

Resolution No.: 18-666
Introduced: November 8, 2016
Adopted: November 8, 2016

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

By: District Council

SUBJECT: Westbard Sector Plan Sectional Map Amendment (H-116)

OPINION

Sectional Map Amendment (SMA) H-116 was filed by the Maryland-National Capital Park and Planning Commission and is a comprehensive rezoning application for the purpose of implementing the zoning recommendations contained in the Approved and Adopted Westbard Sector Plan. The SMA application covers approximately 181 acres. It would rezone approximately 48 acres and reconfirm the zoning on 118 acres. Approximately 15 acres are public rights-of-way to be zoned to the centerline of the adjacent zone classification.

The District Council approved the Westbard Sector Plan on May 3, 2016. The Master Plan sets forth the specific land use and zoning objectives for the development of the Westbard Sector Plan area and was subject to extensive and detailed review by the Council. The Council held a public hearing on the Draft Plan on February 2 and 4, 2016, wherein testimony was received from interested parties. The County Executive transmitted to the County Council his fiscal impact analysis for the Westbard Sector Plan on March 11, 2016.

Sectional Map Amendment (SMA) H-116 was filed on July 22, 2016 by the Montgomery County Planning Board to implement the specific zoning recommendations of the Westbard Sector Plan.

The Council held a public hearing on the SMA for the Westbard Sector Plan on September 20, 2016. The Planning, Housing, and Economic Development (PHED) Committee considered the Sectional Map Amendment and testimony at a worksession on October 31, 2016. The Council considered the PHED Committee's recommendation at a worksession on November 8, 2016.

The Council supported the Planning, Housing, and Economic Development's recommendation to change the zoning for SMA Area 3 (designated as Site 6b in the Sector Plan - Park Bethesda Apartment Building and Parking) to better conform to the Sector Plan recommendations. The Sector Plan recommends a maximum height of 110 feet, including the affordable housing

recommended in the Sector Plan. Since the Zoning Ordinance allows additional height when necessary to accommodate affordable housing, the Council supported the Committee's recommendation to reduce the height in the SMA zone from 110 to 100 feet to ensure that the building height will not exceed the Sector Plan recommended 110 feet. It is not the Council's intent to reduce the ultimate height of development to less than recommended in the Sector Plan, but to ensure that the final height does not exceed the Sector Plan recommendation of 110 feet due to height increases allowed in the Ordinance for affordable housing. Therefore, on Site 3, the Council recommends that the zoning change from CRT-2.5 C-0.5 R-2.0 H-110 to CRT-2.5 C-0.5 R-2.0 H-100.

The Council received general testimony both in support of and in opposition to the zoning recommendations in the SMA, as well as comments related to specific issues and sites. This testimony was considered carefully by the PHED Committee and Council, and the Council **does not recommend any further changes to the SMA (other than for Site 3) for reasons described below.** In this opinion, the term master plan is generally used to mean master plan or sector plan. The term Sector Plan is used when referring to the Westbard Sector Plan.

The Council received testimony that the Council engaged in contract zoning, in violation of Maryland law, by providing additional height in exchange for additional affordable housing. . **The Council has not entered into any such contract with any property owner and the Sector Plan (which merely recommends) does not, and could not, contractually bind the Council to any particular zoning decision. The Council notes that:**

- The Zoning Ordinance allows properties to exceed the height limits of their zone if necessary to provide additional affordable housing above the minimum required by law (i.e., more than 12.5% - Section 59-4.7.3.D.6).
- References in the Westbard Sector Plan to "additional height" and to the amount of affordable housing proposed to be built simply recognize that the Zoning Ordinance allows for additional height to accommodate MPDUs and that certain CRT zones will have a higher height limit than others. Also, the Sector Plan describes, for planning purposes, the nature of the development proposed for Westbard.
- Additional affordable housing is only required in the Westbard Sector Plan for optional method projects; a property owner can choose to develop under the standard method and not provide more than the minimum 12.5% MPDUs.
- The CR and CRT zones require "public benefits" for optional method development, including the provision of affordable housing. Developers who provide these and other "public benefits" (and also meet all other applicable development standards) sufficient to warrant Planning Board approval are, by law, entitled to more density.
- The Council recommended in the resolution approving the Westbard Sector Plan that affordable housing should be prioritized under the public benefits requirements of the CRT zone.
- Regarding SMA Sites 7 and 8 (Sector Plan Site 4), the Sector Plan indicates that the Housing Opportunities Commission (HOC) intends to provide 30 percent affordable housing on its property, but does not require it as a condition of rezoning.
- The Council has frequently used zoning tools and incentives to maximize the development of new affordable housing.

The Council received testimony indicating that the rezoning would result in too much height and density in Westbard, and specific testimony requesting that the townhomes on SMA Site numbers 5 and 6 (Sector Plan Site 1 – shopping center) should be capped at 50 feet, not 60 feet, which testimony indicated was too high. The Council deliberated on the zoning for each property during its review of the Sector Plan and supported the heights and densities reflected in the approved Sector Plan and the height recommended in the Planning Board Draft for Site 1 (60 feet), which is reflected in the SMA. It is not the Council's practice to reconsider master plan recommended zoning when considering the SMA unless new information is presented that was not considered at the time of the master plan. No such information was provided. Opponents submitted new survey information concerning the opinions of some residents during the course of the Council's deliberations on this SMA. The Council was previously aware of negative opinions concerning the Sector Plan. As zoning is not a plebiscite, the outcome of the survey was not considered new information that was different from the opinions received in the course of the Council's deliberations on the Sector Plan.

The Council received testimony indicating that the rezoning would allow additional height above what is allowed in zoning due to the 15% MPDU requirement, and this should not be allowed. The Council does not support any change in the SMA for the following reasons:

- The Zoning Ordinance allows properties to exceed the height limits in the zone if necessary to provide additional affordable housing above the minimum required by law (Section 59-4.7.3D.6). (If the Council no longer supports this provision, it would need to amend the Zoning Ordinance and cannot make this change via the SMA).
- Aware of provisions of the Zoning Ordinance, the Council added language to the resolution approving the Westbard Sector Plan, indicating that when additional height was necessary, it should be located to minimize the impact on surrounding communities.

“This requirement (*for 15% MPDUs*) should be met to the maximum extent possible without increasing heights in locations that would most impact adjacent lower-density residential neighborhoods (such as the Manor Care site). While affordable housing should be located throughout the property, modest variations in the percentage among individual parcels (as currently allowed by County law with the approval of the Director of the Department of Housing and Community Affairs) may help minimize the impact of increased height on adjacent homeowners.”

The Council received testimony on several issues not directly related to the proposed rezoning. The SMA provides a vehicle for the Council to implement the zoning recommendations in a master plan, but does not provide the opportunity to reconsider or revise other issues addressed in the master plan. The testimony described below addresses issues other than zoning or would require separate legislation and therefore the Council does not recommend any change in the SMA.

The Council received numerous form letters indicating that the Westbard Sector Plan neglects the Plan's "potential impact on greenhouse gas emissions and related issues". The Council does not recommend any change in zoning.

- The Sector Plan states that its "overall goal is to move Westbard closer to environmental sustainability". In particular, it focuses on reducing impervious surfaces that intensify the urban heat island effects, which create health hazards and increased use of energy in cars and buildings. The Plan's recommendations for new parks, greenways, and tree canopies will also help to moderate temperature and decrease excess heat.
- The Council has a strategy of placing more intense mixed-use development near centers of economic activity and transit, to foster walkability and increase transit use as a means of reducing greenhouse gases. This pattern of development reduces per capita vehicle miles travelled and carbon emissions as compared to a pattern of growth that allows development further from activity centers and transit. (While not a transit center or economic activity center, Westbard is less than 2 miles from the Friendship Heights Metro and just over 2 miles from the Bethesda Metro station. In addition to being close to these major economic centers, it is also close to the District of Columbia.)
- Master plans are not required to expressly address greenhouse gas emissions or carbon footprints.
- An SMA only addresses zoning, not the environmental issues addressed in a master plan.

The Council received testimony indicating that the County failed to conduct an obligatory environmental impact study and does not show compliance with the County's general permit for stormwater recapture on redeveloped land. The Council does not recommend any change in zoning and further notes:

- The County is not required to conduct an environmental impact study when preparing a master plan (although significant environmental analysis is completed), nor is it required to show compliance with stormwater permits when it prepares a master plan.
- Compliance with the County's stormwater regulations and general permit are considered in the development approval procedure for each development application.

The Council received testimony indicating that the District Council failed to hold a public hearing on the Draft Sector Plan after making its own substantial, wholesale changes to the Planning Board Draft Plan. The Council does not recommend any change in the SMA.

- The Council scheduled, then held, a public hearing on the Sector Plan on February 2, which was continued on February 4. State and County law do not require the Council to have a second public hearing on changes it proposes to a master plan after the first hearing.
- The District Council is composed of the same 9 individuals who are on the County Council. The agenda specifically indicates that the Council is acting as the District Council when it acts on land use matters. The Council takes no action at a public hearing.

The Council received testimony expressing the view that 15% MPDUs should be required by law and therefore not allowed to count as a public benefit under the CRT zone. The Council does not recommend any change to the SMA.

- This issue cannot be resolved in the SMA and would not impact the zoning recommendations.
- If the Council endorses this idea, it would need to pass new legislation and a zoning text amendment.

The Council received testimony expressing the view that townhome heights should be capped by zoning and should not be allowed to be exceeded by rooftop terraces. The Council does not recommend any change to the SMA.

- This issue cannot be resolved in the SMA.
- If the Council endorses this idea, it would need to pass a zoning text amendment amending the section on height encroachments.
- The Council discussed at length the height of the property closest to lower density residential development during its Sector Plan deliberations and lowered the height from that recommended in the Planning Board Draft to better achieve compatibility.

The Council received testimony expressing the view that the Council should not allow a new road or park that could result in the displacement of some industrial businesses in Westbard. The Council does not recommend any change in the SMA. The SMA addresses zoning recommendations and does not impact the many other issues addressed in a master plan, including the alignments of roads and locations of parks. Moreover, the specific recommendations related to road alignments and new parks in the Westbard Sector Plan would not impact the zoning recommendations.

The Council received testimony expressing the concern that no archeological studies have been conducted “to ascertain whether cemeteries are located on the site of the proposed SMA”. The Council does not recommend any change in the SMA.

- The potential location of cemeteries is considered during the regulatory process when the Planning Board is reviewing a specific development proposal. It would be premature to consider this issue at the master plan stage when there is not sufficient information on the specific location of potential development.
- Zoning the property does not mean development will proceed in advance of any determination regarding the existence of a cemetery.

The Council received testimony expressing the concern that schools are overcrowded and therefore the Council should not allow new development. The testimony also asserted that the County used faulty assumptions to project the number of school children. The Council does not recommend any change in the SMA. The Council examined this issue at length during the Sector Plan review and had its staff review the methodology and outcomes used to estimate future students. The Council believed that the Sector Plan provides options for creating

sufficient school capacity to serve new students. In addition, the subdivision staging plan will guide the timing of development to ensure adequate school capacity.

The Council received testimony expressing the view that the Sector Plan does not provide for enough green space or adequately address the restoration of Willett Branch. Other testimony indicated that the SMA would result in a reduction in the amount of open space. The Council does not recommend any change in the SMA. This issue was addressed at length in the Sector Plan and during the Council's consideration of the Sector Plan (as well as during a subsequent Planning, Housing, and Economic Development Committee review of plans for the Willett Branch Greenway Park). While the SMA only covers zoning, the Sector Plan as approved will result in a 12-acre (39 percent) increase in the amount of public parkland.

The Council received testimony expressing the view that the Sector Plan's analysis of traffic and traffic/bicycle usage was not accurate and there will be too much congestion. The Council does not recommend any change in the SMA. This issue was addressed in the Sector Plan and during the Council's consideration of the Sector Plan. The SMA only covers zoning.

The Council received testimony expressing the view that the Sketch Plan submitted by Equity One is not consistent with the Sector Plan recommendations, particularly regarding the buffer for the Willett Branch Stream. The Council does not recommend any change in the SMA.

- Individual development applications (particularly those not yet considered by the Planning Board) should not be the basis for determining the zoning.
- Review of the Sketch Plan is delegated to the Planning Board; the Council has no authority to make decisions regarding the Sketch Plan.

The Council received testimony expressing the view that no financial analyses were done during the master plan review to conclude that rezoning the shopping center was necessary to allow redevelopment. The Council does not recommend any change in the SMA. The Council deliberated on the zoning for SMA Sites 5 and 6 (Sector Plan Site 1) during its review of the Sector Plan and supported the zone recommended in its resolution (which is less than that recommended in the Planning Board Draft). This zoning is reflected in the SMA. Although neither the Planning Department nor Council Staff conducted a formal written financial analysis of the likelihood of redevelopment under different zoning options, the Council received verbal advice from Council Staff indicating that redevelopment would be highly unlikely without the rezoning.

The District Council considered the Sectional Map Amendment at a worksession held on November 8, 2016. The Council finds Sectional Map Amendment Application H-116 to be consistent with the Approved and Adopted Westbard Sector Plan and necessary to implement the land use and development policies expressed in the Approved and Adopted Westbard Sector Plan.

The evidence of record for Sectional Map Amendment H-116 consists of all record materials compiled in connection with the Council public hearing on the Planning Board Draft of the Westbard Sector Plan, dated February 2 and February 4, 2016, and all record materials compiled

in connection with the public hearing held by the Council on September 20, 2016 on Sectional Map Amendment H-116.

For these reasons, and because to grant this application will aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, this application will be GRANTED.

Action

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 resolution:

1. Application No. H-116, Maryland-National Capital Park and Planning Commission, Applicants for the Sectional Map Amendment covering the area of the Westbard Sector Plan consisting of approximately 181 acres, more or less, is GRANTED. Approximately 48 acres are proposed for change in zoning classification and 118 acres are reconfirmed. Approximately 15 acres are public rights-of-way to be zoned to the centerline of the adjacent zone classification.
2. The following areas are reclassified as part of this action, consistent with the recommendations in the Westbard Sector Plan.
3. A finding by a court that the application of a zone to a property is void for any reason does not affect the validity of any other property zoned by this Sectional Map Amendment.

Table 1: Parcels to be Rezoned¹

Area	Existing Zones	Proposed Zone	Acres
1	RT-12.5	TMD	4.68
2	R-60, EOF-1.5 H-45	CRT-2.5 C-0.25 R-2.5 H-35	1.98
3	EOF-1.5 H-45	CRT-2.5 C-0.5 R-2.5 H-100	4.24
4	RT-15.0	THD	1.83
5	NR-0.75 H-45'	CRT-2.0 C-0.75 R-1.25 H-60	8.01
6	R-60	CRT-2.0 C-0.75 R-1.25 H-60	3.29
7	R-10	CRT-2.5 C-0.5 R-2.0 H-75	1.44
8	R-10	CRT-3.0 C-0.5 R-3.0 H-165	2.6
9	CRT-0.75 C-0.75 R-0.25 H-45	CRT-2.5 C-0.5 R-2.0 H-110	2.47
10	RT-12.5	TMD	0.45
11	R-60	CRT-1.0 C-0.25 R-1.0 H-45	2.12
12	CRT-0.75 C-0.75 R-0.25 H-35	CRT-1.5 C-0.5 R-1.5 H-75	2.25
13	EOF-1.5 H-45	CRT-3.0 C-3.0 R-3.0 H-90	0.55
14	RT-8.0	TLD	0.86
15*	RT-8.0	CRT-0.75 C-0.75, R-0.5 H-40	0.05
16	PD-28	CRT-4.75 C-0.75 R-4.75 H-100	1
17	PD-28	CRT-0.5 C-0.5 R-0.5 H-55	10.05
		Total Changes	47.87

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

¹ The acreages shown in this table are estimates of acreage to be rezoned; actual acreage will depend on future engineering surveys. In approving the Zoning Maps, the District Council is approving the boundary lines, not a precise acreage amount.

