a lot is subject to the requirements of the Established Building Line.

Addition to Section 4.9.11.C.1.a (Ripley/South Silver Spring Overlay Zone) to clarify that a CR property mapped at 200 feet within the Ripley Street Overlay zone must provide ground floor retail, or the maximum building height is 145 feet.

Addition to Section 6.2.3.E (Bicycle Parking), to clarify that the maximum for bicycle parking spaces is the maximum that can be required of an applicant, but that the applicant can choose to exceed it.

Addition to Section 7.7.2.B (Nonconforming Use-Abandonment of Use) to clarify that a lawful nonconforming use and a use deemed to be conforming under 7.7.1.A.2 get the same treatment if the use is abandoned.

⁷ Modify Section 7.3.1.F.2.a.i (Conditional Use-Board of Appeals Decision) to reflect that the Board members not present for oral argument should not have to read the transcripts of the hearing and review all exhibits introduced at the hearing, but rather should read and sign the transcript of the oral argument.

Correct a typo in Section 7.3.1.F.2.b (Conditional Use-Board of Appeals Decision).

Restructure Section 7.3.2.E (Necessary Findings-Variance) to indicate that to grant a variance, the Board has to find either that there is a taking or that a property meets at least one of the criteria in Section 7.3.2.E.2 and meets 7.3.2.E.3 – 6 (inclusive).

Modify Section 7.3.2.H (Recording Procedures) to state that the Board of Appeals, not the applicant, must file an approved variance in the land records.

Amend Section 7.4.4.C.6 (Sign Variance) to include the Hearing Examiner as an entity that may have approved a sign in connection with a conditional use.

Add text for administrative appeals to Section 7.6.1 (Notice Requirements) and add DPS, SHA, and the Board of Education to the list of persons/entities that receive notice of a hearing in Section 7.5.2.E (Hearing Notice). These additions would be consistent with the current code, and the Board of Appeals has confirmed that these agencies wish to continue receiving such notice - Section 7.6.1.C (Filing of Appeals to the Board of Appeals).

October 29, 2014 for properties that were classified as floating zones on October 29, 2014, and not subject to any binding elements. This language was added by Council staff to address the issue raised by the Grove property (Shady Grove Road and Rockville Pike).

The Planning Board and Planning Staff recommended allowing all property, where the zoning on October 29, 2014 was the result of a Local Map Amendment, to expand up to the limits of the zoning in effect on October 29, 2014, regardless of whether the development plan contains binding elements.⁸ This modification would provide the same process for expansion of development on all properties classified in floating zones prior to the DMA. This process would mirror how expansions/development plan amendments are allowed for floating zones under the current code.

Staff does not recommend making this revision. It would expand the grandfathering provision for significant changes in zoning. Binding elements are part of the zoning approval. Significant changes should conform to the new code. If the Council thought that the current code served the public interest more than the Zoning Rewrite, then the current code should have been retained for all development. In addition to the public policy reason to reject this amendment, there is the practical reason. Ten years from now, implementing the new code will be routine. Any requirement to go back to the old code will be a novel educational experience for all concerned. Staff believes that the use of the old code should be as limited as possible.

2) *Should the code allow the CRT zone to be applied with a .25 FAR instead of .5?*

The Planning Board and Planning staff recommend modification to Section 4.5.2.A.3 (Density and Height Allocation of the Commercial/Residential zones) to allow the CRT zone to be mapped at a density of 0.25 FAR, rather than requiring that the CRT zone be mapped at a density of at least 0.5 FAR. This modification is necessary because of the C-4 zone translation in DMA G-956. The C-4 zone translates to the CRT zone, and the C-4 zone typically limits density to 0.25 FAR (although it allows higher density under certain circumstances).

Staff recommends approving this revision.

3) *Require only certain elements of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) at the Local Map Amendment (LMA) application stage (not a full NRI/FSD as suggested by the Hearing Examiner).*

Planning Board and Planning Staff agreed with clarifying what is meant by “existing site conditions and vicinity”, but disagreed that a full NRI/FSD is needed at rezoning.⁹ The application requirements for a

⁸ Proposed amendments are indicated by double brackets for deletion and double underlining for additions:

3. Prior Floating Zones

- a. [[Any applicant]] A property whose [[property]] zoning on October 29, 2014 was the result of a Local Map Amendment [[and the]] with an approved development plan [[lacks any binding elements,]] may [[seek approval for an increase in floor area of any amount]] expand as allowed under Section [[7.7.1.C.3.B.]] 7.7.1.C.3.b. Any expansion must satisfy Section 7.7.1.C.1.

⁹Section 59-7.2.1. Local Map Amendment

* * *

B. Application Requirements

* * *

2. The applicant must submit the following for review:

* * *

- v. the following additional information:

- (a) current and proposed zone;

Local Map Amendment in the new code were intentionally modified to help streamline the review process. The September 13, 2013 staff memo for PHED Committee Worksession #8, Administration and Procedures noted: It is the intent of these changes to not only streamline the process, but rationalize the review requirements. Every Local Map Amendment for a Floating zone is followed by a site plan(s) which provides a detailed review, including separate findings on master plan and neighborhood compatibility, adequacy of open space and circulation, and conformance with environmental regulations, among other topics. To clarify this submittal requirement, Planning Board and Planning Staff recommended modifying the language to include certain components of an NRI.

The Hearing Examiner notes that an NRI is signed by a civil engineer. The Examiner thinks it is unwise to have the Council rely on a site description in a rezoning that is not certified by a civil engineer, and urges the Council to include a full NRI/FSD requirement in ZTA 14-09.

Staff agrees with the Planning Board and recommends their revised text (Section 7.2.1.B). The Hearing Examiner can get sworn testimony in the course of the hearing. The Planning Board is correctly concerned about overkill at an early stage in the development process. An NRI/FSD expires after 3 years. A process that requires 2 NRIs to cover the span of the development process would be overkill.

- 4) *Should the density on lots less than 2 acres in size, currently zoned C-4 but translated to CRT 0.75, be limited to the CRT density of 0.25 FAR (even if the area of abutting parcels in common ownership would exceed 2 acres)?*

The proponents of this revision would like it to have the effect of reducing the density allowed by DMA-956 to the Woodmoor shopping center. The Woodmoor-Pinecrest Citizens Association noted that the Woodmoor Shopping Center is currently subdivided into lots that are each less than 2 acres. Under the C-4 zone, only sites larger than 2 acres could apply for an optional method project with density greater than .25 FAR. Currently, it is only through the optional method process that a project can achieve a density greater than .25 FAR.

This issue was presented to Council when the DMA was approved. The Council agreed with the Planning Board proposed CRT 0.75 zoning. In the opinion of Planning Staff, the higher density is warranted because the total area of the Woodmoor Shopping Center, which is under common ownership, is larger than 2 acres. In addition, one of the parcels in the Woodmoor Shopping Center is at 1.0 FAR; the other developed parcel is 0.70 FAR.

The DMA zoning that will be mapped on the property on October 30, 2014 is not an issue before the Council. Although testimony described the change as a map correction, there was no error in reflecting the decision of the Council. **Staff does not see the value in making this change: any significant project would require site plan approval.**

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- (b) existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;

- 5) *Should the code allow flexibility of all development standards except for density and height in standard method projects, if approved by site plan?*

There are several standards in the code in addition to density and building height. These standards include site area, lot area, lot width, setbacks, build-to area, parking setbacks, building coverage, transparency minimums, blank wall maximums, compatibility height limits, lighting, landscaping, and open space. These standards are not applicable to all zones or all uses, but each zone requires some of these standards. Testimony suggested adding the following provision to the code to allow every standard except height and density to be determined at site plan:

Except for density and height established by the zone, the standards of Article 4 and Article 6 may be established by the site plan approval process.

Flexibility exists for all general standards in Article 59-6. Article 59-6 covers the following standards: site parking (spaces required, design standards, open space), queuing and loading, open space, landscaping, lighting, and screening under Section 6.8.1:

Section 6.8.1. Alternative Method of Compliance

The applicable deciding body may approve an alternative method of compliance with any requirement of Division 6.1 through Division 6.6 if it determines there are unique site or development constraints, such as grade, visibility, an existing building or structure, an easement, a utility line, or use restrictions that preclude safe or efficient development under the requirements of the applicable Division and the alternative design will:

- A. satisfy the intent of the applicable Division;
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;
- C. provide necessary mitigation alleviating any adverse impacts; and
- D. be in the public interest.

Flexibility is also provided in optional method standards in Article 59-4. Flexibility is an intended incentive of using the optional method process. Key aspects of the zone, density height, coverage, and open space are still required in optional method projects. There is more flexibility in CR, CRT, LSC, and EOF zones for optional method projects than for standard method projects in any of the Commercial Residential or Employment zones under Section 4.5.4.B.3 and Section 4.6.4.B.3.:

Setbacks for principal buildings, accessory structures, and parking are established by the site plan approval process.

This added aspect of flexibility is a significant subject that was not part of the changes proposed in ZTA 14-09. Staff would not object to allowing some flexibility for standard method projects that go through site plan review if the issue is the subject of a separate ZTA. In any event, this proposal goes way beyond a correction and clarification, in Staff's opinion. At best, Staff recommends a wait and see approach before approving this significant change and without focused testimony on the change itself.

If the Committee agrees that more standards should be subject to waiver at site plan, it need not deal with the next two issues.

- 6) *Should the participation in a shared parking program established by a municipality satisfy parking requirements (Section 6.8 to be amended to add current code text)?*

Testimony requested an additional Section after Section 6.8.1:

Section 6.8.2. Municipal Shared Parking Program, Alternative Method of Compliance

- A. The applicable deciding body may approve an alternative method of compliance with the requirements of Division 6.2, if it determines that the property is within the boundary of a duly established Municipal Shared Parking Program, and the municipality confirms that the property will participate in that Program in order to satisfy the intent of the Division.
- B. Participation in the Municipal Shared Parking Program will satisfy the requirements of 6.2.3.F.

Division 6.2 concerns all aspects of parking: calculation of required spaces (vehicles and bicycles), design standards, (vehicles and bicycles) queuing design, loading design, parking landscaping, and outdoor lighting. Participation in a municipal shared parking program should allow relief from the number of spaces required, but not for the design requirements for the on-site spaces that will be constructed.

Staff recommends allowing participation in a Municipal Shared Parking Program to relieve the project from the number of required spaces, but not other aspects of Section 6.2. This provision is in the current code and should be in the new code. Staff recommends adding a provision to Section 6.2.3.F which ZTA 14-09 will change from 6.2.3.F to 6.2.3.G.¹⁰

- 7) *Should the code allow a building in CRN, CRT, and CR zones under standard method development, with increased setbacks and parking between the building and the street, if precluded by “existing or required easements” such that the building cannot be at the “build to” line? (Section 4.1.7 and 4.5.3.C.3)*

A potential project has a WMATA easement in the front of its property. That easement prohibits buildings, yet the Commercial/Residential zones have a “build-to” requirement that defines the maximum setback from the street. Due to the easement, it would be impossible to place the building where the code requires the building to be located. The location of the building away from the street then would deprive the project’s owner from locating a sufficient amount of surface parking behind the building. To correct this, 2 provisions were proposed:

Section 4.1.7. Measurement and Exceptions

The rules in Section 4.1.7 apply to all zones unless stated otherwise.

* * *

2. Build-to Area
Defined

- a. The build-to area is the area on the lot where a certain percentage of the front building façade must be located, measured as a range from the edge of the lot line.

¹⁰ An applicant may satisfy the required number of vehicular parking spaces if the property is within the boundary of a duly established Municipal Shared Parking Program and the municipality confirms that the property will participate in that Program.

- b. [All] Except where otherwise provided in this Division, all structures and uses customarily allowed on the lot are allowed in the build-to area except a surface parking lot.

* * *

Section 4.5.3. Standard Method Development

The CRN, CRT, and CR zones allow standard method development under the following limitations and requirements.

* * *

{to the cells in the table that starts “Building in front of street BTA” and “Building in side street BTA” add the following phrase} unless precluded by existing or required easement, reservation or other encumbrance pertaining to transportation or utility infrastructure.

{to the cells concerning Parking setbacks that start “must be behind the front building line” add the following phrase} unless building is precluded in front of the build-to area.

Under the Zoning Rewrite as approved, the project would require a variance, because meeting the build-to line is impossible due to a pre-existing easement. The number of parking spaces could be waived, but that may leave the project under-parked, in the developer’s opinion. Structured parking may be cost-prohibitive.

Staff understands the possible problem and the needed relief from the build-to line and recommends more generalized relief from all platted public and utility easements. The parking waiver is a separate matter, given the existing alternative compliance provision for parking. The Committee should hear from the Planning Board on whether front yard parking should be allowed without use of the alternative compliance procedure.

- 8) *Should the provision for a sign concept plan (Section 6.7.9.A) be clearer?*

A similar provision in the current code has worked. **Staff does not recommend any changes.**

- 9) *Should the 45% green space requirement (for previously zoned H-M zoned property) be allowed in place of the public open space requirement in the CR zone?*

The Council discussed the issue of green space when it approved the DMA for current H-M zoned properties. ZTA 14-09 as introduced would amend (7.7.1.B.5) as follows:

Development with a Development Plan or Schematic Development Plan Approved before October 30, 2014

Any development allowed on property [subject to the binding elements of a District Council approved development plan or schematic development plan on October 30, 2014] [[whose]] where the zoning classification on October 29, 2014 was the result of a Local Map Amendment must satisfy [those binding elements] the green area requirements of the zone in effect on October 29, 2014 and any binding elements until [the property is]:

- a. the property is subject to a Sectional Map Amendment that implements a master plan approved after October 30, 2014;
- b. the property is rezoned by Local Map Amendment; or
- c. the binding element is revised by a [major] development plan amendment under the procedures in effect on October 29, 2014.

Staff would revise this proposed provision to allow the green area to be inclusive of any open space requirement required by the zone:

Any green area required under this provision includes and is not in addition to any open space requirement of the property's zoning on October 30, 2014.

Staff supports this as a clarifying revision.

- 10) *Allow a site of any size to use the cluster option (Section 4.4.8.C.1.a) if it abuts an existing cluster development in the same zone and it would be a compatible extension of the neighboring development.*

The waiver requested for the acreage necessary for a cluster option exists in the current code. Staff recommends adding the provision back into the new code.

- 11) *Make veterinary clinic a conditional use in CR zones.*

This use was a limited use in the CR zone before the Zoning Rewrite. It was not an oversight to retain the land use aspect of the CR zone when it was approved in the new code. As a general matter, the new code is more land use permissive and has fewer conditional (special exception) uses. **Staff does not recommend making veterinary clinic a conditional use.**

- 12) *Allow "Independent Living Facility for Senior or Persons with Disabilities" as a limited use in the EOF zone.*

EOF is primarily intended to be an employment zone with limited residential uses. The proposed change would expand the potential for institutional uses in the zone. Such uses are better located in the CR family of zones. The use is categorized as "Group Living" and would not be limited to 30 percent of the FAR without additional restrictions. A residential care facility (over 16 persons) is allowed in the EOF zone as a conditional use because the use was similarly allowed in the CO zone.

Staff does not recommend expanding institutional uses in the EOF zone change.

- 13) *General – Can the new zoning code adequately handle ADA requests?*

Testimony requested "a zoning waiver based on medical necessity resulting from disability....County code should allow minor accommodations to be negotiated with the County administratively and private, and documented in a legally defensible manner, without the cost or permit fees, without public signage....". Such a waiver "should generally follow the person with disability not the property, unless accommodation is regarded as having become a permanent fixture of the property." The testimony states that "Many of these issues arise out of Montgomery County Code Section 26: Housing and Building Maintenance Standards."

The testimony raises a broad subject area that was not noted in the text advertised for the Council's public hearing. In any event, Chapter 26 is not before the Council. **Staff does not recommend any changes to ZTA 14-09 based on this testimony.** Even though the code allows accessory dwelling units, increased flexibility for "temporary healthcare structures" without standards would be a significant change to the code. If Council wants to pursue this topic, it should be the subject of a future ZTA.

The new zoning carries forward 2 provisions from the current code that pertain to ADA compliance. Under Section 4.1.7.B.5.c, a handicapped facility can encroach into any setback to the extent necessary to meet the minimum standards of the Americans with Disabilities Act. Section 7.3.4. allows DPS to issue a building permit without finding of conformance to the approved site plan to construct a handicapped accessibility improvement.

14) *Should the provision that allows the health clubs in the CRN zone be revised to allow health clubs as large as 40% of non-residential uses (not 40% of retail use)?*

ZTA 14-05 amended the current code to allow health clubs in the C-1 zone up to 40 percent of the floor area in a “retail center”. The proposed language in ZTA 14-10 would base the 40% on gross floor area in retail use. The retail centers include office use as well as retail gross floor area.

Staff believes the following revision would be more consistent with the Council’s intent in approving ZTA 14-05:

Section 59-3.5.10. Recreation and Entertainment

* * *

E. Health Clubs and Facilities

* * *

2. Use Standards

b. In the NR zone, the maximum size is [14,500 square feet of gross floor area] 40% of the [[floor area of the]] gross floor area in [[retail]] non-residential use. The gross floor area in [[retail]] non-residential use must be calculated after any reconstruction or enlargement.

15) *Revise variance standards to avoid “use” variances.*

Section 59-G-3.1(d) currently prohibits granting use variances; “These provisions shall not be construed to permit the board, under the guise of a variance, to authorize a use of land not otherwise permitted.” The new Zoning Ordinance does not contain this restriction. It is clearly a major policy change. Although use variances are allowed in other jurisdictions, it would be new to the County.

The variance standards in the new code are designed much more for consideration of variations of development standards (area variances) than for variations in use. A Conditional Use process, specifically intended to consider uses, would have much more specifically written standards for uses to consider variations in use.

Staff recommends adding to the variance finding provisions Section 7.3.2.E.7:

Granting the variance will only authorize a use of land allowed by the underlying zone.

16) *Should the potential class of people who can claim to be adversely impacted by a variance request be expanded?*

Section 59-G-3.1(d) states: “Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.” Section 7.3.2.E.6 in the new code states: “Granting the variance will not be adverse to the use and enjoyment of abutting properties.”

The new language significantly limits the scope of what properties can be considered in analyzing the possible detrimental impact of granting a variance, eliminating even directly confronting properties. (Consider a property two houses away from a subject property and significantly downhill from a potential runoff problem created by proposed construction.)

Planning Staff believes that the phrase “adjoining or neighboring properties” is undefined in the new code and does not recommend the change.

Staff finds the code as proposed clear and inclusive of the most affected properties. Adverse effects are mostly felt by abutting properties. If the Council wants any expansion, Staff would recommend including confronting properties but would not recommend returning to “adjoining or neighboring”.

17) *Should the variance time limit provision be relocated in the code?*

Section 7.3.2.F.2 states: Any party aggrieved by a decision of the Board of Appeals may file a petition for judicial review of the decision within 30 days after the Board of Appeals action to the Circuit Court and thereafter to the Court of Special Appeals. *If a decision on a variance is appealed to a court, this time limit runs from the date of the final court order in the appeal.*

Section 59-A-4.53 of the current Ordinance sets out durations of validity for special exceptions and variances, and at subsection (d) states: “Appeal. If a decision on a variance or a special exception is appealed to a court, the time limits in this section run from the date of the final court order in the appeal.”

The *time limit* referred to above is the duration of validity, not the appeal period.

Staff agrees the italicized sentence should be relocated to Section 7.3.2.G.1.

18) *Should ZTA 14-09 be revised to better address the Council’s intent to prohibit fracking?*

ZTA 14-09 as introduced would have allowed fracking if recommended in a Master Plan. The proposed revision recommended by Staff would prohibit fracking. Any use not allowed in the code is prohibited.

Section 59-3.6.5. Mining, Excavation

A. Defined

Mining, Excavation means any use that extracts rocks, minerals, and other natural resources from ~~[[land]]~~ the ground. Mining, Excavation only includes borrow pit [and] ~~[[.]]~~ and gravel mining ~~[[, and all other methods to gather natural resources]]~~.

19) *Add section numbers on each page of the code.*

Section numbers on each page are references and not part of the code. Staff recommended to the County Attorney, who will publish the code, having section numbers on each page as a footer.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 14-09 with staff recommended revisions	1 – 83
Planning Board recommendation	84 – 85
Planning Staff recommendation	86 – 93
Testimony	
Woodmoor-Pinecrest Citizens' Association	94 – 97
William Kominers	98 – 101
Promenade	102 – 103
Grosvenor Trust	104 – 107
Pooks Hill	108 – 111
Shelter Group	112 – 117
Commercial condo owner	118 – 119
Rock Spring property	120 – 123
Commercial condo owner	124

F:\Land Use\ZTAS\ZYONTZ\2014 ZTAs\ZTA 14-09 Zoning Rewrite - Clarifications & updates\ZTA 14-09 PHED September 22.doc

With staff recommended revisions 9/17/2014

Zoning Text Amendment No.: 14-09
Concerning: Zoning Ordinance
Rewrite – Updates,
Clarifications, and
Corrections
Draft No. & Date: 1 – 7/22/14
Introduced: July 29, 2014
Public Hearing: September 9, 2014
Adopted:
Effective:

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

By: Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance that is effective October 30, 2014 to:

- clarify language and correct errors;
- add the substance of text amendments approved by Council since March 11, 2014;
- address issues raised in the course of approving District Map Amendment G-956;
- and generally amend the Zoning Ordinance that will be in effect on October 30, 2014

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code effective October 30, 2014:

DIVISION 59-1.4. “DEFINED TERMS”
Section 59-1.4.1. “Rules of Interpretation”
Section 59-1.4.2. “Specific Terms and Defined Phrases”
Division 59-2.1. “Zones Established”
Section 59-2.1.3. “Establishment of Zones”
DIVISION 59-2.2. “Zoning Map”
Section 59-2.2.1. “Zoning Maps”
DIVISION 59-3.1. “USE TABLE”
Section 59-3.1.6. “Use Table”
DIVISION 59-3.2. “AGRICULTURAL USES”
Section 59-3.2.3. “Community Garden”
Section 59-3.2.9. “Urban Farming”
Section 59-3.2.10. “Winery”

Section 59-3.2.12.	“Temporary Agricultural Uses”
DIVISION 59-3.3.	“RESIDENTIAL USES”
Section 59-3.3.1.	“Household Living”
Section 59-3.3.2.	“Group Living”
DIVISION 59-3.4.	“CIVIC AND INSTITUTIONAL USES”
Section 59-3.4.2.	“Charitable, Philanthropic Institution”
DIVISION 59-3.5.	“COMMERCIAL USES”
Section 59-3.5.7.	“Medical and Dental”
Section 59-3.5.8.	“Office and Professional”
Section 59-3.5.10.	“Recreation and Entertainment”
Section 59-3.5.11.	“Retail Sales and Service”
Section 59-3.5.14.	“Accessory Commercial Uses”
DIVISION 59-3.6.	“INDUSTRIAL USES”
Section 59-3.6.5.	“Mining, Excavation”
Section 59-3.6.8.	“Warehouse”
DIVISION 59-3.7.	“MISCELLANEOUS USES”
Section 59-3.7.2.	“Solar Collection Systems”
DIVISION 59-4.1.	“RULES FOR ALL ZONES”
Section 59-4.1.4.	“Building Types Allowed by Zone in the Agricultural, Rural Residential, and Residential Zones”
Section 59-4.1.7.	“Measurement and Exceptions”
Section 59-4.1.8.	“Compatibility Requirements”
DIVISION 59-4.2.	“Agricultural Zones”
Section 59-4.2.1.	“Agricultural Reserve Zone (AR) ”
DIVISION 59-4.4.	“RESIDENTIAL ZONES”
Section 59-4.4.1.	“Standard Method Development”
Section 59-4.4.2.	“Optional Method Development”
Section 59-4.4.7.	“Residential – 200 Zone (R-200)”
Section 59-4.4.8.	“Residential – 90 Zone (R-90)”
Section 59-4.4.9.	“Residential – 60 Zone (R-60)”
DIVISION 59-4.5.	“COMMERCIAL/RESIDENTIAL ZONES”
Section 59-4.5.2.	“Density and Height Allocation”
Section 59-4.5.3.	“Standard Method Development”
Section 59-4.5.4.	“Optional Method Development”
DIVISION 59-4.6.	“EMPLOYMENT ZONES”
Section 59-4.6.2.	“Density and Height Allocation”
Section 59-4.6.3.	“Standard Method Development”
Section 59-4.6.4.	“Optional Method Development”
DIVISION 59-4.7.	“Optional Method Public Benefits”
Section 59-4.7.3.	“Public Benefit Descriptions and Criteria”
DIVISION 59-4.8.	“INDUSTRIAL ZONES”
Section 59-4.8.2.	“Density and Height Allocation”
DIVISION 59-4.9.	“OVERLAY ZONES”
Section 59-4.9.4. to Section 59-4.9.18.	
DIVISION 59-5.1.	“IN GENERAL”
Section 59-5.1.3.	“Applicability”

DIVISION 59-6.2.	“PARKING, QUEUING, AND LOADING”
Section 59-6.2.3.	“Calculation of Required Parking”
Section 59-6.2.5.	“Vehicle Parking Design Standards”
DIVISION 59-6.4.	“GENERAL LANDSCAPING AND OUTDOOR LIGHTING”
Section 59-6.4.3.	“General Landscaping Requirements”
DIVISION 59-7.2.	“DISTRICT COUNCIL APPROVALS”
Section 59-7.2.1.	“Local Map Amendment”
DIVISION 59-7.3.	“REGULATORY APPROVALS”
Section 59-7.3.1.	“Conditional Use”
Section 59-7.3.2.	“Variance”
Section 59-7.3.3.	“Sketch Plan”
Section 59-7.3.4.	“Site Plan”
DIVISION 59-7.4.	“ADMINISTRATIVE APPROVALS”
Section 59-7.4.1.	“Building Permit”
Section 59-7.4.4.	“Sign Variance”
DIVISION 59-7.6.	“SPECIAL PROVISIONS”
Section 59-7.6.1.	“Board of Appeals”
DIVISION 59-7.7.	“EXEMPTIONS AND NONCONFORMITIES”
Section 59-7.7.1.	“Exemptions”
Section 59-7.7.2.	“Nonconforming Use”
DIVISION 59-8.1.	“IN GENERAL”
Section 59-8.1.2.	“Modification of Zones”
DIVISION 59-8.3.	“PLANNED UNIT DEVELOPMENT ZONES”
Section 59-8.3.6.	“Planned Cultural Center Zone”

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

ORDINANCE

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

Sec. 1. TABLE OF CONTENTS is amended as follows:

Table of Contents

Article 59-4. Development Standards for Euclidean Zones

* * *

DIVISION 4.9. OVERLAY ZONES

SECTION 4.9.1. IN GENERAL

SECTION 4.9.2. BURTONSVILLE EMPLOYMENT AREA (BEA) OVERLAY ZONE

SECTION 4.9.3. CHEVY CHASE NEIGHBORHOOD RETAIL (CCNR) OVERLAY ZONE

SECTION 4.9.4. CLARKSBURG EAST ENVIRONMENTAL (CEE) OVERLAY ZONE

SECTION 4.9.5. CLARKSBURG WEST ENVIRONMENTAL (CWE) OVERLAY ZONE

SECTION [4.9.4] 4.9.6. COMMUNITY-SERVING RETAIL (CSR) OVERLAY ZONE

SECTION [4.9.5] 4.9.7. FENTON VILLAGE (FV) OVERLAY ZONE

SECTION [4.9.6] 4.9.8. GARRETT PARK (GP) OVERLAY ZONE

SECTION [4.9.7] 4.9.9. GERMANTOWN TRANSIT MIXED USE (GTMU) OVERLAY ZONE

SECTION [4.9.8] 4.9.10. REGIONAL SHOPPING CENTER (RSC) OVERLAY ZONE

SECTION [4.9.9] 4.9.11. RIPLEY/SOUTH SILVER SPRING (RSS) OVERLAY ZONE

SECTION [4.9.10] 4.9.12. RURAL VILLAGE CENTER (RVC) OVERLAY ZONE

SECTION [4.9.11] 4.9.13. SANDY SPRING/ASHTON RURAL VILLAGE (SSA) OVERLAY ZONE

SECTION [4.9.12] 4.9.14. TAKOMA PARK/EAST SILVER SPRING COMMERCIAL REVITALIZATION (TPESS) OVERLAY ZONE

SECTION [4.9.13] 4.9.15. TRANSFERABLE DEVELOPMENT RIGHTS (TDR) OVERLAY ZONE

SECTION [4.9.14] 4.9.16. TWINBROOK (TB) OVERLAY ZONE

SECTION [4.9.15] 4.9.17. UPPER PAINT BRANCH (UPB) OVERLAY ZONE

SECTION [4.9.16] 4.9.18. UPPER ROCK CREEK (URC) OVERLAY ZONE

28 * * *

29 **Sec. 2. DIVISION 59-1.4 is amended as follows:**

30 **Division 59-1.4. Defined Terms**

31 **Section 59-1.4.1. Rules of Interpretation**

32 The following rules of interpretation apply to this Chapter.

33 * * *

34 **L. Use of “Section”**

35 In this Chapter, [[where the word]] “Section” [[precedes a reference to a
36 subsection, it may]] means section or subsection, as the context indicates
37 [[may mean the subsection referenced]].

38 **Section 59-1.4.2. Specific Terms and Phrases Defined**

39 * * *

40 **Coverage:** See Section [4.1.7.B.5] 4.1.7.B.4

41 * * *

42 **Gross Floor Area (GFA):** The sum of the gross horizontal areas of all floors of all
43 buildings on a tract, measured from exterior faces of exterior walls and from the
44 center line of walls separating buildings. Gross floor area includes:

- 45 1. basements;
- 46 2. elevator shafts and stairwells at each floor;
- 47 3. floor space used for mechanical equipment with structural headroom
48 of 6 feet, 6 inches or more, except as exempted in the LSC and
49 Industrial zones;
- 50 4. floor space in an attic with structural headroom of 6 feet, 6 inches or
51 more (regardless of whether a floor has been installed); and
- 52 5. interior balconies and mezzanines.

53 Gross floor area does not include:

- 54 1. mechanical equipment on rooftops;
- 55 2. cellars;
- 56 3. unenclosed steps, balconies, and porches;
- 57 4. [structured] parking;
- 58 5. floor area for publicly owned or operated uses or arts and
59 entertainment uses provided as a public benefit under the optional
60 method of development;
- 61 [6. floor area for an historic resource recommended in the master plan to
62 be preserved and reused, which does not occupy more than 10% of the
63 gross floor area;]
- 64 [7] 6. interior balconies and mezzanines for common, non-leasable area in a
65 regional shopping center; and
- 66 [8] 7. in the LSC and Industrial zones, floor space used for mechanical
67 equipment.

68 * * *

69 **Impervious Surface:** Any [covering] surface that prevents or significantly
70 impedes the infiltration of water into the underlying soil, including any structure,
71 building, patio, [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete,
72 stone, brick, tile, swimming pool, or artificial turf. Impervious surface also
73 includes any area used by or for motor vehicles or heavy commercial equipment
74 regardless of surface type or material, any road, [road shoulder,] driveway, or
75 parking area.

76 * * *

77 **Permeable Area:** Any surface that allows the infiltration of water into the
78 underlying soil. Permeable area does not include any structure, building, patio,
79 [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile,
80 swimming pool, artificial turf, or any area used by or for motor vehicles or heavy
81 commercial equipment, regardless of surface type or material, including any road,
82 [road shoulder,] driveway, or parking area.

83 * * *

84 **Road, [Residential] Primary Residential:** See Chapter 49.

85 * * *

86 **Sec. 3. DIVISION 59-2.1 is amended as follows:**

87 **Division 59-2.1. Zones Established**

88 * * *

89 **Section 2.1.3. Establishment of Zones**

90 * * *

91 **G. Overlay Zones**

92 * * *

93 1. There are [15] 17 Overlay zone classifications:

94 a. Burtonsville Employment Area (BEA),

95 b. Chevy Chase Neighborhood Retail (CCNR),

96 c. Clarksburg East Environmental (CEE),

97 d. Clarksburg West Environmental (CWE),

98 [c] e. Community-serving Retail (CSR),

99 [d] f. Fenton Village (FV),

100 [e] g. Garrett Park (GP),

101 [f] h. Germantown Transit Mixed Use (GTMU),

- 102 [g] i. Regional Shopping Center (RSC),
- 103 [h] j. Ripley/South Silver Spring (RSS),
- 104 [i] k. Rural Village Center (RVC),
- 105 [j] l. Sandy Spring/Ashton Rural Village (SSA),
- 106 [k] m. Takoma Park/East Silver Spring Commercial Revitalization
- 107 (TPESS)
- 108 [l] n. Transferable Development Rights (TDR)
- 109 [m] o. Twinbrook (TB),
- 110 [n] p. Upper Paint Branch (UPB), and
- 111 [o] q. Upper Rock Creek (URC).

112 2. Building types, uses, density, height, and other standards and
 113 requirements may be modified by the Overlay zones under Section
 114 4.9.2 through Section [4.9.16] 4.9.18.

115 * * *

116 **Sec 4. DIVISION 59-2.2 is amended as follows:**

117 **Division 2.2. Zoning Map**

118 **Section 2.2.1. Zoning Maps**

119 **A. Adoption of Zoning Map**

120 * * *

121 4. The Planning Director must file an offline digital copy of the digital
 122 map and must provide a digital copy of the District Council approved
 123 map to the Director of DPS, the Hearing Examiner, the clerk of the
 124 Circuit Court, and the Executive Director of the Board of Appeals on
 125 October 30, 2014.

126 * * *

127 **C. Changes to be Recorded on the Digital Zoning Layer**

128 * * *

129 3. When the digital zoning layer is changed, the Planning Director must
130 file an offline digital copy of the digital map and must provide a new
131 digital copy of the map to the Director of DPS, the Hearing Examiner,
132 the clerk of the Circuit Court, and the Executive Director of the Board
133 of Appeals within 10 days of the District Council's action.

134 * * *

135 **F. Zoning on October 29, 2014**

136 A property's zoning on October 29, 2014 may be determined by the October
137 29, 2014 digital zoning map, which will be permanently kept and maintained
138 by the Planning Department on their website.

139 * * *

140 **Sec. 5. DIVISION 59-3.1 is amended as follows:**

141 **Division 59-3.1. Use Table**

142 * * *

143 **Section 59-3.1.6. Use Table**

144 The following Use Table identifies uses allowed in each zone. Uses may be
145 modified in Overlay zones under Division 4.9.

146 * * *

166 * * *

167 **Section 59-3.2.10. Winery**

168 * * *

169 **A. Use Standards**

170 * * *

171 2. Where a Winery is allowed as a conditional use, it may be permitted
172 by the Hearing Examiner under Section 7.3.1, Conditional Use, and
173 the following standards:

174 * * *

175 c. The lot must front on and have access to a road built to primary
176 residential or higher standards.

177 * * *

178 **Section 59-3.2.12. Temporary Agricultural Uses**

179 * * *

180 **B. Seasonal Outdoor Sales**

181 * * *

182 **2. Use Standards**

183 Where Seasonal Outdoor Sales is allowed as a limited use, it must
184 satisfy the following standards:

185 * * *

186 e. In the Agricultural, Rural Residential, Residential, LSC, and
187 EOF zones:

188 i. The property must be vacant or used for nonresidential
189 purposes.

190 ii. Except where Seasonal Outdoor Sales occur on the site of
191 a Religious Assembly use, the site must front on and
192 have access to a road built to primary residential or
193 higher standards.

194 * * *

195 **Sec. 7. DIVISION 59-3.3 is amended as follows:**

196 **Division 59-3.3. Residential Uses**

197 **Section 59-3.3.1. Household Living**

198 * * *

199 **B. Single-Unit Living**

200 * * *

201 **2. Use Standards**

202 Where Single-Unit Living is allowed as a limited use, it must satisfy
203 the following standards:

204 a. In the GR, NR, and EOF zones, the gross floor area of all
205 Household Living uses [[on a site]] is limited to 30% of the
206 [[total]] gross floor area on the subject site.

207 * * *

208 **C. Two-Unit Living**

209 * * *

210 **2. Use Standards**

211 * * *

212 d. In the GR, NR, and EOF zones, the gross floor area of all
213 Household Living uses [[on a site]] is limited to 30% of the
214 [[total]] gross floor area on the subject site.

215 * * *

216 **D. Townhouse Living**

217 * * *

218 **2. Use Standards**

219 * * *

220 d. In the GR, NR, and EOF zones, the gross floor area of all
221 Household Living uses [[on a site]] is limited to 30% of the
222 [[total]] gross floor area on the subject site.

223 * * *

224 **E. Multi-Unit Living**

225 * * *

226 **2. Use Standards**

227 Where Multi-Unit Living is allowed as a limited use, it must satisfy
228 the following standards:

229 b. In the GR, NR, and EOF zones, the gross floor area of all
230 Household Living uses [[on a site]] is limited to 30% of the
231 [[total]] gross floor area on the subject site.

232 * * *

233 **Section 59-3.3.2. Group Living**

234 * * *

235 **E. Residential Care Facility**

236 * * *

237 **2. Use Standards**

238 * * *

239 c. Residential Care Facility (Over 16 Persons)

240 * * *

241 ii. Where a Residential Care Facility (Over 16 Persons) is
242 allowed as a conditional use, it may be permitted by the

243 Hearing Examiner under Section 7.3.1, Conditional Use,
244 and the following standards:

245 * * *

246 (f) In the R-10 and R-20 zones, the development
247 standards of the apartment building type apply,
248 except as modified by Section 3.3.2.E.2.c.

249 [(f)] (g) Independent dwelling units must satisfy the
250 MPDU provisions of Chapter 25 (Section 25.A-5).

251 [(g)] (h) In a continuing care retirement community,
252 occupancy of any independent dwelling unit is
253 restricted to persons 62 years of age or older, with
254 the following exceptions:

255 * * *

256 [(h)] (i) Height, density, coverage, and parking
257 standards must be compatible with surrounding
258 uses [and]; the Hearing Examiner may modify any
259 standards to maximize the compatibility of the
260 building with the residential character of the
261 surrounding neighborhood.

262 [(i)] (j) In the AR zone, this use may be prohibited
263 under Section 3.1.5, Transferable Development
264 Rights.

265 * * *

266 **Sec. 8. DIVISION 59-3.4 is amended as follows:**

267 **Division 59-3.4. Civic and Institutional Uses**

268 * * *

269 **Section 59-3.4.2. Charitable, Philanthropic Institution**

270 * * *

271 **B. Use Standards**

272 Where a Charitable, Philanthropic Institution is allowed as a conditional use,
273 it may be permitted by the Hearing Examiner under Section 7.3.1,
274 Conditional Use, and the following standards:

275 * * *

276 3. In the AR, R, RC, and RNC:

277 * * *

278 b. The site fronts on and has direct access to a public road built to
279 arterial or higher road standards. Frontage on and access to an
280 arterial or higher standard is not required where the Hearing
281 Examiner finds that road access by a primary residential or
282 secondary residential road will be safe and adequate for the
283 anticipated traffic to be generated.

284 * * *

285 7. In the RE-2, RE-2C, RE-1, R-200, R-90, and R-60 zones:

286 a. The site fronts on and has direct access to a road built to
287 primary residential road or higher standards. Access to a corner
288 lot may be from an abutting primary street, constructed to
289 primary residential standards, if the Hearing Examiner finds
290 this access to be appropriate and not detrimental to existing
291 residential uses on that primary residential street.

292 * * *

293 **Sec. 9. DIVISION 59-3.5 is amended as follows:**

294 **Division 59-3.5. Commercial Uses**

295 * * *

296 **Section 59-3.5.7. Medical and Dental**

297 **A. Clinic (Up to 4 Medical Practitioners)**

298 * * *

299 **2. Use Standards**

300 Where a Clinic (Up to 4 Medical Practitioners) is allowed as a
301 conditional use, it may be permitted by the Hearing Examiner under
302 Section 7.3.1, Conditional Use, and the following standards:

303 * * *

304 c. The site must front on and have direct access to a business
305 district street or higher classification; however, access to a
306 corner lot may be from an abutting [primary] street built to
307 primary residential standards, if the Hearing Examiner finds the
308 access to be appropriate and not detrimental to existing
309 residential uses on the primary residential street.

310 * * *

311 **Section 59-3.5.8. Office and Professional**

312 **A. Life Sciences**

313 **1. Defined**

314 Life Sciences means the research, development, and manufacturing
315 activities in one or more of the following scientific fields: biology,
316 biophysics, biochemistry, bioelectronics, biotechnology, biomedical
317 engineering, bioinformatics, medicine, immunology, embryology,
318 clinical engineering, diagnostics, therapeutics, nutraceuticals,
319 pharmacogenomics, drug production, genetic testing, or gene therapy

320 activities. Life Sciences also includes a Hospital and uses accessory to
321 a Hospital, other than medical/dental clinic.

322 * * *

323 **B. Office**

324 * * *

325 **2. Use Standards**

326 a. Where an Office is allowed as a limited use, it must satisfy the
327 following standards:

328 i. In the LSC zone, an Office for a company that is not
329 principally engaged in health services, research and
330 development, or high technology industrial activities is
331 limited to 40% of the [[total]] gross floor area on the
332 subject site.

333 * * *

334 **Section 59-3.5.10. Recreation and Entertainment**

335 * * *

336 **E. Health Clubs and Facilities**

337 * * *

338 **2. Use Standards**

339 * * *

340 b. In the NR zone, the maximum size is [14,500 square feet of
341 gross floor area] 40% of the [[floor area of the]] gross floor area
342 in [[retail]] non-residential use. The gross floor area in [[retail]]
343 non-residential use must be calculated after any reconstruction
344 or enlargement.

345 * * *

346 **G. Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000**
347 **Persons)**

348 * * *

349 **2. Use Standard**

350 Where a Recreation and Entertainment Facility, Outdoor (Capacity up
351 to 1,000 Persons) is allowed as a conditional use, it may be permitted
352 by the Hearing Examiner under Section 7.3.1, Conditional Use and
353 the following standards:

354 a. In the RE-2C zone:

355 * * *

356 v. The site must have direct access to a public road that is
357 built to primary residential or higher standards.

358 b. In the R-200 zone:

359 * * *

360 v. The site must have direct access to a public road that is
361 built to primary residential or higher standards.

362 * * *

363 **H. Recreation and Entertainment Facility, Major (Capacity over 1,000**
364 **Persons)**

365 * * *

366 **2. Use Standards**

367 Where a Recreation and Entertainment Facility, Major (Capacity over
368 1,000 Persons) is allowed as a conditional use, it may be permitted by

369 the Hearing Examiner under Section 7.3.1, Conditional Use, and the
370 following standards:

371 a. In the RE-2C zone:

372 * * *

373 v. The site must have direct access to a public road that is
374 built to primary residential or higher standards.

375 * * *

376 **Section 59-3.5.11 Retail Sales and Service**

377 * * *

378 **B. Retail/Service Establishment**

379 **1. Defined**

380 * * *

381 **2. Use Standards**

382 a. Where a Retail/Service Establishment is allowed as a limited
383 use, it must satisfy the following standards:

384 * * *

385 iv. In the CRT, CR, GR, and NR zones, where a
386 development is located within ½ mile of a Metro station
387 entrance and has a minimum 50,000 square foot footprint
388 or a minimum of 100,000 square feet of all gross floor
389 area designed for a single user it must satisfy the
390 following standards:

391 * * *

392 (h) For a project greater than 500,000 square feet of
393 [[total]] gross floor area, the Planning Board may

394 approve a development that does not satisfy
395 Section 3.5.11.B.2.a.iv.(a) through Section
396 3.5.11.B.2.a.iv.(f) if it finds that the project,
397 through an alternative design, results in a more
398 appropriate configuration of the site.

399 * * *

400 v. In the EOF zone, Retail/Service Establishment is limited
401 to a maximum of 30% of the [[total]] gross floor area [of
402 development approved under one application] on the
403 subject site.

404 * * *

405 **Section 59-3.5.14. Accessory Commercial Uses**

406 * * *

407 **D. Commercial Kitchen**

408 * * *

409 2. Use Standards

410 Where a Commercial Kitchen is allowed as a limited use, it must
411 satisfy the following standards:

412 a. The Commercial Kitchen must occupy less than 5% of the floor
413 area of [the building in] all buildings on the tract of land under
414 common ownership on which it is located.

415 * * *

416 **Sec. 10. DIVISION 59-3.6 is amended as follows:**

417 **Division 59-3.6. Industrial Uses**

418 * * *

419 **Section 59-3.6.5. Mining, Excavation**

420 **A. Defined**

421 Mining, Excavation means any use that extracts rocks, minerals, and other
422 natural resources from [[land]] the ground. Mining, Excavation only

423 includes borrow pit [and] [[,]] and gravel mining [[, and all other methods to

424 gather natural resources]].

425 * * *

426 **B. Use Standards**

427 * * *

428 2. Where Mining, Excavation is allowed as a conditional use, it may be
429 allowed by the Hearing Examiner under Section 7.3.1, Conditional
430 Use, if the use is recommended for the site by the applicable master
431 plan, and the following standards:

432 * * *

433 **Section 59-3.6.8. Warehouse**

434 * * *

435 **E. Storage Facility**

436 * * *

437 **2. Use Standards**

438 Where a Storage Facility is allowed as a limited use, it must satisfy
439 the following standards:

- 440 a. Outdoor storage is prohibited.
- 441 b. In the CRT[,] and CR[, and EOF] zones, only a facility up to
442 10,000 square feet of gross floor area is allowed.

- 443 c. In the EOF zone, only a facility up to 10,000 square feet of
- 444 gross floor area is allowed; however, if the facility was legally
- 445 existing on October 29, 2014, the following are allowed:
- 446 i. a facility greater than 10,000 square feet of gross floor
- 447 area; and
- 448 ii. outdoor storage.

449 * * *

Sec. 11. DIVISION 59-3.7 is amended as follows:

Division 59-3.7. Miscellaneous Uses

452 * * *

Section 59-3.7.2. Solar Collection Systems

454 * * *

B. Use Standards

455 Where a Solar Collection System is allowed as a limited use, it must satisfy
456 the following standards:
457

458 * * *

- 459 2. [In the Commercial/Residential, Employment, and Industrial zones, a
- 460 roof-mounted system may exceed the maximum height by 8 feet
- 461 under Section 4.1.7.C.3.] Solar panels may encroach into a setback as
- 462 allowed under Section 4.1.7.B.5.C and may exceed the maximum
- 463 height as allowed under Section 4.1.7.C.3.b.

464 * * *

Sec. 12 . DIVISION 59-4.1 is amended as follows:

Division 59-4.1. Rules for All Zones

467 * * *

468 **Section 4.1.4. Building Types Allowed by Zone in the Agricultural, Rural**
469 **Residential, and Residential Zones**

470 * * *

471 **Key:** * * *

472 TDR = Allowed in a TDR Overlay zone as part of optional method TDR
473 Development under Section [4.9.13.B] 4.9.15.B

474 * * *

475 **Section 59-4.1.7. Measurement and Exceptions**

476 * * *

477 **B. Placement**

478 * * *

479 **5. Setback Encroachments**

480 Any building or structure must be located at or behind the required
481 building setback line, except:

482 * * *

483 **c. Solar Panels**

484 A solar panel may project a maximum of 3 feet into any side
485 street or side setback and may project a maximum of 9 feet into
486 any front or rear setback.

487 **[c] d. Other Encroachments**

488 * * *

489 **C. Height**

490 * * *

491 **3. Height Encroachments**

492 Any height encroachment not specifically listed is prohibited.

493 * * *

- b. The maximum height does not apply to solar panels and any roof structure listed in Section 4.1.7.C.3.a, except that in the TLD, TMD, THD, and R-30 zones, an air conditioning unit or similar structure or mechanical appurtenance may exceed the established height limit by a maximum of 8 feet.

* * *

Section 4.1.8. Compatibility Requirements

A. Setback Compatibility

1. Applicability

- a. Section 4.1.8.A applies to a property in a Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone that:

- [a] i. abuts a property in an Agricultural, Rural Residential, or Residential zone that is vacant or improved with an agricultural or residential use; and

- [b] ii. proposes development of an apartment, multi use, or general building type.

- b. On a property in a Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone [[Where]] for which Section 4.1.8.A.1.a does not apply, the minimum side and rear setback is equal to the setback required for “Side setback, abutting all other zones” and “Rear setback, abutting all other zones” in the applicable standard method development standards tables in Division 4.4 through Division 4.8.

2. Setback Required along Side or Rear Lot Line

520 a. The minimum side and rear setbacks [[equal either 1.5 times the
521 minimum side and rear setback required for a detached house
522 on the abutting property or the minimum side and rear setback
523 required for a detached house on the abutting property]] are as
524 follows:

525 * * *

526 **B. Height Compatibility**

527 **1. Applicability**

528 Section 4.1.8.B applies to a property that:

- 529 a. abuts or confronts a property in an Agricultural, Rural
530 Residential, [[or]] Residential Detached, or Residential
531 Townhouse zone that is vacant or improved with an agricultural
532 or residential use; and
533 b. proposes any building type in a Commercial/Residential,
534 Employment, Industrial, or Floating zone.

535 **2. Height Restrictions**

- 536 a. When the subject property abuts a property in an Agricultural,
537 Rural Residential, [[or]] Residential Detached, or Residential
538 Townhouse zone that is vacant or improved with an agricultural
539 or residential use, any structure may not protrude beyond a 45
540 degree angular plane projecting over the subject property,
541 measured from a height equal to the height allowed for a
542 detached house in the abutting zone at the setback line
543 determined by Section 4.1.8.A.

544 b. When the subject property confronts a property in an
545 Agricultural, Rural Residential, [[or]] Residential Detached, or
546 Residential Townhouse zone that is vacant or improved with an
547 agricultural or residential use, any structure may not protrude
548 beyond a 45 degree angular plane projecting over the subject
549 property, measured from a height equal to the height allowed
550 for a detached house in the abutting zone at the setback line
551 determined under Article 59-4.

552 [c. If not applicable under Section 4.1.8.B.1, the maximum height
553 in the zone is not modified by Section 4.1.8.B.2.]

554 * * *

555 **Sec. 13. DIVISION 59-4.2 is amended as follows:**

556 **Division 59-4.2. Agricultural Zones**

557 **Section 4.2.1. Agricultural Reserve Zone (AR)**

558 * * *

559 **D. Special Requirements for the Transfer of Density**

560 **1. In General**

561 Under Section [4.9.13.B] 4.9.15.B and in conformance with a general
562 plan, master plan, or functional master plan, residential density may
563 be transferred at the rate of one development right per 5 acres minus
564 one development right for each existing dwelling unit, from the AR
565 zone to a [[duly designated]] TDR Overlay zone.

566 * * *

567 **2. Recording of Development Right**

568 a. A development right may be created, transferred, and
569 extinguished only by an easement and appropriate release, in a
570 recordable form approved by the Planning Board. Any
571 easement must limit the future construction of detached houses
572 on land zoned AR to the total number of development rights
573 allowed by zoning minus all development rights recorded prior
574 to October 30, 2014 all development rights previously
575 transferred under Section 4.2.1.D.1 and Section [4.9.13.B]
576 4.9.15.B the number of development rights to be transferred by
577 the instant transaction, and the number of existing detached
578 houses on the property.

579 * * *

580 **Sec. 14. DIVISION 59-4.4 is amended as follows:**

581 **Division 59-4.4. Residential Zones**

582 **Section 59-4.4.1. Standard Method Development**

583 **A. Established Building Line**

584 * * *

585 3. The established building line applies if at least 2 buildings described in
586 Section 4.4.1.A.2 and more than 50% of the buildings described in
587 Section 4.4.1.A.2 are set back more than the minimum required by the
588 zone. The established building line is equal to the average front
589 setback of all the buildings described in Section 4.4.1.A.2, excluding
590 those buildings:

- 591 a. in the R-200 zone that are or were ever served by well or septic;
- 592 b. on the subject property;

- 593 c. in a different zone than the subject property;
- 594 d. on a through lot that fronts on a street different than the subject
- 595 property;
- 596 e. located on any pipestem, wedge-shaped, or flag-shaped lot; or
- 597 f. approved by permit for demolition, except if a building permit
- 598 was also approved with the same setback.

599 4. [[Instead of using the established building line,]] If the established
600 building line applies, the applicant may choose to use as the front
601 setback:

- 602 a. the established building line;
- 603 b. [[to calculate as a front setback]] the average front setback of
604 the [[two]] 2 abutting lots[[,]]; or
- 605 c. the front setback of the existing detached house that was
606 established before demolition, excluding any approved
607 variance, if the existing building meets the minimum front
608 setback of the zone.

609 5. All calculations must be based on a survey that is signed and sealed
610 by a Maryland licensed engineer or surveyor.

611 [[4.]] 6. If the established building line does not apply, the building must
612 satisfy the minimum front setback of the zone.

613 [[5.]] 7. [[Corner lots have two]] A corner lot has 2 front setbacks and must
614 satisfy established building line standards on both streets. At the
615 option of the applicant, a corner lot may use front setbacks of the
616 abutting buildings on both sides of the corner lot.

617 * * *

618 **Section 59-4.4.2. Optional Method Development**

619 **A. Optional Method Development**

620 * * *

621 **4. Requirements for MPDU Projects with 20 or Fewer Dwelling**
622 **Units**

623 In a Residential Detached zone, an applicant who voluntarily provides
624 at least 12.5% MPDUs in a development with 20 or fewer dwelling
625 units may use the optional method MPDU Development standards,
626 except that:

627 a. the minimum usable area requirement does not apply;

628 ~~[[a]]~~ b. a perimeter lot that is adjacent, abutting, or confronting
629 one or more existing detached house dwellings must satisfy the
630 dimensional standards under the standard method of
631 development;

632 ~~[[b]]~~ c. the MPDU buildings must be similar in size and height to
633 the market rate dwellings in that development; and

634 ~~[[c]]~~ d. the maximum percentage of townhouses is 40% of the
635 total residential dwellings in that development, unless a
636 development in which up to 100% of the units consist of
637 townhouses is approved by the Planning Board upon a finding
638 that the increased use of townhouses is more desirable for
639 environmental reasons and the increased use of townhouses is
640 compatible with adjacent development.

641 **Section 59-4.4.7. Residential - 200 Zone (R-200)**

642 * * *

643 **B. [RE-200] R-200 Zone, Standard Method Development Standards**

644 * * *

645 **C. [RE-200] R-200 Zone, Optional Method Development Standards**

646 * * *

647 **Section 59-4.4.8. Residential - 90 Zone (R-90)**

648 * * *

649 **B. [RE-90] R-90 Zone, Standard Method Development Standards**

650 * * *

651 **Specification for Site under Cluster Development**

652 a. The Planning Board may allow development to proceed under
653 optional method Cluster Development on a smaller site than
654 allowed in Usable Area if;

655 i. the subject property is recommended for cluster
656 development in a master plan; or

657 ii. ~~[[if]]~~ it finds that cluster development on a smaller site
658 would be more suitable than standard method
659 development for environmental reasons; or

660 iii. the development abuts an existing cluster development in
661 the same zone and the Planning Board finds it would be a
662 compatible extension of the neighboring development.

663

664 * * *

665 **Section 59-4.4.9. Residential – 60 Zone (R-60)**

666 * * *

667 **C. [RE-60] R-60 Zone, Optional Method Development Standards**

668 * * *

669 **Sec. 15. DIVISION 59-4.5 is amended as follows:**

670 **Division 59-4.5. Commercial/Residential Zones**

671 * * *

672 **Section 59-4.5.2. Density and Height Allocation**

673 **A. Density and Height Limits**

674 * * *

675 3. The following limits apply unless additional total FAR, residential
 676 FAR, or height is allowed under Section 4.5.2.C and Section
 677 4.7.3.D.6.c:

CRN	0.25 to 1.5	0.00 to 1.5	0.00 to 1.5	25' to 65'
CRT	[[0.5]] 0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'
CR	0.5 to 8.0	0.25 to 7.5	0.25 to 7.5	35' to 300'

678

679 **B. FAR Averaging**

680 * * *

681 4. If the Planning Board approves a site plan for a development project
 682 using FAR averaging [[that covers]] across two or more lots, the
 683 maximum density on certain lots in the development project will be
 684 less than or greater than the zone allows, as indicated in the site plan.
 685 To provide additional notice of the FAR averaging, before the
 686 Planning Board approves a certified site plan for such a project or, if
 687 plat approval is required, before plat approval, the applicant must state
 688 the gross square footage taken from any lot with reduced density in an
 689 instrument approved by the Planning Board and must record the
 690 instrument in the Montgomery County land records.

691 * * *

692 **Section 59-4.5.3. Standard Method Development**

693 * * *

694 **C. CRN, CRT, and CR Zones, Standard Method Development Standards**

695 * * *

2. Lot and Density							
Lot area	1,000 SF	1,000 SF	500 SF	800 SF	n/a	n/a	n/a
Lot width at front building line	25'	25'	12.5'	12'	n/a	n/a	n/a
Lot width at front lot line	10'	10'	10'	n/a	n/a	n/a	n/a
CRN Density, FAR	mapped						
CRT Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 1.0 FAR						
CR Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 0.5 FAR						
a.	[An] <u>In the CR zone, a historic resource recommended in the applicable master plan to be preserved and reused, which does not occupy more than 10% of the gross floor area, is excluded from the FAR calculation.</u>						
Lot	90%	90%	90%	90%	n/a	n/a	n/a

696 * * *

697 **Section 59-4.5.4. Optional Method Development**

698 * * *

699 **B. Development Standards**

700 **2. Lot, Density, and Height**

701 a. Lot standards for detached house, duplex, and townhouse
 702 building types are determined by the site plan approval process
 703 under Section 7.3.4.

704 b. The maximum total, nonresidential, and residential FARs and
 705 the maximum height are established by the mapped zone unless
 706 increased under Section 4.5.2.C and Section 4.7.3.D.6.c.

707 c. In the CR zone, a designated historic resource [[recommended
 708 in the applicable master plan to be preserved and reused,
 709 which]] that does not occupy more than 10% of the gross floor
 710 area[[,]] is excluded from the FAR calculation.

711 * * *

712 **Sec. 16. DIVISION 59-4.6 is amended as follows:**

713 **Division 59-4.6. Employment Zones**

714 * * *

715 **Section 59-4.6.2. Density and Height Allocation**

716 * * *

717 **B. FAR Averaging**

718 * * *

719 4. If the Planning Board approves a site plan for a development project
720 using FAR averaging [[that covers]] across two or more lots, the
721 maximum density on certain lots in the development project will be
722 less than or greater than the zone allows, as indicated in the site plan.
723 To provide additional notice of the FAR averaging, before the
724 Planning Board approves a certified site plan for such a project or, if
725 plat approval is required, before plat approval, the applicant must state
726 the gross square footage taken from any lot with reduced density in an
727 instrument approved by the Planning Board and must record the
728 instrument in the Montgomery County land records.

729

730 **C. Special Provisions for “T” Zones Translated from Certain Zones**
731 **Existing Before October 30, 2014**

732 * * *

733 2. For Employment-zoned properties designated with a T, the following
734 provisions apply:

735 * * *

736 b. In the LSC zone, to allow construction of all workforce housing
737 units on-site, residential density may be increased by a
738 maximum of 5% and building height may be increased up to a
739 maximum building height of 200 feet. Density and building

740 height may only be increased to the extent required for the
741 number of workforce housing units that are constructed.

742 c. In any case, to achieve a density bonus under Section 4.6.2.C.2,
743 at least one more MPDU than would be required at 12.5% must
744 be provided.

745 [c] d. Any density increase under Section 4.6.2.C requires site plan
746 Approval under Section 7.3.4.

747 * * *

748 **Section 59-4.6.3. Standard Method Development**

749 * * *

750 **C. GR and NR Zones, Standard Method Development Standards**

751 * * *

752 **2. Lot and Density**

753 * * *

754 **Specification for Density**

755 * * *

756 **a.** Gross floor area of all Household Living uses [[on a site]] is limited to
757 30% of the [[total]] gross floor area on the subject site.

758 * * *

759 **D. LSC Zone, Standard Method Development Standards**

760 * * *

761 **2. Lot and Density**

762 * * *

763 **Specification for Density**

764 * * *

765 **b.** For a tract larger than 5 acres:

766 A) A minimum of 40% of the gross floor area proposed must be
767 for Life Sciences and related uses. The proposed gross floor
768 area used for the purpose of calculating the minimum
769 percentage of Life Sciences uses excludes[: (1) a Hospital and
770 the Hospital’s accessory uses; and (2)] educational facilities.

771 * * *

772 **E. EOF Zone, Standard Method Development Standards**

773 * * *

774 **2. Lot and Density**

775 * * *

776 **Specification for Density**

777 * * *

778 **a.** Gross floor area of all Household Living uses [[on a site]] is limited to
779 30% of the [[total]] gross floor area on the subject site.

780 * * *

781 **Section 59-4.6.4. Optional Method Development**

782 * * *

783 **B. Development Standards**

784 * * *

785 **2. Lot, Density, and Height**

786 * * *

787 c. In the GR, NR, and EOF zones, gross floor area of all
788 Household Living uses on a site is limited to 30% of the
789 [[total]] gross floor area on the subject site.

790 d. In the LSC zone:

791 i. For tracts larger than 5 acres:

792 (a) A minimum of 40% of gross floor area proposed
793 must be for Life Sciences and related uses. The
794 proposed gross floor area used for the purpose of
795 calculating the minimum percentage of Life
796 Sciences uses excludes[: (1) a Hospital and the
797 Hospital’s accessory uses; and (2)] educational
798 facilities.

799 * * *

800 **Sec. 17. DIVISION 59-4.7 is amended as follows:**

801 **Division 59-4.7. Optional Method Public Benefits**

802 * * *

803 **Section 4.7.3. Public Benefit Descriptions and Criteria**

804 * * *

805 **F. Protection and Enhancement of the Natural Environment**

806 * * *

807 **6. Transferable Development Right:** For a property that is in a TDR
808 Overlay zone, up to 20 points for the purchase of TDRs under Section
809 [4.9.13.B] 4.9.15.B. Every TDR purchased is worth 1 point.

810 * * *

811 **Sec. 18. DIVISION 59-4.8 is amended as follows:**

812 **Division 59-4.8. Industrial Zones**

813 * * *

814 **Section 59-4.8.2. Density and Height Allocation**

815 * * *

816 **B. FAR Averaging**

817 * * *

818 4. If the Planning Board approves a site plan for a development project
819 using FAR averaging across two or more lots, the maximum density
820 on certain lots in the development project will be less than or greater
821 than the zone allows, as indicated in the site plan. To provide
822 additional notice of the FAR averaging, before the Planning Board
823 approves a certified site plan for such a project or, if plat approval is
824 required, before plat approval, the applicant must state the gross
825 square footage taken from any lot with reduced density in an
826 instrument approved by the Planning Board and must record the
827 instrument in the Montgomery County land records.

828 **Sec. 19. DIVISION 59-4.9 is amended as follows:**

829 **Division 59-4.9. Overlay Zones**

830 * * *

831 **Section 59-4.9.4. Clarksburg East Environmental (CEE) Overlay Zone**

832 **A. Purpose**

833 The purpose of the CEE Overlay zone is to:

834 1. Protect the water quantity, water quality, habitat, and biological
835 diversity of the Ten Mile Creek watershed and its tributaries.

- 836 2. Regulate the amount and location of impervious surfaces to maintain
837 levels of groundwater, control erosion and water temperature, and
838 retain as many of the functions provided by natural land as possible.
- 839 3. Regulate development that could adversely affect this high quality
840 stream system.
- 841 4. Implement the recommendations of the 2014 Ten Mile Creek Area
842 Limited Amendment to the Clarksburg Master Plan and Hyattstown
843 Special Study Area.

844 **B. Exemptions**

- 845 1. Any impervious surface lawfully existing under a building permit or
846 sediment control permit issued before August 4, 2014 that exceeds the
847 applicable impervious surface restriction may continue or be
848 reconstructed with the same or less impervious surface area under the
849 development standards in effect when the building permit or sediment
850 control permit was issued.
- 851 2. An impervious surface resulting from an addition to an existing
852 detached house or an accessory structure to a detached house, not
853 approved as part of a site plan under Section 7.3.4, is exempt from this
854 Overlay zone's impervious surface restriction.
- 855 3. On any lot or parcel with an area less than 2 acres as of January 1,
856 2014, any development is exempt from this Overlay zone's
857 impervious surface restriction.
- 858 4. Impervious surface for any publicly funded road or bikeway identified
859 by the Ten Mile Creek Area Limited Amendment to the Clarksburg
860 Master Plan and Hyattstown Special Study Area is exempt from this
861 Overlay zone's impervious surface restriction.

862 **C. Land Uses**

863 The land uses and use standards of the underlying zone apply, except that if
864 the underlying zone is R-90, Two-Unit Living, Townhouse Living, and
865 Multi-Unit Living are also permitted.

866 **D. Development Standards**

- 867 1. Except as allowed under Section 4.9.4.B, the maximum total
868 impervious surface area for any development after August 4, 2014
869 [[must be a maximum of]] is 15% of the total area under application
870 for development.
- 871 2. All environmental buffer areas or natural resources recommended for
872 protection in the Ten Mile Creek Area Limited Amendment to the
873 Clarksburg Master Plan and Hyattstown Special Study Area must be
874 regulated as environmentally sensitive areas, just as other areas
875 identified environmentally sensitive in law, regulations, or in the
876 Planning Board's Guidelines for the Environmental Management of
877 Development, as amended.
- 878 3. All environmentally sensitive areas must be included in the required
879 open space area.
- 880 4. The minimum area devoted to open space must be 80% of the total
881 area under application for development. For the purpose of this
882 Overlay zone, open space is defined as rural open space as described
883 and managed under Section 6.3.4.A.2, Section 6.3.4.A.4.b, and
884 Section 6.3.4.B.
- 885 5. If the underlying zone is R-90:

- 886 a. the maximum density without MPDU bonus density is 3
887 dwelling units per acre;
- 888 b. the maximum density with MPDU bonus density is 3.66
889 dwelling units per acre;
- 890 c. any type of dwelling unit is permitted, up to the maximum
891 number allowed;
- 892 d. the maximum building height is:
- 893 i. 35 feet for a detached house;
- 894 ii. 50 feet for a duplex or townhouse; and
- 895 iii. 65 feet for an apartment building or any non-residential
896 building; and
- 897 e. when site plan approval is required, the minimum lot area, lot
898 dimensions, building coverage, and building setbacks of the R-
899 90 zone do not apply. Such requirements are determined
900 during the site plan approval process under Section 7.3.4. [[Any
901 such requirements must be determined by the Planning Board
902 during the site plan approval process.]]

903 **E. Site Plan**

- 904 1. Any development that must file a preliminary plan of subdivision
905 under Chapter 50 requires approval of a site plan by the Planning
906 Board under Section 7.3.4, unless excluded under Section 4.9.4.E.2.
- 907 2. A lot or parcel that is occupied by a detached house and that has not
908 changed in size or shape since January 1, 2014 is excluded from the
909 site plan approval requirement.

910 **Section 59-4.9.5. Clarksburg West Environmental (CWE) Overlay Zone**

911 **A. Purpose**

912 The purpose of the CWE Overlay zone is to:

- 913 1. Protect the water quantity, water quality, habitat, and biological
914 diversity of the Ten Mile Creek watershed and its tributaries.
- 915 2. Regulate the amount and location of impervious surfaces to maintain
916 levels of groundwater, control erosion and water temperature, and
917 retain as many of the functions provided by natural land as possible.
- 918 3. Regulate development that could adversely affect this high quality
919 stream system.
- 920 4. Implement the recommendations of the 2014 Ten Mile Creek Area
921 Limited Amendment to the Clarksburg Master Plan and Hyattstown
922 Special Study Area.

923 **B. Exemptions**

- 924 1. Any impervious surface lawfully existing under a building permit or
925 sediment control permit issued before August 4, 2014 that exceeds the
926 applicable impervious surface restriction may continue or be
927 reconstructed with the same or less impervious surface area under the
928 development standards in effect when the building permit or sediment
929 control permit was issued.
- 930 2. An impervious surface resulting from an addition to an existing
931 detached house or an accessory structure to a detached house, not
932 approved as part of a site plan under Section 7.3.4, is exempt from this
933 Overlay zone's impervious surface restriction.

- 934 3. On any lot or parcel with an area less than 2 acres as of January 1,
935 2014, any development is exempt from this Overlay zone's
936 impervious surface restriction.
- 937 4. Impervious surface for any publicly funded road or bikeway identified
938 by the Ten Mile Creek Area Limited Amendment to the Clarksburg
939 Master Plan and Hyattstown Special Study Area is exempt from this
940 Overlay zone's impervious surface restriction.

941 **C. Land Uses**

942 The land uses and use standards of the underlying zone apply.

943 **D. Development Standards**

- 944 1. Except for County owned land or land under a conservation easement
945 granted to the benefit of the County and development exempted under
946 Section 4.9.5.B, the maximum total impervious surface area for any
947 development after August 4, 2014 [[must be a maximum of]] is 6% of
948 the total area under application for development.
- 949 2. County owned land or land under a conservation easement granted to
950 the benefit of the County that is not managed as parkland by the
951 Maryland-National Capital Park and Planning Commission may not
952 add any impervious surface.
- 953 3. [[Any number of lots may be of any size, without regard to varying
954 lot]] Lot size requirements in the underlying zone do not apply.
- 955 4. When site plan approval is required, the minimum lot area, lot
956 dimensions, building coverage, and building setbacks of the
957 underlying zone do not apply. Such requirements are determined
958 during the site plan approval process under Section 7.3.4. [[Any such

959 requirements must be determined by the Planning Board during the
960 site plan approval process.]]

961 5. All environmental buffer areas or natural resources recommended for
962 protection in the Ten Mile Creek Area Limited Amendment to the
963 Clarksburg Master Plan and Hyattstown Special Study Area must be
964 regulated as environmentally sensitive areas, just as other areas
965 identified environmentally sensitive in law, regulations, or in the
966 Planning Board’s Guidelines for the Environmental Management of
967 Development, as amended.

968 6. All environmentally sensitive areas must be included in the required
969 open space area.

970 7. The minimum area devoted to open space must be 80% of the total
971 area under application for development. For the purpose of this
972 Overlay zone, open space is defined as rural open space as described
973 and managed under Section 6.3.4.A.2, Section 6.3.4.A.4.b, and
974 Section 6.3.4.B.

975 **E. Site Plan**

976 1. Any development that must file a preliminary plan of subdivision
977 under Chapter 50 requires approval of a site plan by the Planning
978 Board under Section 7.3.4, unless excluded under Section 4.9.5.E.2 or
979 Section 4.9.5.E.3.

980 2. A lot or parcel that is occupied by a detached house and that has not
981 changed in size or shape since January 1, 2014 is excluded from the
982 site plan approval requirement.

983 3. Any detached house that is served by a septic facility is excluded from
984 the site plan approval requirement.

985

986 **Section 59-[4.9.4] 4.9.6. Community-serving Retail (CSR) Overlay Zone**

987 * * *

988 **Section 59-[4.9.5] 4.9.7. Fenton Village (FV) Overlay Zone**

989 * * *

990 **C. Development Standards**

991 1. Building Height

992 * * *

993 b. Maximum building height is 60 feet along any street
994 confronting any block that includes property in a Residential
995 Detached zone and, when a building is allowed to be higher
996 than 60 feet under Section [4.9.5.C.1.c] 4.9.7.C.1.c each
997 additional foot in building height above 60 feet requires at least
998 an additional one foot setback from the front of the building
999 along Fenton Street;

1000 * * *

1001 e. For properties with frontage on both Wayne Avenue and Fenton
1002 Street, in spite of the height limitations in Section [4.9.5.C.1.b]
1003 4.9.7.C.1.b through Section [4.9.5.C.1.d] 4.9.7.C.1.d, maximum
1004 building height may be increased by 15 feet for a building that
1005 includes residential uses or a mix of residential and commercial
1006 uses, if such additional height is not more than 200 feet from
1007 the right-of-way line for Fenton Street as recommended in the
1008 Approved and Adopted 2000 Silver Spring CBD Sector Plan;
1009 however, any building using additional height must be set back
1010 from abutting Residentially zoned land no less than the setback

1011 required in the abutting Residential zone or the height of the
1012 building, whichever is greater.

1013 f. Building heights may be approved under the standards of
1014 Section [4.9.5.C.1] 4.9.7.C.1 without regard to the building
1015 height recommendations of the master plan.

1016 * * *

1017 **Section 59-[4.9.6] 4.9.8. Garrett Park (GP) Overlay Zone**

1018 * * *

1019 **C. Land Uses**

1020 The land uses and use standards of the underlying zone are applicable unless
1021 the development standards in Section [4.9.6.D] 4.9.8.D are more restrictive,
1022 in which case, Section [4.9.6.D] 4.9.8.D must be followed.

1023 * * *

1024 **Section 59-[4.9.7] 4.9.9. Germantown Transit Mixed Use (GTMU) Overlay**
1025 **Zone**

1026 * * *

1027 **Section 59-[4.9.8] 4.9.10. Regional Shopping Center (RSC) Overlay Zone**

1028 * * *

1029 **D. Site Plan**

1030 Site plan approval under Section 7.3.4 is required for any increase in
1031 building height under Section [4.9.8.C.1] 4.9.10.C.1.

1032 **E. Parking**

1033 * * *

1034 **2. Pedestrian Access**

1035 The major point of pedestrian access for an off-street parking facility
1036 that occupies contiguous land area integral to the regional shopping
1037 center property may extend more than 500 feet walking distance from
1038 an entrance to the center to satisfy the number of spaces required
1039 under Section [4.9.8.E.1.a] 4.9.10.E.1.a.

1040 * * *

1041 **Section 59-[4.9.9] 4.9.11. Ripley/South Silver Spring (RSS) Overlay Zone**

1042 * * *

1043 **C. Development Standards**

1044 1. Building Height

1045 * * *

1046 a. [The] For a property zoned CR and mapped at 200 feet, the
1047 Planning Board may approve a maximum building height of
1048 200 feet only in ~~[[any]]~~ an [CR] optional method development
1049 project that provides ground floor retail. If no ground floor
1050 retail is provided the maximum building height is 145 feet. Any
1051 structure or device used to collect or radiate electromagnetic
1052 waves, including a satellite dish, must not be included in
1053 calculating building height under this paragraph.

1054 * * *

1055 4. In the CR zone, under the standard method of development the
1056 maximum FAR is 1.0 if approved by site plan under Section 7.3.4.

1057 5. Under standard method development, the public open space
1058 requirement may be transferred to other properties within the Overlay
1059 zone if approved by a site plan under Section 7.3.4.

1060 * * *

1061 **Section 59-[4.9.10] 4.9.12. Rural Village Center (RVC) Overlay Zone**

1062 * * *

1063 **C. Development Standards**

1064 1. Where a lot is either partially or totally in a Commercial/Residential
1065 zone:

1066 * * *

1067 e. In addition to the parking requirements in Division 6.2:

1068 * * *

1069 iii. For any cumulative enlargement of a surface parking
1070 facility that is greater than 50% of the total parking area
1071 approved before November 4, 2002 the entire off-street
1072 parking facility must be brought into conformance with
1073 Section [4.9.10] 4.9.12.

1074 * * *

1075 **D. Site Plan**

1076 * * *

1077 2. Site plan approval is not required for a detached house exempt from
1078 subdivision or for a property that is exempt from platting requirements
1079 under Section 50-9(j).

1080

1081 **Section 59-[4.9.11] 4.9.13. Sandy Spring/Ashton Rural Village (SSA) Overlay**
1082 **Zone**

1083 * * *

1084 **Section 59-[4.9.12] 4.9.14. Takoma Park/East Silver Spring Commercial**
1085 **Revitalization (TPESS) Overlay Zone**

1086 * * *

1087 **B. Land Uses**

1088 1. [Multi-Unit Living is only allowed in a multi use building type unless
1089 this requirement is waived by the Planning Board.]

1090 Residential Uses

1091 a. In the CRT zone, residential density may be increased above
1092 the number following the R on the zoning map, up to the
1093 maximum total mapped density.

1094 b. In the NR zone, Household Living uses may exceed 30% of the
1095 [[total]] gross floor area on the subject site up to the maximum
1096 mapped density.

1097 c. Residential uses must be in a multi use building type with the
1098 ground floor devoted to commercial uses, unless [[this
1099 requirement is waived by]]the Planning Board waives this
1100 requirement.

1101 2. In the CRT [zone] and NR zones, the following additional Recreation
1102 and Entertainment Facility, Indoor (Capacity up to 1,000 Persons)
1103 uses are permitted: bowling alley and theater.

1104 3. In the CRT [zone] and NR zones, the following uses, as allowed in the
1105 underlying zone, are allowed in the Overlay zone only if the use does
1106 not abut or confront land in a Residential Detached zone:

- 1107 a. Car Wash;
- 1108 b. Filling Station;
- 1109 c. Funeral Home, Undertaker;
- 1110 d. Light Vehicle Sales and Rental (Indoor);
- 1111 e. Light Vehicle Sales and Rental (Outdoor);
- 1112 f. Repair (Major); and
- 1113 g. Repair (Minor).

1114 4. In the NR zone, the following additional uses are permitted:

- 1115 a. Clinic (More than 4 Medical Practitioners);
- 1116 b. Cultural [[Institutions]] Institution;
- 1117 c. Research and Development; and
- 1118 d. Artisan Manufacturing and Production.

1119 **C. Development Standards**

- 1120 1. The maximum building height is 30 feet; however, the Planning
- 1121 Board may allow a building height:
- 1122 [1] a. up to 42 feet for commercial development[,]; and
- 1123 [2] b. up to 50 feet to accommodate residential development if the
- 1124 Planning Board finds that such buildings are compatible with
- 1125 the neighborhood and substantially conform with the intent of
- 1126 the applicable master plan.
- 1127 2. Household Living uses must meet the development standards of the
- 1128 underlying zone, but the required open space may be adjusted to
- 1129 assure compatibility of uses, or to provide adequate area to
- 1130 accommodate housing, if appropriate.
- 1131 3. In the NR zone, surface parking must be behind the front building
- 1132 line.

1133 **D. Site Plan**

1134 * * *

1135 2. During site plan review, the Planning Board may:

1136 a. [where recommended in the master plan, allow direct pedestrian
1137 access for all uses from the exterior of a structure in the EOF or
1138 CRT zone; and] waive the requirements for parking setbacks
1139 and the number of spaces where it finds that such waivers will
1140 accomplish the goals of the master plan, including
1141 revitalization, enhancing the pedestrian environment, and
1142 encouraging the use of transit;

1143 b. waive the building setbacks in the NR zone;

1144 c. where recommended in the master plan, allow direct pedestrian
1145 access for all uses from the exterior of a structure in the EOF or
1146 CRT zone; and

1147 [b] d. reduce building setbacks to accomplish master plan objectives.

1148 3. For any addition, reconstruction, or alteration that changes a building
1149 by less than 1,000 square feet ~~[[that]]~~ and does not require site plan
1150 approval under Section [4.9.12.D.1.c] 4.9.14.D.1.c, ~~[[there will be a~~
1151 ~~review of the building permit by]]~~ the Planning Board or its designee
1152 must review the building permit to determine compliance with master
1153 plan recommendations and the provisions of this Overlay zone. If an
1154 existing building is located on the site or on an adjacent property, the
1155 minimum setback of the zone may be reduced to conform to the
1156 existing setback on the site or on the adjacent property.

1157 * * *

1158 **Section 59-[4.9.13] 4.9.15. Transferable Development Rights (TDR) Overlay**

1159 **Zone**

1160 * * *

1161 **B. Optional Method**

1162 **1. In General**

1163 The TDR Overlay optional method of development permits an
1164 increase in the maximum residential density, if the development
1165 satisfies the requirements for optional method development using
1166 Transferable Development Rights under Section [4.9.13.B] 4.9.15.B.

1167 **a. Applicability**

1168 The procedures and requirements in Section [4.9.13.B] 4.9.15.B
1169 apply to the transfer of development rights from land in the AR
1170 zone to land in a Transferable Development Rights (TDR)
1171 Overlay zone.

1172 * * *

1173 **c. Recording of Development Right**

1174 * * *

1175 ii. A final record plat for a subdivision using transferred
1176 development rights must contain a statement including
1177 the development proposed, the zoning classification of
1178 the property, the number of development rights used, and
1179 a notation of the recordation of the conveyance as
1180 required by Section [4.9.13.B] 4.9.15.B.

1181

d. Development with Moderately Priced Dwelling Units

1182

i. A property developed under Section [4.9.13.B] 4.9.15.B must satisfy Chapter 25A.

1183

1184

ii. A density bonus allowed under Chapter 25A is calculated after the base density of the property has been increased under Section [4.9.13.B] 4.9.15.B through TDRs.

1185

1186

1187

iii. In a Rural Residential or Residential zone, development using TDRs and providing MPDUs above 12.5% must follow the requirements under optional method MPDU Development.

1188

1189

1190

1191

e. Additional Findings

1192

In addition to the findings required for approval of a site plan under Section 7.3.4, for projects developed under Section [4.9.13.B] 4.9.15.B the Planning Board must find that the proposed development provides an appropriate range of housing types that takes advantage of existing topography and environmental features and achieves a compatible relationship between the proposed development and adjoining land uses.

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1199 * * *

Section 59-[4.9.14] 4.9.16. Twinbrook (TB) Overlay Zone

1201 * * *

Section 59-[4.9.15] 4.9.17. Upper Paint Branch (UPB) Overlay Zone

1203 * * *

1204 **B. Exemptions**

1205 The following are exempt from Section [4.9.15] 4.9.17:

1206 * * *

1207 **C. Land Uses**

1208 1. Except as listed in Section [4.9.15.C.2] 4.9.17.C.2 and Section
1209 [4.9.15.C.3] 4.9.17.C.3, the land uses of the underlying zone [[are
1210 applicable]] apply. The use standards of the underlying zone [[are
1211 applicable]] apply unless the development standards in Section
1212 [4.9.15.D] 4.9.17.D are more restrictive, in which case Section
1213 [4.9.15.D] 4.9.17.D must be followed.

1214 * * *

1215 3. If validly existing on July 1, 1997, the uses in Section [4.9.15.C.2]
1216 4.9.17.C.2 may be continued under the requirements in effect at the
1217 time the use was established. Any expansion requires compliance with
1218 the UPB Overlay zone.

1219 * * *

1220 **E. Waiver**

1221 The applicable review body may grant a waiver of the development standards
1222 in Section [4.9.15.D] 4.9.17.D if it finds that:

1223 1. The 8% impervious surface limit would cause an undue hardship on
1224 the applicant because of events or circumstances not caused or
1225 facilitated by the applicant;

1226 2. The application otherwise complies with all applicable Federal, State,
1227 and County water quality provisions;

1228 3. The relief sought is the minimum needed to prevent the undue
1229 hardship; and

1230 4. Alternative water quality and control techniques are used to meet the
1231 purposes of Section [4.9.15] 4.9.17.

1232 **Section 59-[4.9.16.] 4.9.18. Upper Rock Creek (URC) Overlay Zone**

1233 * * *

1234 **B. Exemptions**

1235 The following are exempt from Section [4.9.16] 4.9.18:

1236 * * *

1237 **D. Waiver**

1238 The applicable review body may grant a waiver of the development
1239 standards in Section [4.9.16.C] 4.9.18.C if it finds that:

1240 1. The 8% impervious surface limit would cause an undue hardship on
1241 the applicant because of events or circumstances not caused or
1242 facilitated by the applicant or the applicant can demonstrate that the
1243 impervious surface limit would prevent the applicant from building
1244 the maximum number of affordable housing units otherwise allowed
1245 by the zone. If the applicable review body grants a waiver from the
1246 8% impervious surface limit for affordable housing, it must approve
1247 the minimum increase necessary to allow the affordable housing. In
1248 no event may the waiver result in development with more than 10%
1249 impervious surface area;

1250 2. The application otherwise complies with all applicable Federal, State,
1251 and County water quality regulations;

1252 3. The relief sought is the minimum needed to prevent the undue
 1253 hardship; and

1254 4. Alternative water quality and quantity control techniques are used to
 1255 meet the purposes of Section [4.9.16] 4.9.18.

1256 * * *

1257 **Sec. 20. DIVISION 59-5.1 is amended as follows:**

1258 **Division 59-5.1. In General**

1259 * * *

1260 **Section 59-5.1.3. Applicability**

1261 **A.** A Floating zone must not be approved for property that is in an Agricultural
 1262 or Rural Residential zone.

1263 **B.** If a Floating zone is recommended in a master plan, there are no
 1264 prerequisites for an application. For properties with a master plan
 1265 recommendation for a Floating zone that can no longer be applied for as of
 1266 October 30, 2014, the following table identifies the equivalent Floating
 1267 zones that can be applied for:

<u>Master Plan Recommended Floating Zone</u>	<u>Equivalent Floating Zone</u>
<u>C-Inn</u>	None (See Use Table under Section 3.1.6)
<u>R-MH</u>	<u>RDF</u>
<u>RT-6.0, RT-8.0, RT-10.0, RT-12.5, RT-15.0</u>	<u>TF</u>
<u>R-H, R-4plex</u>	<u>AF</u>
<u>P-D</u>	<u>AF or CRNF</u>
<u>C-T</u>	<u>CRNF</u>
<u>MXN, MXPD, PNZ, PRC, T-S</u>	<u>CRTF</u>
<u>H-M, TS-M, TS-R</u>	<u>CRF</u>
<u>C-3, PCC</u>	<u>GRF</u>
<u>C-P, I-3, O-M</u>	<u>EOFF</u>
<u>RS</u>	<u>IMF</u>

1268 * * *
 1269

1270 **Sec. 21. DIVISION 59-6.2 is amended as follows:**

1271 **Division 59-6.2. Parking, Queuing, and Loading**

1272 * * *

1273 **Section 59-6.2.3. Calculation of Required Parking**

1274 The minimum number of vehicle and bicycle parking spaces required in all zones
1275 is the sum of the number of spaces required for each applicable land use in the
1276 tables in Section 6.2.4.B and Section 6.2.4.C, unless the total number is reduced
1277 under Section [6.2.3.H] 6.2.3.I.

1278 * * *

1279 **D. Car-Share Spaces**

1280 * * *

1281 **E. Spaces for Charging Electric Vehicles**

1282 Any parking facility constructed after May 12, 2014, containing 100 parking
1283 spaces or more, must have a minimum of one parking space ready to be
1284 converted to a station for charging electric vehicles[. One additional
1285 charging station ready parking space is required for each additional 100
1286 parking spaces in the facility]] for every 100 parking spaces.

1287 **[E] F. Bicycle Parking**

1288 * * *

1289 3. The maximum number of bicycle parking spaces listed in the bicycle
1290 parking table under Section 6.2.4.C is the maximum required of the
1291 applicant; however, the applicant may choose to exceed the
1292 maximum.

1293 **[F] G. Off-Site Parking by Agreement**

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1. An applicant may satisfy the required number of vehicular parking spaces through off-site parking on property located within ¼ mile of the subject property if the off-site property is plat-restricted, deed-restricted, or is under a joint use agreement. The plat or deed restrictions must specify that the property provides the required number of parking spaces for a use on another property. The plat or deed restrictions may be lifted if substitute off-site parking is provided, or if the use requiring the parking ceases to exist. A joint use agreement must:
- [[1]] a. be for a property under the control of the involved parties;
 - [[2]] b. be approved by the deciding body;
 - [[3]] c. have a minimum term of 5 years; and
 - [[4]] d. require the parties to notify DPS within 3 days after any changes to the joint use arrangement and provide DPS with a minimum of one month notice of any pending termination of the agreement.
 - [[5]] e. If the parking available under a joint use agreement is reduced the use-and occupancy permit for the development that was approved in reliance on the joint use agreement must be amended, or revoked, as appropriate, due to the reduced parking unless an alternative compliance plan is approved.
 - [[6]] f. A property owner must obtain a new use-and-occupancy permit, including
2. An applicant may satisfy the required number of vehicular parking spaces if the property is within the boundary of a duly established

1320 Municipal Shared Parking Program and the municipality confirms that
1321 the property will participate in that Program.

1322 * * *

1323 **[G] H. Parking Minimums and Maximums**

1324 **1. Parking Lot District**

1325 a. In a Parking Lot District, an applicant may provide fewer
1326 parking spaces than required, after all adjustments are made
1327 under Section [6.2.3.H] 6.2.3.I, if payment is made under
1328 Chapter 60.

1329 * * *

1330 **2. Reduced Parking Area**

1331 a. In a Reduced Parking Area, an applicant may provide fewer
1332 parking spaces than required, after all adjustments are made
1333 under Section [6.2.3.H] 6.2.3.I, only under Alternative
1334 Compliance (see Division 6.8).
1335 b. In a Reduced Parking Area, an applicant may provide more
1336 parking spaces than allowed by the maximum if all of the
1337 parking spaces provided in excess of the maximum number
1338 allowed are made available to the public and are not reserved,
1339 or if approved under Alternative Compliance (see Division 6.8).

1340 **[H] I. Adjustments to Vehicle Parking**

1341 **1. In General**

1342 a. Reduced parking rates under Section [6.2.3.H] 6.2.3.I are not
1343 mandatory. The maximum number of parking spaces allowed in

1344 a Parking Lot District or Reduced Parking Area is based on the
1345 baseline maximum in the parking table under Section 6.2.4.B.

1346 b. Adjustments under Section [6.2.3.H] 6.2.3.I to the minimum
1347 number of required parking spaces must not result in a
1348 reduction below 50% of the baseline parking minimum or
1349 shared parking model minimum.

1350 **2. Special Uses**

1351 a. The parking minimum resulting from a Special Uses adjustment
1352 may not be further reduced by additional adjustments under
1353 Section [6.2.3.H] 6.2.3.I.

1354 * * *

1355 **c. Religious Assembly**

1356 i. The deciding body may reduce the required number of
1357 parking spaces:

1358 (a) to [0] 0.15 spaces per fixed seat for a Religious
1359 Assembly located within 500 feet of any
1360 commercial or industrial parking lot where
1361 sufficient spaces are available during the time of
1362 services to make up the difference; or

1363 * * *

1364 **3. Shared Parking**

1365 * * *

1391 * * *

1392 **[I] J. Drainage**

1393 * * *

1394 **[J] K. Facilities for Conditional Uses in Residential Detached Zones**

1395 * * *

1396 **[K] L. Commercial Vehicle Parking for Properties with a Residential Use**

1397 **1. In General**

- 1398 a. Vehicles and machinery used primarily for Farming may be
1399 parked without restriction.
- 1400 b. Parking of a tow truck with a vehicle attached is prohibited.
- 1401 c. A commercial vehicle under Section [6.2.5.K] 6.2.5.L must be
1402 owned or used by an occupant of the dwelling.

1403 * * *

1404 **3. RE-2, RE-2C, and RE-1 Zones**

1405 * * *

- 1406 b. Any property zoned RE-1 that does not have a minimum lot
1407 area of 40,000 square feet, must satisfy the requirements for
1408 Surface Parking in R-200, R-90, and R-60 under Section
1409 [6.2.5.L] 6.2.5.M.

1410 * * *

1411 **[L] M. Surface Parking in R-200, R-90, R-60, and R-40 Zones**

- 1412 1. Parking for any vehicle or trailer in the area between the lot line and
1413 the front building line must be on a surfaced parking area.
- 1414 2. Except as provided in Section [6.2.5.L.3] 6.2.5.M.3, the maximum
1415 surfaced parking area between the lot line and the front building line,

1416 excluding the surfaced parking area in a driveway on a pipestem or
1417 flag-shaped lot, is:

- 1418 a. in the R-200 and R-90 zones, 30% or 320 square feet,
1419 whichever is greater; and
1420 b. in the R-60 and R-40 zones, 35% or 320 square feet, whichever
1421 is greater.

1422 3. A surfaced parking area may exceed the size limits in Section
1423 [6.2.5.L.2] 6.2.5.M.2 if:

1424 * * *

1425 **Sec. 22 DIVISION 59-6.4 is amended as follows:**

1426 **Division 59-6.4. General Landscaping and Outdoor Lighting**

1427 * * *

1428 **Section 6.4.3. General Landscaping Requirements**

1429 * * *

1430 4. To satisfy Section 6.2.9, Division 6.3, and Division ~~[[6.6]]~~ 6.5, a
1431 property owner must not place plant material in any utility,
1432 stormwater management, or other easement that may result in removal
1433 of the plantings, except as allowed under Section 6.2.9, Division 6.3,
1434 and Division ~~[[6.6]]~~ 6.5.

1435 * * *

1436 **Sec. 23. DIVISION 59-7.2 is amended as follows:**

1437 **Division 59-7.2. District Council Approvals**

1438 **Section 59-7.2.1. Local Map Amendment**

1439 * * *

1440 **B. Application Requirements**

1441 * * *

- 1442 2. The applicant must submit the following for review:
- 1443 a. An application form and fees approved by the District Council.
- 1444 b. The identity of each person who has a substantial interest in the
- 1445 property under the application, including any person with a
- 1446 share in the property amounting to 5% or more (whether held in
- 1447 an individual or corporate capacity) of the full cash value of the
- 1448 property after subtracting all mortgages, deeds of trusts, liens,
- 1449 and encumbrances. The application must also contain the names
- 1450 of any contract purchaser or person holding a mortgage, deed of
- 1451 trust, or option to purchase the property.
- 1452 c. A statement disclosing political contributions to the treasurer or
- 1453 political committee of any candidate for County Council and
- 1454 County Executive or slate that contributes to candidates for
- 1455 County Council or County Executive, under State law. The
- 1456 applicant must submit the disclosure statement on a form
- 1457 approved by the District Council.
- 1458 d. A statement explaining how the proposed development satisfies
- 1459 the criteria to grant the application.
- 1460 e. A certified zoning map.
- 1461 f. A description by metes and bounds, courses and distances of
- 1462 land, or if the boundaries conform to lot boundaries within a
- 1463 subdivision for which a plat is recorded in the land records of
- 1464 the County, then the lot, block, and subdivision designations
- 1465 with appropriate plat reference.
- 1466 g. For a Floating zone, a floating zone plan depicting:
- 1467 i. building location, density, massing, height, and
- 1468 anticipated use;

- 1469 ii. locations of open spaces and preliminary stormwater
1470 management strategy;
- 1471 iii. pedestrian, bicycle, and vehicular circulation, parking,
1472 and loading;
- 1473 iv. any binding element on the application. An applicant
1474 who proposes a binding element must submit an
1475 unexecuted covenant suitable for filing in the land
1476 records reflecting any restriction on the development
1477 standards, development program, or use that will be
1478 applicable to the property if the District Council approves
1479 the application; and
- 1480 v. the following additional information:
- 1481 (a) current and proposed zone;
- 1482 (b) existing site conditions and vicinity within 100
1483 feet, including total tract area; existing topography;
1484 watershed in which the site is located; Special
1485 Protection or Primary Management areas; any
1486 floodplain, wetland, or perennial or intermittent
1487 stream, and any associated buffers; whether or not
1488 rare, threatened, or endangered species were
1489 observed on the property; whether or not the
1490 property is on the Locational Atlas and Index of
1491 Historic Sites; the aerial extent of forest and tree
1492 cover on the property; and date(s) field work was
1493 conducted;
- 1494 (c) existing or approved adjacent land uses, buildings,
1495 and rights-of-way;

1496 (d) a Traffic Study under the Planning Board’s LATR
1497 Guidelines if the incremental increase in vehicular
1498 peak-hour trips between the density of the base
1499 zoning and the density of the requested floating
1500 zone meets the minimum applicability requirement
1501 in the LATR Guidelines; and

1502 (e) general phasing of structures, uses, rights-of-way,
1503 sidewalks, dedications, and future preliminary and
1504 site plan applications.

1505 ~~[[f]]~~ h. For a Euclidean zone application, exhibits showing:

1506 i. the subject property and the proposed neighborhood,
1507 identifying uses and zoning; and

1508 ii. an explanation of the changes that have occurred in the
1509 neighborhood since the original zoning or previous
1510 comprehensive rezoning, or evidence of the alleged
1511 mistake made by the District Council in the previous
1512 Sectional or District Map Amendment, in support of the
1513 requested Euclidean zone.

1514 * * *

1515 **Sec. 24. DIVISION 59-7.3 is amended as follows:**

1516 **Division 59-7.3. Regulatory Approvals**

1517 **Section 59-7.3.1 Conditional Use**

1518 * * *

1519 **F. Decision**

1520 **1. Hearing Examiner**

1521 * * *

1522 c. Any party of record or aggrieved party may[, no later than 10
1523 days after the transmittal of notification that the Hearing
1524 Examiner's report and decision are available for review,] file a
1525 written request to present oral argument before the Board of
1526 Appeals within 10 days after the Office of Zoning and
1527 Administrative Hearings issues the Hearing Examiner's report
1528 and decision. The filing of such a request transfers jurisdiction
1529 over the matter from the Hearing Examiner to the Board of
1530 Appeals.

1531 * * *

1532 **F. Decision**

1533 * * *

1534 **2. Board of Appeals**

1535 a. If the Board of Appeals is deciding the application, it must
1536 make the necessary findings under Section 7.3.1.E and must:
1537 i. vote in public session to approve, approve with
1538 conditions, or deny the application, or to remand the
1539 application to the Hearing Examiner for additional
1540 evidence or clarification. An affirmative vote of 4
1541 members of the Board of Appeals is required to approve
1542 a conditional use when 5 members are present, otherwise
1543 an affirmative vote of 3 members is required. Any Board
1544 of Appeals member who votes on a conditional use and
1545 was not present for any portion of the [[hearing]] oral
1546 argument must read and sign the transcript of that portion
1547 of the [[testimony and must review all exhibits
1548 introduced at the hearing]] oral argument; and

- 1549 ii. issue a resolution reflecting the Board of Appeals’
1550 decision no later than 30 days after voting on the matter,
1551 unless such time is extended by the Board of Appeals.
- 1552 b. All matters decided under Section 7.3.1.F.2 must be decided on
1553 the basis of the evidence ~~[[or]]~~ of record, but the Board of
1554 Appeals may decide any matter heard by the Hearing Examiner
1555 and presented to the Board of Appeals for decision solely on the
1556 basis of the Hearing Examiner's report and decision.

1557 * * *

1558 **K. Amendments**

1559 * * *

1560 **2. Minor Amendment**

1561 * * *

- 1562 b. When a minor amendment is granted, the Board of Appeals or
1563 Hearing Examiner must send a copy of the resolution or
1564 decision, as applicable, to the applicant, the Board of Appeals
1565 or Hearing Examiner, as appropriate, the Planning Board, DPS,
1566 the Department of Finance, all parties entitled to notice at the
1567 time of the original filing, and current abutting and confronting
1568 property owners. The resolution or decision, as applicable,
1569 must state that any party may[, within 15 days after the
1570 resolution is sent,] request a public hearing on the Board of
1571 Appeals' or Hearing Examiner's action within 15 days after the
1572 ~~[[Office of Zoning and Administrative Hearings issues the]]~~
1573 resolution or decision is issued.

1574 * * *

1575 **Section 59-7.3.2. Variance**

1576 * * *

1577 **E. Necessary Findings**

1578 To approve a variance, the Board of Appeals must find that:

1579 1. ~~[[Denying]]~~ denying the variance would result in no reasonable use of
1580 the property; or

1581 2. each of the following apply:

1582 a. ~~[[One]]~~ one or more of the following unusual or extraordinary
1583 situations or conditions exist:

1584 ~~[[a]]~~ i. exceptional narrowness, shallowness, shape,
1585 topographical conditions, or other extraordinary
1586 conditions peculiar to a specific property

1587 ~~[[b]]~~ ii. the proposed development uses an existing legal
1588 nonconforming property or structure;

1589 ~~[[c]]~~ iii. the proposed development contains
1590 environmentally sensitive features or buffers;

1591 ~~[[d]]~~ iv. the proposed development contains a historically
1592 significant property or structure; or

1593 ~~[[e]]~~ v. the proposed development substantially conforms
1594 with the established historic or traditional development
1595 pattern of a street or neighborhood~~[[.]]~~;

1596 ~~[[3]]~~ b. ~~[[The]]~~ the special circumstances or conditions are not
1597 the result of actions by the applicant;

1598 ~~[[4]]~~ c. ~~[[The]]~~ the requested variance is the minimum necessary
1599 to overcome the practical difficulties that full compliance with
1600 this Chapter would impose due to the unusual or extraordinary
1601 situations or conditions on the property;

1629 **E. Necessary Findings**

1630 To approve a sketch plan, the Planning Board must find that the following
1631 elements are appropriate in concept and appropriate for further detailed
1632 review at site plan. The sketch plan must:

- 1633 1. meet the objectives, general requirements, and standards of this
1634 Chapter;
- 1635 2. substantially conform with the recommendations of the applicable
1636 master plan;
- 1637 3. satisfy under Section 7.7.1.B.5 the binding elements of any
1638 development plan or schematic development plan in effect on October
1639 29, 2014;
- 1640 4. under Section 7.7.1.B.5, for [[properties]] a property whose zoning
1641 classification on October 29, 2014 was the result of a Local Map
1642 Amendment, satisfy any green area requirement in effect on October
1643 29, 2014; any green area under this provision includes and is not in
1644 addition to any open space requirement of the property's zoning on
1645 October 30, 2014;
- 1646 [4] 5. achieve compatible internal and external relationships between
1647 existing and pending nearby development;
- 1648 [5] 6. provide satisfactory general vehicular, pedestrian, and bicyclist
1649 access, circulation, parking, and loading;
- 1650 [6] 7. propose an outline of public benefits that supports the requested
1651 incentive density and is appropriate for the specific community; and

1652 [7] g. establish a feasible and appropriate phasing plan for all structures,
1653 uses, rights-of-way, sidewalks, dedications, public benefits, and future
1654 preliminary and site plan applications.

1655 * * *

1656 **G. Subsequent Actions**

1657 If a sketch plan is approved, a site plan under Section 7.3.4 must be
1658 submitted within 36 months after the date [[of the sending of]] the resolution
1659 is sent, unless a longer period is established by the resolution.

1660 **Section 59-7.3.4. Site Plan**

1661 * * *

1662 **E. Necessary Findings**

- 1663 1. When reviewing an application, the approval findings [[of approval
1664 only]] apply only to the [[area encompassed]] site covered by the
1665 application.
- 1666 2. To approve a site plan, the Planning Board must find that the
1667 proposed development:
- 1668 a. satisfies any previous approval that applies to the site[,
1669 including any development plan or schematic development plan
1670 in effect on October 29, 2014];
 - 1671 b. satisfies under Section 7.7.1.B.5 the binding elements of any
1672 development plan or schematic development plan in effect on
1673 October 29, 2014;
 - 1674 c. satisfies under Section 7.7.1.B.5 any green area requirement in
1675 effect on October 29, 2014 for [[properties]] a property whose
1676 zoning classification on October 29, 2014 was the result of a
1677 Local Map Amendment;

1678 [b] d. satisfies applicable use standards, development standards, and
1679 general requirements under this Chapter;

1680 [c] e. satisfies the applicable requirements of:

1681 i. Chapter 19, Erosion, Sediment Control, and Stormwater
1682 Management; and

1683 ii. Chapter 22A, Forest Conservation.

1684 [d] f. provides safe, well-integrated parking, circulation patterns,
1685 building massing and, where required, open spaces and site
1686 amenities;

1687 [e] g. substantially conforms with the recommendations of the
1688 applicable master plan and any guidelines approved by the
1689 Planning Board that implement the applicable plan;

1690 [f] h. will be served by adequate public services and facilities
1691 including ...

1692 * * *

1693 [g] i. on a property in a Rural Residential or Residential zone, is
1694 compatible with the character of the residential neighborhood;
1695 and

1696 [h] j. on a property in all other zones, is compatible with existing and
1697 approved or pending adjacent development.

1698 * * *

1699 **H. Duration of Approval**

1700 1. A site plan expires unless a certified site plan, as defined and
1701 reviewed by the Planning Director, is approved within 24 months after
1702 [[Planning Board approval]] the date the resolution is sent.

1703 * * *

1704 **K. Compliance and Enforcement**

1705 * * *

1706 2. If the Planning Board or its designee finds that the applicant has failed
1707 to comply with a compliance program approved under Section
1708 7.3.4.k.1.c, the Planning Board may, without holding any further
1709 hearing, take any of the actions identified in Section 7.3.4.k.1.a.
1710 through Section 7.3.4.k.1.e.

1711 3. If the Planning Board suspends or revokes a site plan, DPS must
1712 immediately suspend any applicable building permit under which
1713 construction has not been completed, or withhold any applicable use-
1714 and-occupancy permit, until the Planning Board reinstates the site
1715 plan or approves a new site plan for the development.

1716 [3] 4. The Planning Board may require the applicant to post a commercially
1717 acceptable form of surety securing compliance with and full
1718 implementation of specified features of the certified site plan in an
1719 amount set by the Planning Board. If such surety is required, DPS
1720 must not issue a building permit or use-and-occupancy permit until
1721 such surety is accepted.

1722

1723 **Sec. 25. DIVISION 59-7.4 is amended as follows:**

1724 **Division 59-7.4. Administrative Approvals**

1725 **Section 59-7.4.1. Building Permit**

1726 * * *

1727 **C. Review and Recommendation**

1728 DPS must submit the application to the Planning Director for review for any
1729 building permit that requests

1730 * * *

1731 3. construction that increases the gross floor area of any residential
1732 structure by more than [500 square feet] 50% of the existing gross
1733 floor area.

1734 * * *

1735 **Section 59-7.4.4. Sign Variance**

1736 * * *

1737 **C. Necessary Findings**

1738 * * *

1739 6. The Sign Review Board may approve a variance for a sign on
1740 property with a conditional use approval if the Hearing Examiner or
1741 Board of Appeals, as applicable, has approved the sign. Nothing in
1742 Section 7.4.4 prevents the Sign Review Board from imposing more
1743 restrictive conditions than the Hearing Examiner or Board of Appeals,
1744 but the Sign Review Board must not approve a sign variance which is
1745 less restrictive than any condition set by the Hearing Examiner or
1746 Board of Appeals.

1747 * * *

1748 **Sec. 26. DIVISION 59-7.6 is amended as follows:**

1749 **Division 59-7.6. Special provisions**

1750 **Section 7.6.1. Board of Appeals**

1751 * * *

1752 **C. Filing of Appeals**

1753 * * *

1754 5. When an administrative appeal is made, the Board of Appeals must
1755 send notice of the hearing within 5 days of the request for appeal to
1756 DPS, the State Highway Administration, the County Board of
1757 Education, all abutting and confronting property owners, civic and
1758 homeowners associations within ½ mile, any municipality within ½
1759 mile, and pre-submittal attendees if applicable. A condominium's
1760 council of unit owners may be notified instead of the owner and
1761 residents of each individual condominium.

1762 * * *

1763 **Sec. 27. DIVISION 59-7.7 is amended as follows:**

1764 **Division 59-7.7. Exemptions and Nonconformities**

1765 **Section 59-7.7.1. Exemptions**

1766 **A. Existing Structure, Site Design, or Use on October 30, 2014**

1767 1. Structure and Site Design

1768 A legal structure or site design existing on October 30, 2014 that does
1769 not meet the zoning standards on or after October 30, 2014 is
1770 conforming and may be continued, renovated, repaired, or
1771 reconstructed if the floor area, height, and footprint of the structure is
1772 not increased, except as provided for in Section 7.7.1.C for structures
1773 in Commercial/Residential, Employment or Industrial zones, or
1774 Section 7.7.1.D.5 for structures in Residential Detached zones.

1775 2. Use

1776 [Any] Except for a Registered Living Unit, any use that was
1777 conforming or not nonconforming on October 29, 2014 and that
1778 would otherwise be made nonconforming by the application of zoning
1779 on October 30, 2014 is conforming, but may not expand.

1780 **B. Application Approved or Filed for Approval before October 30, 2014**

1781 **1. Application in Progress before October 30, 2014**

1782 Any development plan, schematic development plan, diagrammatic
1783 plan, concept plan, project plan, sketch plan, preliminary plan, record
1784 plat, site plan, special exception, variance, or building permit filed or
1785 approved before October 30, 2014 must be reviewed under the
1786 standards and procedures of the Zoning Ordinance in effect on
1787 October 29, 2014. Any complete Local Map Amendment application
1788 submitted to the Hearing Examiner by May 1, 2014, must be reviewed
1789 under the standards and procedures of the Zoning Ordinance in effect
1790 on October 29, 2014. If the District Council approves such an
1791 application after October 30, 2014 for a zone that is not retained in
1792 Chapter 59, then the zoning will automatically convert to the
1793 equivalent zone as translated under DMA [G-95] G-956 when the
1794 Local Map Amendment is approved. The approval of any of these
1795 applications or amendments to these applications [approved before
1796 October 30, 2014] will allow the applicant to proceed through any
1797 other required application or step in the process within the time
1798 allowed by law or plan approval, under the standards and procedures
1799 of the Zoning Ordinance in effect on October 29, 2014.

1800 * * *

1801 **5. Development with a Development Plan or Schematic Development**
1802 **Plan Approved before October 30, 2014**

1803 Any development allowed on property [subject to the binding
1804 elements of a District Council approved development plan or
1805 schematic development plan on October 30, 2014] [[whose]] where

1806 the zoning classification on October 29, 2014 was the result of a Local
1807 Map Amendment must satisfy [those binding elements] the green area
1808 requirements of the zone in effect on October 29, 2014 and any
1809 binding elements until [the property is]:

- 1810 a. the property is subject to a Sectional Map Amendment that
- 1811 implements a master plan approved after October 30, 2014;
- 1812 b. the property is rezoned by Local Map Amendment; or
- 1813 c. the binding element is revised by a [major] development plan
- 1814 amendment under the procedures in effect on October 29, 2014.

1815 Any green area required under this provision includes and is not in
1816 addition to any open space requirement of the property's zoning on
1817 October 30, 2014.

1818 * * *

1819 **C. Expansion of Floor Area Existing on October 30, 2014**

1820 **1. Limited Rights under Zoning before October 30, 2014**

1821 Until October 30, 2039, on land that is located in a
1822 Commercial/Residential, Employment, or Industrial zone, an
1823 applicant for an amendment to an application listed in Section
1824 7.7.1.B.1 may increase the floor area on the site [by the lesser of 10%
1825 of the gross floor area approved for the site on October 30, 2014 or
1826 30,000 square feet, except for properties with 2,000 square feet or less
1827 of floor area, which may expand up to 30% of the gross floor area
1828 approved for the site on October 30, 2014,] under Section 7.7.1.C.2 or
1829 7.7.1.C.3 following the [[procedure]] procedures and standards of the
1830 property's zoning on October 29, 2014[, if]:

- 1831 a. [The] if the building does not exceed the height limits and
1832 density of the property's zoning in effect on October 29, 2014;
1833 b. [Any] if any building on the site is no closer to property in a
1834 Residential Detached zone that is vacant or improved with a
1835 Single-Unit Living use than any existing structure on the site on
1836 October 30, 2014 or satisfies the setbacks of the current zoning;
1837 and
1838 c. [If] when a site plan or site plan amendment is required by the
1839 property's zoning on October 29, 2014, [then] a site plan or a
1840 site plan amendment is approved under the standards of site
1841 plan approval on October 29, 2014.

1842 **2. All prior zones**

1843 [[Any applicant]] Existing development in a Commercial/Residential,
1844 Employment, or Industrial zone may [[seek approval for]] expand by
1845 up to the lesser of 10% of the gross floor area approved for the site on
1846 October 30, 2014 or 30,000 square feet, except for properties with
1847 2,000 square feet or less of floor area, which may expand by up to
1848 30% of the gross floor area approved for the site on October 30, 2014.
1849 Any expansion must satisfy Section 7.7.1.C.1.

1850 **3. Prior Floating Zones**

1851 a. [[Any applicant]] A property whose [[property]] zoning on
1852 October 29, 2014 was the result of a Local Map Amendment
1853 [[and the]] with an approved development plan [[lacks]]
1854 without any binding elements, may seek approval for an
1855 increase in floor area of any amount under Section

1856 [[7.7.1.C.3.B.]] 7.7.1.C.3.b. Any expansion must satisfy
1857 Section 7.7.1.C.1.

1858 b. If the District Council approves a development plan amendment
1859 larger than allowed under Section 7.7.1.C.2, the zoning of the
1860 property subject to the amendment will automatically convert
1861 and be remapped to the equivalent zone as translated under
1862 DMA G-956, with the density and height approved in the
1863 amendment.

1864 **4. Expansion above Section [7.7.1.C.1 or Amendment after**
1865 **Section 7.7.1.B.3.a] 7.7.1.C.2**

1866 Any portion of an enlargement that exceeds Section [7.7.1.C.1]
1867 7.7.1.C.2 must satisfy the applicable standards and procedures for the
1868 current zoning. After October 30, 2039, any amendment to a
1869 previously approved application must satisfy the applicable standards
1870 and procedures for the current zoning to the extent of (a) any
1871 expansion, and (b) any other portion of an approved development that
1872 the amendment changes.

1873 **D. Residential Lots and Parcels**

1874 * * *

1875 **6. Exempted Lots and Parcels in the RE-2C Zone**

1876 A lot or parcel in the RE-2C zone, in addition to other exemptions in
1877 this subsection, is exempt from the area and dimension requirements
1878 of the RE-2C zone, but must satisfy the requirements of the zone
1879 applicable to it before its classification to the RE-2C zone if:

1880 a. the property owner held title to the property before March 17,
1881 1982;

- 1882 b. a reduced lot size is required for a lot created for a detached
1883 house;
1884 c. the child of the property owner or the spouse of a child, or the
1885 parents of the property owner will reside in the house on the
1886 additional lot; and
1887 d. the overall density of the tract owned on March 17, 1982 is 1.1
1888 units per acre or lower.

1889 **7. Exempted Lots and Parcels in the Rural Zone**

1890 A lot or parcel in the Rural zone, in addition to other exemptions in
1891 this subsection, is exempt from the area and dimension requirements
1892 of the Rural zone, but must satisfy the requirements of the zone
1893 applicable to it before its classification to the Rural zone if:

- 1894 a. the property owner can establish that the owner had legal title
1895 on or before June 4, 1974;
1896 b. the child of the property owner, or the spouse of a child, or the
1897 parents of the property owner will reside in the house on the
1898 additional lot; and
1899 c. the overall density of the property does not exceed one dwelling
1900 unit per 5 acres in any subdivision.

1901 **8. Exempted Lots and Parcels in the Rural Cluster Zone**

1902 A lot or a parcel in the Rural Cluster (RC) zone, in addition to other
1903 exemptions in this subsection, is exempt from the minimum area
1904 requirements and dimension requirements of the Rural Cluster zone,
1905 but must satisfy the requirements of the zone applicable to it before its
1906 classification to the RC zone if:

- 1907 a. the property owner held title to the property before June 4,
- 1908 1974;
- 1909 b. a reduced lot size is required for a lot created for a detached
- 1910 house; and
- 1911 c. the child of the property owner, or the spouse of a child, or the
- 1912 parents of the property owner will reside in the house on the
- 1913 additional lot.

1914 * * *

1915 **Section 59-7.7.2. Nonconforming Use**

1916 A lawful nonconforming use may be continued, under the following limits:

1917 **A. Expansion**

1918 A lawful nonconforming use of a structure or lot must not be expanded [in
1919 any way].

1920 **B. Abandonment of Use**

1921 [If a nonconforming use is abandoned, it must not be reestablished unless it
1922 is a historic resource and satisfies Section 7.7.2.C. A] Except for a
1923 Registered Living Unit allowed under the code in effect on October 29,
1924 2014, which may be abandoned, removed, or terminated under the code in
1925 effect on October 29, 2014, a nonconforming use or a use deemed to be
1926 conforming under Section 7.7.1.A.2 is abandoned if [[the nonconforming
1927 use]] it ceases for at least 6 consecutive months. If a nonconforming use or
1928 a use deemed to be conforming under Section 7.7.1.A.2 is abandoned, it
1929 must not be reestablished unless it is a historic resource and satisfies Section
1930 7.7.2.C.

1931 * * *

1932 **Sec. 28. DIVISION 59-8.1 is amended as follows:**

1933 **Division 59-8.1. In General**

1934 * * *

1935 **Section 59-8.1.2. Modification of Zones**

1936 **A. Amending a Development Plan**

1937 An amendment to an approved development plan or schematic development
1938 plan in any zone in Article 59-8 must follow:

- 1939 1. the procedures for [amending a floating zone plan under Section
1940 7.2.1.1] amendment of a development plan under the zoning ordinance
1941 in effect on October 29, 2014;
- 1942 2. the parking, queuing, and loading standards in Division 6.2; and
- 1943 3. the signage standards in Division 6.7.

1944 * * *

1945 **Sec. 29. DIVISION 59-8.3 is amended as follows:**

1946 **Division 59-8.3. Planned Unit Development Zones**

1947 * * *

1948 **Section 59-8.3.6. Planned Cultural Center Zone**

1949 * * *

1950 **C. Development Standards**

1951 * * *

1952 **2. Coverage and Public Open Space**

- 1953 a. The maximum building coverage is 30%. The building
1954 coverage may be increased to a maximum of 40% if such

1955 additional building coverage is developed and used for above-
1956 ground, structured parking.

1957 b. A minimum of 30% of the total site area included in the
1958 development plan must be maintained as public open space;
1959 however, the District Council may reduce this requirement if it
1960 finds that comparable amenities or facilities provided in lieu of
1961 open space are sufficient to accomplish the purposes of the zone
1962 and would be more beneficial to the proposed development than
1963 strict adherence to the specific public open space requirements.

1964 * * *

1965 **Sec. 30. Effective date.** This ordinance becomes effective October 30,
1966 2014.

1967

1968 This is a correct copy of Council action.

1969

1970

1971 _____
Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

September 8, 2014

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. 14-09

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 14-09 at our regular meeting on September 4, 2014. By a vote of 3:0, the Planning Board recommends approval of the text amendment, with modifications by the Board, to update, clarify, and correct the Zoning Ordinance approved by County Council on March 4, 2014. The Board modified the text based on further review of the new Zoning Ordinance by staff, the Office of Zoning and Administrative Hearings, and the Board of Appeals. The Planning Board also included plain language edits and updated section references. The text amendment language, as modified, is included as an attachment to this memorandum, separate from the technical staff report¹.

ZTA No. 14-09 would amend the new Zoning Ordinance that will become effective on October 30, 2014. The purpose of the ZTA is to:

- clarify language and correct errors;
- add the substance of six text amendments approved by the Council since March 11, 2014;
- address issues raised in the course of approving District Map Amendment G-956;
- and generally amend the Zoning Ordinance that will be in effect on October 30, 2014.

The majority of ZTA No. 14-09 consists of language clarifications, error corrections, and ZTAs adopted after March 11, 2014. However, ZTA No. 14-09 would make some substantive changes to the new Zoning Ordinance; these are noted as footnotes in the report by Council Staff. The Planning Board is in agreement with the revisions requested under ZTA No. 14-09 except as follows:

1. ZTA No. 14-09 proposes under Section 7.7.1 Exemptions to allow the County Council to approve a development plan amendment under the Zoning Ordinance in effect on October 29, 2014 for properties that were classified as floating zones on October 29, 2014, and were not

¹ The following three changes to ZTA 14-09 do not appear in the technical staff report, but were approved by the Planning Board during its review of the ZTA: (1) modification to language requiring recordation of FAR Averaging to allow recordation at record plat, if platting is required, (2) clarification of the language for duration of a site plan approval, and (3) addition of language from the current code regarding compliance with, and enforcement of a site plan. These changes are highlighted in ZTA No. 14-09.

subject to any binding elements. The Board proposes modifying this language to allow all properties classified in a floating zone on October 29, 2014 to expand up to the limits of the zoning in effect on October 29, 2014, regardless of whether the development plan contains binding elements. This modification would provide the same process for expansion of development on all properties classified as floating zones prior to District Map Amendment G-956, and would mirror how expansions/development plan amendments are allowed for floating zones under the current code.

2. The Planning Board recommends changing the density allocation of the CRT zone. This change allows the CRT zone to be mapped at a density of 0.25 FAR, rather than requiring that the CRT zone be mapped at a density of at least 0.5 FAR. The modification is necessary due to the C-4 zone translation in DMA G-956. The C-4 zone translates to the CRT zone; however, the C-4 zone limits density to 0.25 FAR in certain circumstances. To accommodate the C-4 zone translation to 0.25 FAR, the CRT zone needs to be amended so that the C-4 translations can be mapped at the appropriate density.

3. The Planning Board recommends modifying or adding language based on correspondence received from the Office of Zoning and Administrative Hearings (OZAH) and Board of Appeals (BOA) following the introduction of ZTA No. 14-09. The Office of Zoning and Administrative Hearings recently submitted to the Council proposed revisions to their Rules of Procedure. The Technical Staff Report outlines changes that would ensure the adopted code is consistent with OZAH's revised Rules of Procedure. In addition, the Board of Appeals submitted a list of proposed revisions to be considered as part of ZTA No. 14-09. These recommendations are also summarized in the Technical Staff Report. The Planning Board discussed these modifications and agreed with Planning Staff's recommendations which differ in certain respects from those submitted by OZAH.

The Planning Board believes that ZTA No. 14-09 provides necessary updates and clarifications to the new Zoning Ordinance. ZTA No. 14-09 also enhances the role of the new Zoning Ordinance as a tool to help achieve goals in community plans.

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, September 4, 2014.



Casey Anderson
Chair

CA:PD

85



Zoning Text Amendment (ZTA) No. 14-09, Zoning Ordinance Rewrite – Updates, Clarifications, and Corrections

- GR** Greg Russ, Planner Coordinator, gregory.russ@montgomeryplanning.org, (301) 495-2174
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- PD** Pamela Dunn, Acting Chief, Functional Planning and Policy, pamela.dunn@montgomeryplanning.org (301) 650-5649

Completed: 8/28/14

Description

ZTA 14-09 would amend the new zoning ordinance, which is effective October 30, 2014, and was approved by the County Council on March 4, 2014. The purpose of the ZTA is to:

1. clarify language and correct errors;
2. add the substance of text amendments approved by Council since March 11, 2014;
3. address issues raised in the course of approving District Map Amendment G-956;
4. and generally amend the Zoning Ordinance that will be in effect on October 30, 2014.

Summary

Staff recommends approval, with modifications, of ZTA 14-09. The modifications include clarifications and corrections based on further review of the new zoning code by staff, the Office of Zoning and Administrative Hearings, and the Board of Appeals. Staff also recommends plain language edits and updates to section references.

Background/Analysis

ZTA 13-04, the new zoning code, was adopted by the County Council on March 5, 2014. On October 30, 2014, ZTA 13-04 becomes effective and replaces the current zoning code. Several circumstances warrant changes to the new code before its effective date:

- Since March 5, six ZTAs¹ were adopted by the County Council in the format of the current zoning code. These ZTAs need to be modified to fit the format of the new code.
- During review and approval of DMA G-956, County Council directed staff to include language in the ZTA.

¹ ZTA 14-01, Parking Design - Charging Stations; ZTA 14-02, Exemptions - Solar Panels; ZTA 14-03, Overlay Zone – Clarksburg; ZTA 14-05, Health Clubs - C-1 Zone; ZTA 14-06, Rural Village Overlay zones - site plan requirements – exceptions; and ZTA 14-07 Accessory Commercial Kitchen – Standards.

- Further review of the new zoning code and its implications by Council staff, Planning staff, and other stakeholders.

Planning and Council staff worked cooperatively on most of the ZTA language, except as indicated below.

Addition of ZTAs Adopted After March 4, 2014

- Addition of Section 4.9.4. (Clarksburg East Environmental Overlay Zone) and Section 4.9.5. (Clarksburg West Environmental Overlay Zone) to add the substance of ZTA 14-03, adopted by the County Council on July 15, 2014. The addition of the two Overlay zones necessitates changes to the Table of Contents, additions to Section 2.1.3. (Establishment of Zones); and changes to section references in Section 4.2.1. (AR Zone), Section 4.7.3.F.6. (Transferable Development Right), and Division 4.9 (Overlay zones).
- Addition of language to Section 3.5.10.E (Health Clubs Facilities) to add the substance of ZTA 14-05, adopted by the County Council on July 22, 2014.
- Modification of Section 3.5.14.D (Commercial Kitchen) to add the substance of ZTA 14-07, adopted by the County Council on July 22, 2014.
- Modification of Section 3.7.2.B.2 (Solar Collection System), Section 4.1.7.B.5.c (Encroachment for Solar Panels), and Section 4.1.7.C (Height Encroachments) to add the substance of ZTA 14-02, adopted by the County Council on April 22, 2014.
- Addition of language to Section 4.9.12 (Rural Village Center (RVC) Overlay Zone) to add the substance of ZTA 14-06, adopted by the County Council on July 22, 2014.
- Addition of Section 6.2.3.E (Spaces for Charging Electric Vehicles) and Section 6.2.5.F (Spaces for Charging Electric Vehicles) to add the substance of ZTA 14-01, adopted by the County Council on April 22, 2014.

Language Clarification and Error Correction

- Change any reference to a 'primary road' to a 'primary residential road' for consistency with Chapter 49 (Section 3.2.10, Section 3.2.12, Section 3.4.2, Section 3.5.7, Section 3.5.10.G, and Section 3.5.10.H).
- Addition of Section 1.4.1.L (Use of "Section") to clarify that the code uses "Section" to refer to subsections.
- Modifications to Section 1.4.2 (Specific Terms and Phrases Defined):
 - Changes to the definition of *Gross Floor Area* to clarify that:
 - floor space used for mechanical equipment is not included as gross floor area for the purposes of calculating FAR in the LSC and Industrial zones, and
 - gross floor area does not include any type of parking for the purposes of calculating FAR.
 - Changes to the definitions of *Impervious Surface* and *Permeable Area* for consistency with the definition of *Impervious Surface* in Chapter 19 of the County Code. The term "road shoulder" was removed from the definition because it is redundant with other

language in the definition; however, a "road shoulder" used by or for motor vehicles or heavy commercial equipment continues to be considered an impervious surface.

- Modification to Section 1.4.2 (Specific Terms and Phrases Defined), Section 4.5.3.C (CRN, CRT, CR Zones, Standard Method Development Standards), and Section 4.5.4.B.2.c (Optional Method Development Standards) that allow up to 10% of the floor area for an historic resource to not count as FAR in only the CR zone, which is consistent with the current code.
 - Staff recommends a further modification of language to Section 4.5.4.B.2.c. to clarify that this provision applies to a designated historic resource.
- Modification to Section 2.2.1.A (Adoption of Zoning Maps) and Section 2.2.1.C (Changes to be Recorded on Digital Zoning Layer), added by Council staff, to clarify that the Planning Department must file an offline digital copy of the digital map and must provide a digital copy of the District Council approved map to the Hearing Examiner, and the clerk of the Circuit Court when the new zoning code becomes effective and for any subsequent change to the zoning map. This change is consistent with State law.²
- Addition of Section 2.2.1.F (Zoning on October 29, 2014) to clarify that a property's zoning on October 29, 2014 can be determined by a digital zoning map.
- Addition of language to Section 3.3.2.E.2 (Residential Care Facility) to clarify that a conditional use for a *Residential Care Facility* in a Residential Multi-Unit zone should use the development standards of the apartment building instead of the development standards of the "Detached House or ... a Conditional Use allowed in the zone" except when modified by 3.3.2.E.2.c. This change allows a *Residential Care Facility* to develop in the R-10, R-20, or R-30 zones in a manner consistent with the current zoning code.
- Modification of Section 3.5.11.B.2.a.v (Retail/Service Establishment) to remove certain words for consistency with similar language in other sections of the code.
- Modification of Section 3.6.8.E (Storage Facility) to allow outdoor storage, and storage facilities above 10,000 sf, to exist and expand in the EOF zone consistent with the current I-3 zone.
- Modification of Section 4.1.8.A.1 (Setback Compatibility) to clarify the minimum setback required for a building that is not subject to the Setback Compatibility standards of this section.
- Deletion of Section 4.1.8.B.2.c (Height Compatibility) as it is redundant.
- Correction of typos in the headers of Division 4.4 (Residential zones).
- Addition of Section 4.5.2.B.4, Section 4.6.2.B.4, and Section 4.8.2.B.4 (FAR Averaging) to clarify that an applicant must record density transfers in the Maryland Land Records. This addition makes the FAR Averaging provisions consistent with the recordation procedures required with density transfers in the CBD zones currently.
- Addition of Section 4.6.2.C.2.b (Special Provisions for "T" Zones Translated from Certain Zones) to allow a building in the LSC zone to increase height and density to provide workforce housing. This addition is consistent with a provision from the current code.
- Additions and modifications to Section 4.9.14. (Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone) to more closely match the current code. After consultation

² Maryland Code, Land Use Article §22-115

with the city of Takoma Park, the County Council instructed staff to include this language during the adoption of DMA G-956.

- Addition of a Floating zone equivalency table to Section 5.1.3.B (Applicability of Floating Zones). This table provides a translation for floating zones available under the current code that can no longer be mapped to new property after October 30, 2014, but may be recommended in a master plan.
- Correction of typo in Section 6.2.3.I.2.c.i(a) (Adjustments to Vehicle Parking for Religious Assembly).
- Addition of language to Section 7.3.3.E (Necessary Findings for Sketch Plan) and Section 7.3.4.E (Necessary Findings for Site Plan) to clarify that a development on a property that was classified as a floating zone on October 29, 2014 must satisfy the binding elements and green area requirement of the floating zone in effect on October 29, 2014. Also, addition of language to Section 7.7.1.B.5 (Development with a Development Plan or Schematic Development Plan Approved before October 30, 2014) to clarify that a change in the binding elements or green area requirements is only allowed if the property is rezoned by SMA or LMA, or if a binding element is changed by a development plan amendment under the procedures of the zoning code in effect on October 29, 2014.³
- Modification of Section 7.4.1.C.3 (Review and Recommendation for Building Permit) to require that DPS submit a building permit application to the Planning Department if the application contains a request to expand a residential structure by more than 50% of the gross floor area. This modification reflects current practice.
- Addition of language to Section 7.7.1.A.1 (Site Design) that requires a structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 to be legal in order to be deemed conforming under the new zoning code. This addition was made by Council staff at the request of the County Attorney's office.
- A technical correction of the DMA number in Section 7.7.1.B.1.
- Addition of Section 7.7.1.D.6 (Exempted Lots and Parcels in the RE-2C Zone), Section 7.7.1.D.7 (Exempted Lots and Parcels in the Rural Zone), and Section 7.7.1.D.8 (Exempted Lots and Parcels in the Rural Cluster Zone). This language preserves the ability under the current code that allows a property owner to create a child lot under certain circumstances.
- Council staff added language to Section 7.7.2.B (Abandonment of Use) to explain that if a nonconforming use is abandoned it may not be reestablished unless it is a historic use.
- Modification of Section 8.1.2 (Modification of Zones) allows a development plan amendment or schematic development plan amendment for a property classified in one of the zones in Article 59-8 to follow the procedures of the code in effect on October 29, 2014.
- Addition of Section 8.3.6.C.2.a (Coverage and Public Open Space in the PCC zone) to limit the building coverage to 30% or 40%. This language was inadvertently left out of the adopted code.

Substantive Changes

³ Retaining the green area requirement of the current code is more than a clarification; however, the County Council requested this modification during the adoption of DMA G-956.

- Addition of language to Section 3.5.8.A (Life Sciences) that includes a *Hospital and its accessory uses* in the definition of *Life Sciences*. Also, removed language from Section 4.6.3.D.2.b (LSC Zone Standard Method Lot and Density) and Section 4.6.4.B.2.d.i.(a) that is not necessary if *Life Sciences* includes a *Hospital*.
- Modification of Section 3.6.5 (Mining and Excavation), added by Council staff, to address any potential for mining activities not solely related to mineral extraction.
- Addition of Section 4.9.11.C.4 (Ripley/South Silver Spring Overlay zone) to allow projects up to 1.0 FAR to develop under standard method if the property is within the RSS Overlay zone. The Fenton Village Overlay zone allows for a similar standard.
- A modification, by Council staff, of Sec. 7.7.1.A.2 to make a Registered Living Unit existing on October 29, 2014 nonconforming. Council staff also added language to Section 7.7.2 (Abandonment of Use) allowing a Registered Living Unit to be abandoned, removed, or terminated under the code in effect on October 29, 2014.
- Modification of Section 7.7.1.C (Expansion of Floor Area Existing on October 30, 2014) to allow Council to approve a development plan amendment under the zoning code in effect on October 29, 2014 for properties that were classified as floating zones on October 29, 2014, and not subject to any binding elements. This language was added by Council staff.
 - Planning Department Staff recommends allowing all property, whose zoning on October 29, 2014 was the result of a Local Map Amendment, to expand up to the limits of the zoning in effect on October 29, 2014, regardless of whether the development plan contains binding elements. This modification would provide the same process for expansion of development on all properties classified in floating zones prior to the DMA. This process would mirror how expansions/development plan amendments are allowed for floating zones under the current code.

Planning Department Staff Proposed Modifications to ZTA 14-09⁴

Substantive Changes

- Modification of Section 4.5.2.A.3 (Density and Height Allocation of the Commercial/Residential zones) to allow the CRT zone to be mapped at a density of 0.25 FAR, rather than requiring that the CRT zone be mapped at a density of at least 0.5 FAR. This modification is necessary because of the C-4 zone translation in DMA G-956. The C-4 zone translates to the CRT zone, and the C-4 zone limits density to 0.25 FAR (although it allows higher density under certain circumstances).

Language Clarification and Error Correction

- Plain English language edits and necessary updates to section references.
- Modification of Section 4.1.8.A.2 (Setback Compatibility Requirements) to clarify that the minimum setback required is as noted in the table.

⁴ Modifications proposed by Planning Department staff for Section 4.5.4.B.2.c and Section 7.7.1.C are discussed above.

- Modification of Section 4.1.8.B (Height Compatibility) to remove the angular plan requirement when abutting a Residential Multi-Unit zone since the height for apartment buildings in some of the Residential Multi-Unit zones can be as high as 80' or 100'.
- Addition to Section 4.4.2.A.4 (Optional Method MPDU Development) to allow developments of less than 20 units that voluntarily provide 12.5% MPDUs to not have to meet the minimum usable area requirement. This is consistent with Optional Method MPDU development in the current zoning code.
- Modification of Section 4.4.1.A (Established Building Line) to clarify how to proceed when a lot is subject to the requirements of the Established Building Line.
- Addition to Section 4.9.11.C.1.a (Ripley/South Silver Spring Overlay Zone) to clarify that a CR property mapped at 200 feet within the Ripley Street Overlay zone must provide ground floor retail, or the maximum building height is 145 feet.
- Addition to Section 6.2.3.E (Bicycle Parking), to clarify that the maximum for bicycle parking spaces is the maximum that can be required of an applicant, but that the applicant can choose to exceed it.
- Addition to Section 7.7.2.B (Nonconforming Use- Abandonment of Use) to clarify that a lawful nonconforming use and a use deemed to be conforming under 7.7.1.A.2 get the same treatment if the use is abandoned.

Recommendations from the Office of Zoning and Administrative Hearings for Modifications to ZTA 14-09

Planning staff agrees with the following recommendations and has included the applicable modifications:

- Modify the submittal requirements for a Local Map Amendment application to include a legal description of the property and a certified zoning map.
- Modify Section 7.3.1.K.2.b (Minor Amendment to a Conditional Use) to allow for the issuance of a resolution by the Board of Appeals, or the issuance of a decision by the Hearing Examiner, as applicable.
- Require an NRI/FSD with a Local Map Amendment application
 - Planning Staff agrees with clarifying what is meant by "existing site conditions and vicinity" but disagrees that a full NRI/FSD is needed at rezoning. The application requirements for a Local Map Amendment in the new code were intentionally modified to help streamline the review process. The September 13, 2013 staff memo for PHED Committee Worksession #8, Administration and Procedures noted: *It is the intent of these changes to not only streamline the process, but rationalize the review requirements. Every Local Map Amendment for a Floating zone is followed by a site plan(s), which provides a detailed review including separate findings on master plan and neighborhood compatibility, adequacy of open space and circulation, and conformance with environmental regulations among other topics.* To clarify this submittal

requirement, Planning staff recommends modifying the language to include certain components of an NRI.

Recommendations from the Board of Appeals for modifications to ZTA 14-09⁵

Planning staff agrees with the following recommendations and has included the applicable modifications:

- Modify Section 7.3.1.F.2.a.i (Conditional Use-Board of Appeals Decision) to reflect that the Board members not present for oral argument should not have to read the transcripts of the hearing and review all exhibits introduced at the hearing, but rather should read and sign the transcript of the oral argument.
- Correct a typo in Section 7.3.1.F.2.b (Conditional Use-Board of Appeals Decision).
- Restructure Section 7.3.2.E (Necessary Findings- Variance) to indicate that to grant a variance, the Board has to find either that there is a taking, or that a property meets at least one of the criteria in Section 7.3.2.E.2 and meets 7.3.2.E.3 – 6 (inclusive).
 - Planning staff agrees with the intent of the restructuring, but not the exact method of restructuring proposed by the Board of Appeals. Planning staff has included language that meets the intent of this recommendation.
- Modify Section 7.3.2.H (Recording Procedures) to state that the Board of Appeals, not the applicant, must file an approved variance in the land records.
- Amend Section 7.4.4.C.6 (Sign Variance) to include the Hearing Examiner as an entity that may have approved a sign in connection with a conditional use.
- Add a line for administrative appeals to the chart in Section 7.5.1 (Notice Requirements) and add DPS, SHA, and the Board of Education to the list of persons/entities that receive notice of a hearing in Section 7.5.2.E (Hearing Notice). These additions would be consistent with the current code, and the Board of Appeals has confirmed that these agencies wish to continue receiving such notice.
 - Planning staff agrees with the intent of the modification, but proposes to add relevant language instead to Section 7.6.1.C (Filing of Appeals to the Board of Appeals) to indicate that administrative appeals require this type of noticing.

Planning staff does not agree with the following recommendation:

- Amend Section 7.3.2.E.6 (Necessary Findings- Variance) to broaden the scope of properties whose use and enjoyment cannot be affected by the grant of the variance so that it parallels Section 59-G-3.1(d) of the current zoning ordinance.
 - Planning staff does not agree with this recommendation. The Board of Appeals' proposed language refers to "adjoining or neighboring," terms which Planning staff feels are overly broad and vague and are not defined in the new zoning code.

⁵ Refer to Appendix for ZTA language proposed by the Board of Appeals.

- **Modify Sections 7.3.2.F.2 (Decision- Variance) and 7.3.2.G.1 (Duration of Approval- Variance) to relocate the sentence at the end of Section 7.3.2.F.2 to the end of Section 7.3.2.G.1. In light of current Section 59-A-4.53(d), the Board of Appeals believes this is a technical correction, indicating that the time for implementing a variance runs from the date of the final court order in any appeal.**
 - Planning staff does not agree with this modification because it is inconsistent with the location of identical language in other approvals granted in Division 7.2 and Division 7.3.
- **Add language to Section 7.6.1.C.1.a (Filing of Appeals to the Board of Appeals) to clarify that a person cannot bring an administrative appeal of a conditional use decision to the Board of Appeals under this section. Appeals under this section are de novo. The change reflects the Board of Appeals' understanding that the Council did not intend for the Board to hear appeals of Hearing Examiner decisions de novo.**
 - Planning staff does not think the additional language is necessary; the appeal of a conditional use is not an "administrative appeal" because conditional uses are regulatory approvals. Appeals of conditional uses are covered under Section 7.3.1.F of the new zoning ordinance.

Attachments

1. ZTA 14-09, as modified by staff

**WOODMOOR-PINECREST CITIZENS' ASSOCIATION
Silver Spring, MD**

County Council Public Hearing ZTA 14-09, September 9, 2014

Concerning: Zoning Ordinance Rewrite –Updates, Clarifications, and Corrections

I'm Harriet Quinn, Vice-President of the Woodmoor-Pinecrest Citizens' Association which represents about 1,200 homes and 3,000 residents in Silver Spring. I've also served as Chair our Committee on Planning and Transportation issues for the last 7 years. I appreciate this opportunity to speak to you regarding this ZTA which proposes corrections as a result of issues raised during discussions of the zoning rewrite and District Map Amendment.

As you may know, some of the homes our neighborhood adjoin the Woodmoor Shopping Center properties which have been an important part of our community since 1937. Over the years, our neighborhood has worked closely with the various property owners as well as the Planning Department on expansion plans and zoning matters. During our last Master Plan process, some of the parcels were downzoned to C-4 reflecting the Council's goal of maintaining it as a neighborhood serving retail center, while other adjoining R-60 and Commercial Transitional (C-T) parcels were upzoned to C-4, for "limited commercial" use.

We are requesting a correction to the pending zoning height and density translation because the Shopping Center is not one property but rather 5 separate C-4 parcels zoned for "limited commercial" use. Each parcel is less than 2 acres. The maximum height and density in the C- 4 zone for parcels less than 2 acres is 30 feet and .25 FAR.

The language of the Zoning Ordinance states:

59-C-4.372. Building height.

No building shall exceed the following height limits:

- Stories-2.
- Feet-30

59-C-4.373. Floor area.

The total floor area of buildings, including cellar space not used for storage, shall not exceed 0.25 FAR

59-C-4.378. Special regulations-C-4 zone (optional method)

- (a) **Minimum Area of Lot. The optional method of development shall not be permitted on a lot or parcel of land which has a total area of less than 2 acres.**
- (b) **Development Density**
 - (1) **A maximum FAR of 0.75 may be permitted if the Planning Board finds that an increased amount of gross floor area, above a FAR of 0.25, would be compatible with the intensity of surrounding existing and planned land uses, would not have an adverse impact on existing and planned public facilities in the area, and would be consistent with the land use recommendations and guidelines of the applicable approved and adopted master or sector plan.**

The Planning Staff has recommended the higher height and density for each of these parcels.

During this process, Planning Staff divided the 18 C-4 properties in the County, into two groups: those under 2 acres and those over 2 acres. These parcels should have been placed in the under 2 acre group and we respectfully request that it be corrected. -- These parcels are not one property and while they are currently under common ownership they have not always been, and may not be in the future.

Under previous development applications, (as recently as 2007) the Planning Department correctly treated the Shopping Center as separate parcels with maximum height and density of 30 feet and .25 FAR. We ask that the pending translation be corrected to reflect the current maximum allowed. If not corrected this would authorize each

individual parcel to redevelop with up to three times the current maximum density allowed **without going through the subdivision or rezoning processes**: .75 FAR and 40 feet which is currently allowed only under the optional method for parcels of 2 acres or more.

Authorizing tripling the density for each individual parcel, which is an upzoning without a public rezoning process, goes beyond the intent of the translation. The zone translation was supposed to be to the same current maximum height and density for those commercial properties that have not yet been through the area master plan process. The County Council had stated from the beginning of the adoption of the CR zones that the new zones would only be applied through an area master/sector plan. Planning Staff later asserted that the Council should not wait until master plans are taken up to apply the new zones because it would be too cumbersome for staff to work with the new zones and the old zones simultaneously. Therefore, staff stated that those properties not yet considered through area master/sector plans would be translated to the new CR zones using existing maximum heights and densities.

Our master plan is almost 20 years old so these parcels will be looked again in the near future which would be the appropriate public process (other than a rezoning process) to consider additional height and density.

We have retained counsel for this matter and Mr. David Brown will assist us with this as it is taken up at the PHED Committee.

We thank you very much for your consideration of this request for correction.



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TESTIMONY OF WILLIAM KOMINERS
PUBLIC HEARING ON ZONING TEXT AMENDMENT NO. 14-09
(September 9, 2014)

Good Evening President Rice and Members of the Council. My name is Bill Kominers and I am an attorney with Lerch, Early & Brewer in Bethesda.

First, I ask you to plan to process successors of ZTA 14-09 on a frequent basis in the future. I believe we are nowhere near identifying all the elements that will need clarification or correction. This ZTA is a good first step, but plan for more.

My testimony is about elements that are not in this ZTA, but should be.

1. Site Plan Review—Ability to Modify and Adjust Standards.

In the non-residential zones, there needs to be a mechanism to solve practical problems that arise in the application of the Ordinance standards to individual sites. This should be undertaken through the site plan review process and not through variances.

The standards and Articles 4 and Article 6 are very strict and often inflexible. Especially under the standard method of development. At the same time, all properties are unique and do not necessarily appear as the neat polygons drawn in the Rewrite’s diagrams. Sometimes, due to site configuration, utilities, environmental considerations, or others, one just cannot meet some of the standards. And, in many of those cases, to meet the standards strictly would not make good sense or good design.

During site plan review, the Planning Board should be able to modify or adjust all of the standards in Articles 4 and 6, with the exception of density and height. (This could also cause applicants to elect to use site plan review when it is not otherwise required.) Probably, this issue is most applicable to standard method development, but can benefit optional as well.

Section 4.5.4.B.3 (page 4-81) of the CR Zone optional method already allows certain setbacks to be set by the site plan approval process. But why should only those particular setbacks be the beneficiary of this adjustment ability? Why not other design elements, such as: coverage, frontage, transparency, massing or building orientation? These are all the kinds of elements that site plan review is designed to address. Site plan review would address adjustment of these elements in the same regulatory place, in the same plan, and by the same deciding body—the Planning Board—rather than in two

different processes and standards (i.e., the Planning Board and Board of Appeals/Hearing Examiner).

To accomplish this I suggest that you add the following text:

“Except for the density and height established by the zone, the standards of Article 4 and Article 6 may be established by the site plan approval process.”

An important element in this proposed text is that the Planning Board authority is discretionary. By saying that adjustments to the standards “may be established” through site plan review, the Board is allowed to make an adjustment or to retain use of the original standard.

2. Municipal Shared Parking Program.

The Municipal Shared Parking Program (the “Shared Program”) was created when the Council created the CRT and CRN Zones. These Zones, and the Shared Program, went with lower density areas, like the Town of Kensington. There was a desire not to have to provide all the parking on site for each half acre or less redevelopment. Instead, the legislation allowed parking to be shared in unified locations and have people “park and walk” throughout the Town. When created, the shared parking program was very clearly authorized and is set forth in the current Section 59-C-15.632. As a result, a lender can look at that provision and be assured that a project has an unfettered right to meet parking standards through offsite parking under the Shared Program. Under the Zoning Rewrite, that specific provision and that assurance, is lost.

From discussions with Planning Board Staff, the intent is that the Shared Program can be implemented by the Alternate Compliance provisions of Section 6.8 (page 6-44). However, this Alternative Compliance has very difficult standards, that, in many instances I believe, projects could not meet. In addition, it is a far more subjective, discretionary process—no certainty.

The provision in Section 59-C-15.632 is far more clear and certain. In no uncertain terms it states that “parking requirements must be met by any one or a combination of the following [including]...participating in a shared parking program established by municipal resolution...” There were no special standards, no need to demonstrate this or that. Simply work with the municipality to participate.

To return to the certainty and clarity of the current ordinance on this issue, as well as making clear the availability of this methodology for municipalities, I suggest that you add a new Section 6.8.2 as follows:

Section 6.8.2 Municipal Shared Parking Program, Alternative Method of Compliance

- A. The applicable deciding body may approve an alternative method of compliance with the requirements of Division 6.2, if it determines that the property is within the boundary of a duly established Municipal Shared Parking Program, and the municipality confirms that the property will participate in that Program in order to satisfy the intent of the Division.
- B. Participation in the Municipal Shared Parking Program will satisfy the requirements of Section 6.2.3.F.

3. Sign Concept Plan.

A sign concept plan is currently allowed under Section 59-F. But even in the current ordinance, the use of the sign concept plan is not as clear as it could be. The definition has been generally carried forward in the Rewrite, but the opportunities for use remain obscure, as is its processing as a variance by the Sign Review Board.

The approach of developing a sign concept plan for large, multi-tenant/multi-owner development has been very successful, especially in shopping centers and business parks where more than the normal maximum signage is desired. A unified signage program is established for the project, thus avoiding the need to seek individual variances for every individual sign.

Both new and old ordinances authorize a sign concept plan only by inference; stating that for commercial or industrial areas the total sign area is limited to 800 square feet, “without submitting a sign concept plan to DPS...” (Section 6.7.9.A; page 6-40). Authority for use of the sign concept plan should be made more clear.

4. Navigating the New Ordinance.

Finally, I have a comment on the physical configuration of the Rewrite document. The organization of the Rewrite often results in a lengthy string of subsections to identify particular provisions, usually requiring four or more numbers, letters, and symbols to identify. As a result, there are often multiple page spreads in the Rewrite that never have the actual section number shown on either page (for example, see pages 3-22 through 3-23, or 3-26 through 3-31). As one looks through the Rewrite trying to find the proper section, it is very hard to know where you are and where you want to be.

The current Ordinance has in the upper outside corner of the page, the section number reference for the text that is on that page. I suggest that you similarly put the section numbers on the pages of the Rewrite (on the side away from the binding). This will help people trying to find the relevant section by the section number. This would be

like placing the starting and ending names on the top of the pages of the phonebook or the starting and ending words at the top pages of the dictionary. That is, for those of us who still know what a phonebook and a dictionary might be.

Thank you for your attention. I look forward to further discussions during your worksessions.



**TESTIMONY OF
DAVID W. BROWN
ON ZTA-14-09
ON BEHALF OF THE PROMENADE**

September 9, 2014

Good evening; my name is David W. Brown of the law firm of Knopf & Brown, here tonight of behalf of The Promenade, a condominium on Pooks Hill in Bethesda, to speak in support of ZTA 14-09’s changes to sections 59-7.3.3 and 59-7.3.4 of the new Zoning Ordinance. These changes will preserve the green area requirement for properties reclassified by Local Map Amendment where any optional method redevelopment is subject to sketch plan or site plan requirements.

This part of the ZTA arises from one of the last issues the Council dealt with in deciding to approve District Map Amendment G-956 on July 15, 2014—the rezoning of the Pooks Hill Marriott property, which is adjacent to The Promenade. A principal stated purpose of the DMA was to implement the simplified and modernized array of zoning classifications in the new Zoning Ordinance without increasing the allowed density on any property whose zoning was being changed. For the Marriott property, however, in part due to elimination of the green area requirement under which it was fully developed in the H-M zone some decades ago, the DMA would have facilitated a great deal of additional development on the property that could not have been undertaken without a formal rezoning process.

In the end, my client agreed to the DMA change-of-zone-classification for the Marriott property--from the H-M zone (being eliminated) to the CR zone--when the

property owner agreed to support post-DMA preservation of the green area requirement for the entire Marriott property. At the urging of a number of Council members, who were of considerable help in the process, we worked out an agreement with the property owner over the size and placement of new apartment buildings on the Marriott property assuming continued compliance with the H-M zone 45% green area requirement. Especially helpful were Council members' expressions of support for preserving the green area requirement as matters progressed on the DMA. This support, we believe, springs from Council's desire to implement the DMA without materially adding to or detracting from the development potential of any property subject to rezoning by the DMA. What the ZTA does is keep in place the green area requirement for redevelopment of properties where an earlier rezoning imposed it. That applies to the contemplated redevelopment of the Marriott property, and it is sound land use policy worthy of the Council's support.

You have today received a letter from the owner of the part of the Marriott property where more development is contemplated. As we agreed with them, that letter expresses support for the continuation of the green area requirement on the Marriott property. The letter goes a step further and asks that the ZTA be clarified so as to not require the 45% green area land to include public open space as otherwise required in the CR zone. The Promenade is not obliged by its agreement to support this clarification, but has no objection to it, as our negotiations were predicated on compliance with the 45% green area requirement generally, not with any concern or wish that a portion of it be public open space.

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September 9, 2014

Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

RE: Zoning Ordinance Text Amendment No. 14-09;
Proposed Expansion of scope of Section 59.4.4.8.C.1.a

Dear President Rice and Members of the County Council,

I am writing to you on behalf of the Anne R. Grosvenor Trust, the owner of a 2.72 acre parcel of land located at 5510 Grosvenor Lane, Bethesda, in the R-90 zone.

The purpose of this letter is to request that the District Council consider expanding the criteria for waiving the minimum acreage requirement established in Section 59.4.4.8.C.1.a in the new Zoning Ordinance for seeking approval of a cluster form of development.

In the current Zoning Ordinance, development under the cluster option in the R-90 zone is limited to tracts containing 5 or more acres. (Section 59-C-1.532) (unless the property is recommended for cluster development in the relevant area master plan----footnote #5) However, the current Zoning Ordinance provides for a waiver of this requirement.

In the existing Zoning Ordinance, there are two bases for a waiver. They are:

Section 59-C-1.526(a) [see attached Comparison chart]

A "compatible extension" of an abutting cluster development; and

Section 59-C-1.32, footnote 6 [see attached Comparison chart]

If the resulting form of development is "more desirable for environmental reasons."

By comparison, in the new Zoning Ordinance only one criteria for waiver of the minimum size for a cluster subdivision is offered:

Section 4.4.8.C.1.a [see attached Comparison chart]

Cluster development would be more suitable than the standard method form of development "for environmental reasons."

What has happened in the re-write of the Zoning Ordinance is that two standards specified in the current Zoning Ordinance allowing a waiver of minimum acreage requirements as a prerequisite to the use of the cluster option have been reduced to only one criteria, that being the "environmentally superior" standard. This standard, in our opinion, is more difficult to achieve than the test set forth in the current Ordinance and is not, in fact, the criteria that is presently applicable in the R-90 zone.

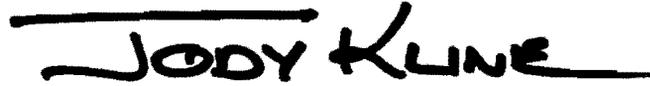
The Anne Grosvenor Trust asks that the Council expand the standard by which a waiver of the 5 acre minimum tract size can be granted by the Planning Board so that it is consistent with the criteria available in the existing Zoning Ordinance. The following amendment of Section 59.4.4.8.C.1.a would accomplish this goal.

"The Planning Board may allow development to proceed under optional method Cluster Development on a smaller size than allowed in Useable Area if the subject property is recommended for cluster development in a master plan, or if it finds that cluster development on a smaller site would be more suitable than standard method for environmental reasons or if the tract abuts an existing cluster development in the same zone and approval of the proposed subdivision will make possible a compatible extension thereof."

Thank you for your consideration of this request.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a bold, slightly slanted, sans-serif style. The "J" and "K" are particularly prominent, with the "K" having a long horizontal stroke that extends to the right.

Jody S. Kline

JSK/sf

CC: Jeff Zyontz
Pam Dunn
Matt Jones
Greg Russ
Anne Grosvenor Trust
Wayne Eig, Esq.

September 9, 2014

**COMPARISON OF ZONING ORDINANCE PROVISIONS
RELATING TO CLUSTERING IN RESIDENTIAL ZONES**

OLD ORDINANCE

Section 59-C-1.526 (a)

“(a) **In the same zone.** The planning board may waive the minimum areas specified in subsection 59-C-1.532 if the tract abuts an existing cluster development in the same zone and approval of the proposed subdivision will make possible a compatible extension thereof.”

Section 59-C-1.532, footnote 6

“[In the RE-2C and RE-1 zones] the minimum area requirement may be waived by the planning board upon a finding that the cluster development is more desirable for environmental reasons.”

NEW ORDINANCE

Section 4.4.8.C.1.a

“The Planning Board may allow development to proceed under optional method Cluster Development on a smaller size than allowed in Usable Area if the subject property is recommended for cluster development in a master plan or if it finds that cluster development on a smaller site would be more suitable than standard method development for environmental reasons.”

Law Offices Of
MILLER, MILLER & CANBY
MM&C
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September 9, 2014

Montgomery County Council President Craig Rice and
Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Ave
Rockville, Maryland 20850

RE: Zoning Text Amendment 14-09 (ZTA 14-09);
Support for Provision That Would Require Compliance with Green Area
Requirement of Previous H-M Zone on Pooks Hill Property;
Request for Further Clarifying Language re CR Zone’s Open Space Requirements

Dear Council President Rice and Members of the County Council,

The following is submitted on behalf of our clients, Pooks Hill JV, LLC, owners of the
“Development Parcel Unit” on the Pooks Hill Property located adjacent to the Pooks Hill
Marriott Hotel (“Hotel Unit”).

The Council may recall that as part of an agreement reached with the Promenade Towers
community regarding the specific ‘CR conversion zone’ to be placed on the Pooks Hill Property
under DMA G-956, our clients agreed to support an amendment to the Zoning Ordinance that
would require any development application filed pursuant to said agreed upon ‘CR conversion
zone’ to comply with the previous H-M zone’s green area requirement (i.e., 45 % of lot area).
This letter is to indicate said support for that aspect of ZTA 14-09 intended to deal with this
issue. The specific language is found on lines 1319-1333 of the text amendment (restated
below).

“5. Development with a Development Plan or Schematic Development Plan Approved before October 30, 2014

Any development allowed on property [subject to the binding elements of a District Council approved development plan or schematic development plan on October 30, 2014] whose zoning classification on October 29, 2014 was the result of a Local Map Amendment must satisfy [those binding elements] the green area requirements of the zone in effect on October 29, 2014 and any binding elements until [the property is]:

- a. the property is subject to a Sectional Map Amendment that implements a master plan approved after October 30, 2014;
- b. the property is rezoned by Local Map Amendment; or
- c. the binding element is revised by a [major] development plan amendment under the procedures in effect on October 29, 2014.”

While, as indicated above, our clients are in support of the above language, we would respectfully request inclusion of additional language that would clarify that the requirement to comply with the green area requirement of the previous zone would *fully satisfy compliance* with the CR zone’s open space requirement.

In the case of the Pooks Hill Property, the previous H-M zone’s green area requirement is 45% of the lot area, which, under the definitions of the previous Zoning Ordinance, can consist of *either* resident-only scenic or recreational areas (i.e., common open space) or publicly accessible scenic or recreational areas (i.e., public open space). There is no requirement that the 45% green area consist of one or the other in any particular amount. However, under the new CR conversion zone placed on the Pooks Hills Property by DMA G-956, there is a requirement that an ‘apartment-type’ development must comply with its open space requirement (which would be 10% of the lot area for the Pooks Hill Property) in a manner that provides “public use and enjoyment.” As such, absent any clarification, the Pooks Hill Project might be expected to comply with both the H-M zone and CR zone requirements by designing at least 10% of the 45% green area to be ‘publicly accessible’ space. While compliance with both requirements could be achieved without an impact to the site’s overall developable area, we do not believe that the Pooks Hill Property is well-suited for the type of ‘publicly accessible’ green area/open space normally required by the CR zone for apartment projects. As a private multi-family residential development located adjacent to existing high-rise residential communities, the apartments will not be arranged, designed or ‘signed’ to invite the general public onto the property. Furthermore, Pooks Hill Road, and the Pooks Hill area itself, is not planned to be a public destination nor is it a place that is oriented toward public events or public usage.

We expect that some portion of the project's 45% green area will undoubtedly comply with the CR zone's definition of 'public open space' just by the provision of improvements commonly required through the development review process such as pedestrian walkways adjacent to right-of-ways. However, we believe that a blanket 10% requirement might result in having to 'create' areas on the site that technically meet the CR zone's 'public open space' definition, but which in the long run will end up providing little benefit to either the general public or the project's residents. The addition of the following language to ZTA 14-09, shown in **bolded double-underline** below, we believe, would provide the necessary clarification and address our concerns:

**“5. Development with a Development Plan or Schematic Development Plan
Approved before October 30, 2014**

- a.** Any development allowed on property [subject to the binding elements of a District Council approved development plan or schematic development plan on October 30, 2014] whose zoning classification on October 29, 2014 was the result of a Local Map Amendment must satisfy [those binding elements] the green area requirements of the zone in effect on October 29, 2014 and any binding elements until [the property is]:
- i.** the property is subject to a Sectional Map Amendment that implements a master plan approved after October 30, 2014;
 - ii.** the property is rezoned by Local Map Amendment; or
 - iii.** the binding element is revised by a [major] development plan amendment under the procedures in effect on October 29, 2014.”
- b.** Any development that satisfies the green area requirements of the zone in effect on October 29, 2014 as required in Section 7.7.1.B.5.a. shall constitute satisfaction of any open space requirements otherwise required under current zoning.”

We have discussed this subject and shared the above language with counsel for the Promenade Towers community. We have been informed that they would not oppose the addition of clarifying language in ZTA 14-09 that would eliminate the need for 10% of the 45% green area on the Pooks Hill Property to be publicly accessible.

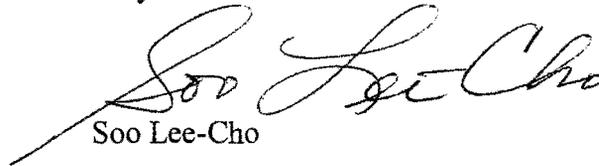
Thank you for your consideration of this matter.

Sincerely yours,

MILLER, MILLER & CANBY

JODY KLINE

Jody S. Kline


Soo Lee-Cho

cc: Jeff Zyontz
Gwen Wright
Rose Krasnow
Pam Dunn
Norman Knopf, Esquire
David Brown, Esquire
Quadrangle Development Corp.

TESTIMONY OF THE SHELTER GROUP
MONTGOMERY COUNTY COUNCIL
ZONING TEXT AMENDMENT NO. 14-09
ZONING ORDINANCE REWRITE –
UPDATES, CLARIFICATIONS AND CORRECTIONS

September 9, 2014

Good evening, Pat Harris with Lerch, Early & Brewer. I am testifying tonight on behalf of The Shelter Group (“Shelter”), a real estate company with expertise in multifamily and mixed income communities, affordable housing, and independent/assisted living for seniors. We are testifying regarding an oversight in the approved Zoning Ordinance Rewrite, which could impede certain standard method projects in the CR zones. That oversight involves the absence of any relief for projects that, due to existing or required easements, reservations or other encumbrances, are unable to comply with the "placement" standards in Section 4.5.3.C.3 (*i.e.*, Page 4-79) for building façades and/or surface parking areas.

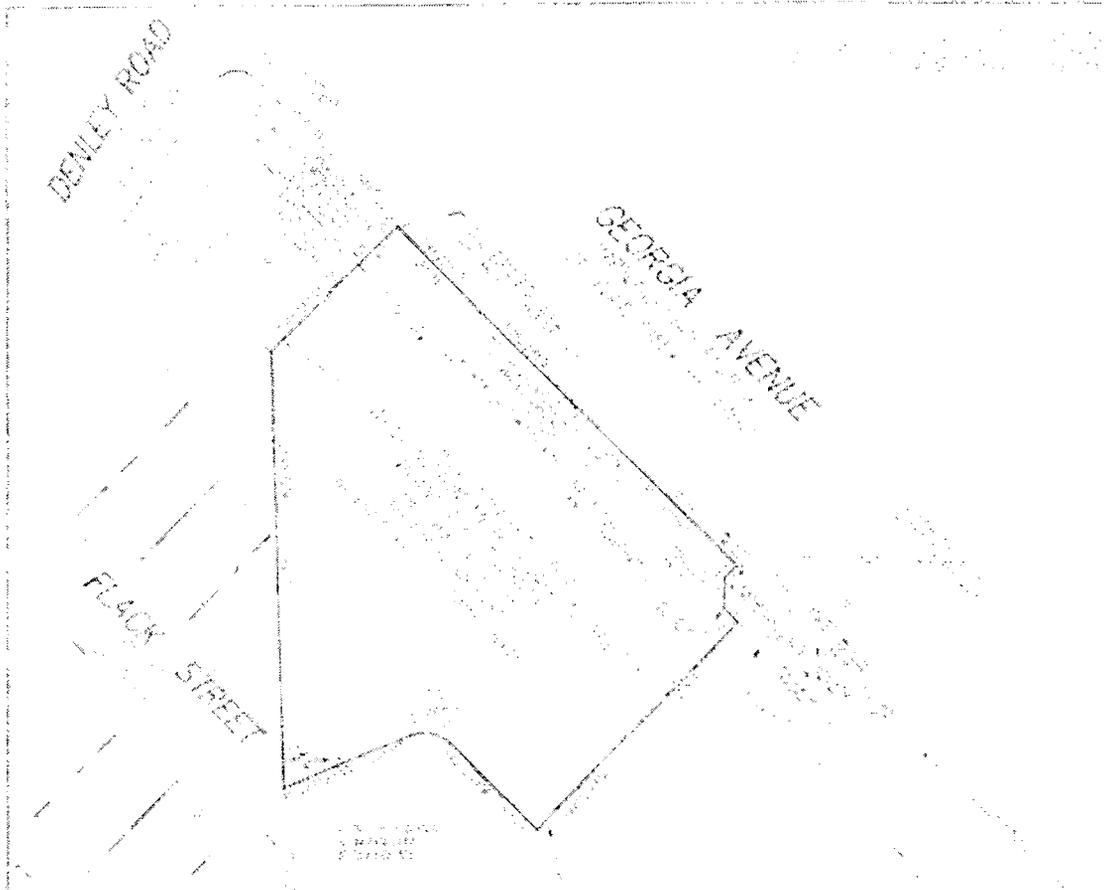
Let me first provide a little background. For almost two years, Shelter has been working with the WMATA, the DHCA, and Park and Planning Staff on plans to develop an age restricted, mixed income, apartment community with approximately 110 units, on CRN zoned property located adjacent to the WMATA parking garage on Georgia Avenue, across the street from the Metro station. Critically, 90% percent of the units in the community will be income restricted, providing much needed quality housing for seniors whose incomes do not exceed 60% of area median income.

The front of the property is encumbered by a 41± foot-wide easement for WMATA's Red Line Tunnel, which runs directly under the front portion of the site. Shelter and WMATA have been actively discussing the feasibility of constructing the proposed building within the easement area. However, if it is determined that the building cannot safely be constructed within the easement area Shelter will need to pursue an alternate design in order to move forward with the project. The alternate places the building outside of the easement area, and places surface parking in the front of the site, in order to provide on-site parking while maintaining required setbacks from abutting residential zones.

As you know, many requirements of the Zoning Ordinance Rewrite are innocuous in the abstract, but become problematic in application. In this case, for a standard method apartment building in the CRN Zone, the Zoning Ordinance Rewrite requires that 70 percent of the front building façade be located within 30 feet of the front property line, and prohibits the placement of surface parking within the front build-to-area. At the same time, the WMATA easement would prohibit this placement (Section 4.5.3.C.3). The Zoning Ordinance Rewrite provides no flexibility for alternative placements of buildings or parking for standard method projects in the CRN Zone, even where real world site constraints – like the WMATA easement – make compliance impossible. In contrast, the CR optional method does provide for flexibility in the application of these standards.

To address this problem, Shelter proposes modest amendments to the build-to and surface parking setback requirements for the CR zones, as well as to the definition of build-to area in Section 4.1.7.B.2 (*i.e.*, Page 4-7). These amendments – which are attached to our written testimony are narrow, and provide relief only where compliance is precluded by a necessary or required easement, reservation, or other encumbrance for transportation or utility infrastructure. Although minor in scope, these changes will have a meaningful impact where such adverse site conditions are present. The revision will help facilitate the development of critical projects such as Shelter’s that will provide needed housing right across from Metro for Montgomery County seniors with limited means.

We thank you for your consideration, and respectfully request your support.



Proposed Amendment

Page 4-7:

Section 4.1.7. Measurement and Exceptions

2. Build-to Area

Defined

- a. The build-to area is the area on the lot where a certain percentage of the front building façade must be located, measured as a range from the edge of the lot line.
- b. Except where otherwise provided in this Division, all structures and uses customarily allowed on the lot are allowed in the build-to area except a surface parking lot.

116

Page 4-79:

Section 4.5.3. Standard Method Development

C. CRN, CRT, and CR Zones, Standard Method Development Standards

3. Placement	Detached House	Duplex - Side	Duplex - Over	Townhouse	Apartment	Multi Use	General
Principal Building Setbacks (min)							
Front setback	5'	5'	5'	5'	0'	0'	0'
Side street setback	5'	5'	5'	5'	0'	0'	0'
Side setback, abutting Agricultural, Rural Residential, or Residential zones	6'	6'	6'	4'	See Section 4.1.8.A		
Side setback, abutting all other zones	4'	4'	4'	n/a	0'	0'	0'
Side setback, end unit	n/a	n/a	n/a	4'	n/a	n/a	n/a
Side setback between lot and site boundary	n/a	n/a	n/a	8'	n/a	n/a	n/a
Rear setback, abutting Agricultural,	15'	15'	15'	10'	See Section 4.1.8.A		

Rural Residential, or Residential zones							
Rear setback, abutting all other zones	15'	15'	15'	10'	0'	0'	0'
Rear setback, alley	4' or 20'	4' or 20'	4' or 20'	4' or 20'	4'	4'	4'
Rear setback between lot and site boundary	n/a	n/a	n/a	15'	n/a	n/a	n/a
Accessory Structure Setbacks (min)							
Front setback, behind front building line	5'	5'	5'	5'	0'	0'	0'
Side street setback	15'	15'	15'	15'	0'	0'	0'
Side setback	4'	4'	4'	4'	equal to Principal Building Setback		
Rear setback	4'	4'	4'	4'	equal to Principal Building Setback		
Rear setback, alley	4' or 20'	4' or 20'	4' or 20'	4' or 20'	4'	4'	4'
Parking setbacks for Surface Parking Lots (min)							
Front setback	n/a	n/a	n/a	n/a	must be behind front building line, unless building is precluded in front street build-to area		
Side street setback	n/a	n/a	n/a	n/a	must be behind front building line, unless building is precluded in front street build-to area		
Side setback	n/a	n/a	n/a	n/a	must accommodate landscaping required under Section 6.2.9		
Rear setback	n/a	n/a	n/a	n/a	must accommodate landscaping required under Section 6.2.9		
Rear setback, alley	n/a	n/a	n/a	n/a	0'	0'	0'
Built-to Area (BTA, max setback and min% of lot width)							
Front setback	n/a	n/a	n/a	15'	30'	15'	20'
Building in front street BTA, unless precluded by existing or required easement, reservation, or other encumbrance pertaining to transportation or utility infrastructure	n/a	n/a	n/a	70%	70%	70%	70%
Side street setback	n/a	n/a	n/a	n/a	30'	15'	20'
Building in side street BTA, unless precluded by existing or required easement, reservation, or other encumbrance pertaining to transportation or utility infrastructure	n/a	n/a	n/a	n/a	35%	35%	35%

* Proposed deletions ~~bracketed~~ in red font.

** Proposed amendments underlined in blue font.

Prepared Remarks
Steven H. Oram
Zoning in Friendship Heights
September 9, 2014

Re: Park Avenue Centre Change in Zoning – Use by Veterinary Clinic, Friendship Heights

My name is Steven Oram and in 1993, I moved our law firm to a condominium space I had purchased in Friendship Heights, Chevy Chase, at 4600 North Park Avenue, Plaza South. We are an estate and retirement planning boutique firm and many of our clients are elderly. Some of our clients require the use of our first floor disability entrance, which is directly adjacent to space known as Plaza West. In anticipation of a zoning change, the owner of the adjacent premises has executed a conditional lease to Plaza West to a Veterinary Eye Clinic.

Such a use would not be permitted as a matter of right at this time, and the use would currently require a Special Exception. The Special Exception Procedure would give neighbors the opportunity to object and give just cause as to why the Veterinary Clinic usage would not be in the best interest of the neighbors, other owners and guests, and the community. By changing the zoning to permit the use as a matter of right, the County is denying the neighbors the opportunity to show why the use would be objectionable. I request that the County Council modify the legislation to permit for a Veterinary Clinic in a residential area, such as Friendship Heights, only by approval through the Special Exception Process.

Recently, the adjacent owners met with the prospective tenant and admitted that their use would be a continuing nuisance, and that they could only address the issues we raised retroactively to minimize future issues. They said, "You cannot stop dogs from pooping, peeing, and barking." But in our residential neighborhood, such continuing nuisance impacts our invited guests and disturbs our right to the peace and quiet enjoyment of our property.

The following are of some of my concerns relative to the usage of the space as a Dog Clinic:

I. Safety – The adjacent spaces to this property are used by businesses that focus and cater to young people (pediatric eye doctors) and older people (estate and retirement planning, and estate administration). Multiple dogs in the courtyard separating these two spaces are a potential hazard, where a dog could react to children or older person not able to react quickly to avoid injury.

II. Noise – The adjacent units are separated merely by unsound proofed quarter-inch drywall. Multiple dogs barking and howling in adjacent premises on a daily basis is not

118

conducive to the permitted quiet enjoyment of the premises by us or our clients. The rear of Plaza West has a limited easement patio, which adjoins our firm's limited easement patio. Permitting a daily dog waiting and resting area there restricts the use of our patio. The dogs will be using their adjacent patio to urinate, poop, and to be stored awaiting treatment. Clearly this usage disturbs the neighbor's rights to enjoy their property.

III. Cleanliness – Older people cannot navigate around dog feces and urine puddles which by the very nature of the Clinic's customer would have to be present in the courtyard, sidewalk, and garage areas. The tenant has admitted their inability to prevent this from occurring, as it is in natural course for this to happen.

IV. Impact on the Rights of Animals – It is potentially unfair to the animals to provide a limited area for the dogs to take care of their daily duty. Allowing the dogs to urinate and poop on the condo's entrance and parking garage clearly denies the rights of elderly business invitees not to be exposed to animal's waste. There is no grass area for the animals to utilize.

It is not within the County Council's purview to monitor activity once use has been permitted by zoning. However, this change in zoning to deny adjacent owners the right to a Special Exception hearing is the equivalent of a taking of value and injurious to the use of the property. We urge the County Council to specifically require that animal and veterinary usage of premises in Friendship Heights only be permitted by Special Exception, with input from adjoining landowners.



ideas that work

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Zoning Text Amendment 14-09
Zoning Ordinance Rewrite
Testimony of Steven A. Robins on Behalf of
Rock Spring Properties, LLC
Before the Montgomery County Council
September 9, 2014

Good evening President Rice and Members of the Council. My name is Steven Robins and I am an attorney with the Law Firm of Lerch, Early & Brewer. Thank you for the opportunity to testify on Zoning Text Amendment 14-09.

I am testifying on behalf of Rock Spring Properties, LLC on a matter related to the EOF zone as contained in the new Zoning Ordinance. Rock Spring Properties LLC is the owner of multiple holdings in Rock Spring Park, a number of which have been rezoned to the EOF designation. My comments relate to a particular use contained in the Ordinance - the "Independent Living Facility for Seniors or Persons with Disabilities" use. This use is defined in Section 3.3.2 C of the Ordinance and is permitted as a conditional use in all of the residential zones, and as a limited use in the residential multi-unit zones, the CR zones and several of the employment zones. As referenced in the Ordinance, these facilities are staffed and generally include meal preparation and service, day care, personal care, nursing or therapy or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations. These facilities are often located in close proximity to medical uses, retail series and other related uses and provide employment opportunities, much like Residential Care Facilities (defined as a nursing home, assisted living facility, a continuing care retirement community, a hospice and a group home), which are permitted as conditional uses in the EOF zone. In the case of Rock Spring's holdings, this use could be located in the Rock Spring Park and would be conveniently located near health care offices, retail uses and other services that would be very attractive for these residents and employees. A Residential Care Facility, but not an "Independent Living Facility for Seniors or Persons with Disabilities" is permitted in the EOF zone as a conditional use. As part of the ZTA, we would request that the Independent Living Facility for Seniors or Persons with Disabilities be permitted as a limited use, like it is in the CR zones and other employment zones. This use is appropriate for this zone, will not take away from the ability to develop office type uses in the EOF zone and thus, should be accommodated as part of this ZTA, rather than waiting for a future one.

Thank you very much for your consideration of our request.

- i. a development including optional method Moderately Priced Dwelling Units (see Division 4.4);
 - ii. optional method cluster development (see Division 4.4) that is a minimum of 10 acres in size; or
 - iii. optional method cluster development (see Division 4.4) that is a minimum of 3 acres or more in size and recommended in a master plan.
- d. In the GR, NR, and EOF zones, the gross floor area of all Household Living uses on a site is limited to 30% of the total gross floor area on the subject site.
- e. In the LSC zone all Household Living uses are limited to 30% of the maximum allowed FAR mapped on the subject site.

E. Multi-Unit Living

1. Defined

Multi-Unit Living means dwelling units in an apartment or multi use building type. Multi-Unit Living includes ancillary offices to manage, service, and maintain the development.

2. Use Standards

Where Multi-Unit Living is allowed as a limited use, it must satisfy the following standards:

- a. In the GR, NR, and EOF zones, the gross floor area of all Household Living uses on a site is limited to 30% of the total gross floor area on the subject site.
- b. In the LSC zone all Household Living uses are limited to 30% of the maximum allowed FAR mapped on the subject site.

Section 3.3.2. Group Living

A. Defined, In General

Group Living means the residential occupancy of a structure by a group of people that does not meet the definition of any Household Living use under Section 3.3.1, where tenancy is arranged on a monthly or longer basis.

B. Dormitory

Defined

Dormitory means a building or portion of a building used for sleeping purposes in connection with a school, college, or other institution.

C. Independent Living Facility for Seniors or Persons with Disabilities

1. Defined

Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.

2. Use Standards

- a. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:
 - i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
 - ii. Resident staff necessary for the operation of the facility are allowed to live on-site.
 - iii. Occupancy of a dwelling unit is restricted to the following:
 - (a) a senior adult or person with disabilities, as defined in Section 1.4.2, Defined Terms;
 - (b) the spouse of a senior or disabled resident, regardless of age or disability;
 - (c) a resident care-giver, if needed to assist a senior or disabled resident; or
 - (d) in a development designed primarily for persons with disabilities rather than senior adults, one parent, daughter, son, sister, or brother of a handicapped resident, regardless of age or disability.

122

- (e) Age restrictions must satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended.
- b. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:
- i. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.
 - ii. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.
 - iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.
 - iv. Height, density, coverage, and parking standards must be compatible with surrounding uses and the Hearing Examiner may modify any standards to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.
 - v. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet in spite of any other limitation in this Chapter.

- vi. The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies.
- vii. The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.
- viii. The minimum green area is:
 - (a) 70% in the RE-2, RE-2C, and RE-1 zone, except where the minimum green area requirement is established in a master plan;
 - (b) 60% in the R-200 zone; and
 - (c) 50% in the R-60, R-90, and Residential Townhouse zones.
- ix. The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

D. Personal Living Quarters

1. Defined, In General

Personal Living Quarters means any building or portion of a building containing more than 5 individual living units, with shared cooking facilities and may have shared sanitation facilities. Personal Living Quarters does not include Multi-Unit Living or Hotel, Motel.

2. Use Standards

a. Personal Living Quarters (Up to 50 Individual Living Units)

Where Personal Living Quarters (Up to 50 Individual Living Units) are allowed as a limited use, it must satisfy the following standards:

- i. Each individual living unit must have a minimum gross floor area of 150 square feet and a maximum gross floor area of 385 square feet.
- ii. Each individual living unit is prohibited from having complete cooking facilities such as a stove, oven, or similar device, but may contain equipment for incidental food preparation, such as small portable kitchen appliances.

Statement of Janelle Wright RE: 4600 North Park Avenue, Chevy Chase, MD 20815

I am a resident of Montgomery County. My family owns 2 commercial condominium units in Friendship Heights. Our offices are in a building comprised of 10 commercial offices, each individually owned. My neighbors are quiet businesses such as attorneys, consultants, doctors, property managers and real estate agents.

Recently, a fellow owner signed a lease with a Veterinary Hospital that specializes in animal eye care. They expect between 30 and 35 animals a day – mostly dogs. The Vet is waiting for the new zoning to go into effect before taking occupancy.

The unit owners at our building are concerned. We educated ourselves by hiring a zoning attorney - Erin Girard of Linowes & Blocher. Erin told us that our building is in the new CR 3.0 (CR 3.0, C 2, R 2.75, H 90) zone which allows veterinary hospitals as a limited use. Our building is currently zoned CBD-1 which allows veterinary hospitals only by Special Exception. As you know, the Special Exception process is set up to allow affected neighbors an opportunity to be heard and have their concerns vetted and addressed by the Board of Appeals. The Board, when granting a Special Exception can impose requirements necessary to protect nearby properties such as ours and the neighborhood.

Erin's research revealed that while the new zoning ordinance was in the staff and draft phase, veterinary hospitals were not a topic of discussion. It appears that this change has been enacted without ample review. When our attorney spoke to Pam Dunn at Park & Planning about the change, she acknowledged that it was envisioned that such uses would typically be located in lower-scale townhouse type commercial areas, not an urban office condominium such as ours.

Council members, I ask you: would you want to work every day above or next to a veterinary hospital with barking dogs? The possibility of soundproofing the space cannot address dogs barking as they come and go to our building, inside the elevators at our building or in our underground, enclosed parking garage. I picture dogs barking at other dogs and dogs and people in constant conflict. The Vet told our unit owners directly that this office space was particularly appealing to them because of there is a small, enclosed outdoor stone terrace for the dogs to use when nature calls. I have no idea if this is even an acceptable place for animals to go to the bathroom.

I am asking for your help. Under the zoning rewrite, a veterinary hospital will be allowed in our building with no opportunity for public input, no agency review of its potential impacts and very few limits on its operations. Given the potential impact of this change and what we believe is the general ignorance of the owners of CBD properties that the change has occurred, we would ask that you consider a text amendment to the new Zoning Ordinance to continue to require Special Exception or Conditional approval for veterinary hospitals in what are currently the CBD zones.

Thank you.