



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

OFFICE OF THE CHAIRMAN

December 3, 2010

The Honorable Nancy Floreen, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Re: Planning Board Recommendation to County Council for
Introduction of Zoning Text Amendment to make changes to the
Commercial/Residential (CR) Zones.

Dear Ms. Floreen and Councilmembers:

On December 2, 2010, the Planning Board voted 4-1 to forward to the County Council recommended changes to the Commercial/Residential (CR) Zones to address concerns regarding application of the CR Zones in various pending area plans, including the *Kensington and Vicinity Sector Plan*, the *Takoma/Langley Crossroads Sector Plan*, and the *Wheaton CBD and Vicinity Sector Plan*. The recommended changes are attached to this letter.

Background

In October 2009, the Planning Board Draft of the *Kensington and Vicinity Sector Plan* was approved with a recommendation applying the CR Zones over much of the commercial area. In early March 2010, County Council Staff recommended a review of alternative zones for the Kensington Sector Plan area because of concerns regarding the economic redevelopment viability of small properties with lower allowed densities under the proposed CR Zones. Planning Board Staff responded with a memorandum in late March analyzing various alternatives, and expressed the view that the CR Zones provided the best balance between encouraging revitalization and ensuring the provision of public amenities to fulfill the sector plan's vision.

During committee work sessions, discussion of the various zoning alternatives and the respective costs and benefits focused on a few issues of concern, including:

- Flexibility in meeting parking requirements,
- Feasibility of optional method projects on smaller properties,
- Appropriateness of public benefits for unique and diverse areas, and
- The costs of required building lot terminations (BLTs).

Planning Department Staff was directed to work with stakeholders to evaluate options to resolve these concerns, e.g. a new zone, an overlay zone, or an amended zone. Based on discussions about these alternatives over several months, during numerous public meetings and hearings, Staff decided that an amendment to the CR Zones would be the most efficient and effective solution. This also allowed for a larger discussion with stakeholders in other areas that may have the CR Zones applied to properties within their Plan boundaries, specifically within the Takoma/Langley Crossroads and Wheaton areas. Four additional issues that arose during these larger discussions are also addressed by the attached ZTA:

- Introduction of limited uses near residential properties,
- Modification of public use space requirements for standard method projects.,
- Allowance for parking/drive through design waivers in certain circumstances when a site plan is not required, and
- Change in payee designation for historic resource protection fee-in-lieu.

General Approach to Designation of Specificity: Ordinance versus Master Plan

Many of the text amendments outlined and detailed below have to do with creating context-appropriate nuance for review and implementation of various standards and requirements, such as allowing smaller properties to earn incentive density with fewer public benefit requirements than larger properties, or creating additional, less costly public benefit categories that will be eligible for incentive density in certain areas of the County. There are basically three means by which these nuances can be handled:

1. Identify in the zoning ordinance areas that will be treated differently or criteria by which properties will be treated differently (for example, the CR Zones would apply certain standards to “all properties zoned at or below 2.0 total FAR”);
2. Create a legislative connection between the ordinance and the applicable master plans and allow each plan to define these areas or criteria independently (for example, the CR Zones would apply certain standards to “all properties that meet criteria specifically recommended in a master plan”); or
3. Create a legislative connection between the CR Zones and an overlay zone for each area where alternative standards are intended to apply (for example, the CR Zones would apply certain standards to “all properties within an overlay zone recommended in a master plan for this purpose”).

The Planning Board recommends using the master plans to identify areas or criteria for differential treatment, for two reasons: (i) this approach allows for great flexibility to respond to the particular needs of each master plan area; and (2) this approach avoids the creation of multiple overlay zones at a time when the County is working towards simplification of its zoning ordinance. This allows the ordinance to remain clear but flexible when it defines the method for assessment and implementation, but the applicable master plan will apply the specific criteria and/or establish the specific parameters. Because each master plan is approved and adopted by the Council, and each

development application to which the relevant elements of the CR Zones apply is reviewed by the Planning Board, the approach is consistently applied and properly delegated. The major drawback of this approach is that if the need arises in the future to change any of the specific criteria, that change will require a minor master plan amendment.

Disagreement over this issue persisted throughout the Planning Board's discussion of this ZTA, resulting in two failed motions before the attached text amendment language was approved for transmittal. Some members of the Planning Board, including the dissenting vote, Commissioner Dreyfuss, saw substantial merit in the overlay zone approach. The benefits of this approach would include:

1. Allowing later amendment of the provisions by ZTA rather than the lengthier process of a master plan amendment; and
2. Ensuring that property owners may rely on the ordinance and the zoning map to identify development standards, rather than having to also refer to the master plan.

The major drawback of the overlay zone approach is that it would perpetuate the problem of a zoning ordinance that is complicated by multiple zones -- the County would need to create a separate overlay zone for any master plan where the differentiated standards this amendment would create should apply.

The Town of Kensington submitted a resolution requesting that all of the language related to the proposed amendments should be in the CR Zones, including identifying by size those properties that are eligible for incentive density with a reduced level of public benefits, and identifying additional public benefits that qualify for incentive density. The principal advantage of this approach would be the simplicity of having all relevant language in one place. The chief drawback would be to make the reduced benefit requirement applicable to small properties all across the County, including in areas such as White Flint, where property values justify the standard public benefit requirement, not a reduced requirement. In addition, the list of additional public benefits, which was crafted with smaller communities in mind, would be available to property owners throughout the County. Kensington's views carry added weight because of Article 28 language that allows the Planning Board and the Council to make a decision on a zoning matter that is contrary to Kensington's views only with a supermajority vote. In fact, the first motion yesterday to transmit the attached amendments to the Council failed on a 3-2 vote.

Testimony from a Takoma Park representative was generally in favor of the proposed amendments, which would make redevelopment and revitalization easier for small business owners. This testimony did not address the issue of whether the amendments should be implemented through the zone or the master plan.

The outline below shows specific alternative approaches to these text amendments to provide the County Council with a sense of the discussions surrounding each topic,

both before the Planning Board and in staff meetings. Following the outline is a table that indicates which master plans would need additional language to implement these changes via master plan. The Planning Board will provide specific master plan language to implement these changes in the Kensington Plan when we provide additional comments on the ZTA after its introduction.

Proposed Zoning Changes

CR Zoning Text Amendments

The proposed text amendments are outlined below with full language attached. Alternative ideas are provided in the outline but, where provided, these alternatives are not supported by the Board for various practical and technical reasons.

1. Limited Land Uses

- a. A new category of land uses is proposed to ensure compatibility of certain commercial uses in transitional areas where the CR zone is adjacent to detached-unit residences.
- b. Modification would apply to 7 uses in the existing land use table and one new use (entertainment/performance venue).
- c. Limits the locations of buildings, parking, and driveway entrances associated with 6 of the proposed uses to at least 100 feet from any residentially- or agriculturally-zoned property line.
- d. Disallows drive-through services for restaurants on properties adjacent to residentially- or agriculturally-zoned properties and limits the location of drive-through service windows for retail uses to at least 100 feet from any residentially- or agriculturally-zoned property line. Banks, considered an office use, would not be affected.
- e. On properties that are not adjacent to such residentially- or agriculturally-zoned properties, the uses are simply permitted.
- f. Alternative: make such uses special exceptions with additional standards or allow municipalities to restrict uses independently as done with "automobile sales, outdoors" in the existing ordinance (59-C-15.5.(c)). Concerns related to these alternatives include:
 - i. Special exceptions for such uses are onerous in a zone meant to encourage flexible and dynamic revitalization.
 - ii. Setbacks recommended provide ample opportunity for visual and noise buffering.
 - iii. Municipal restrictions are hard to track, enforce, and document during application review.

2. Shared Parking Flexibility

- a. Proposed to ensure that municipalities can create shared-parking programs to increase flexibility for property owners that are not within parking lot districts.

- b. Increases range within which shared parking can be provided from 1,000 feet to ¼ mile (a 320-foot increase, or approximately one additional block).
- c. Shared parking applies to municipalities that choose to create municipal shared parking programs.

3. *Parking/Drive-Through Design & Parking Waiver Provision*

- a. Two Parts:
 - i. To grant the Department of Permitting Services (DPS) the same authority granted the Planning Board to waive certain restrictions on parking/drive aisle design and drive-through design, and
 - ii. To establish waiver provision identical to current waiver allowed under Article 59-E (off-street parking and loading).
- b. DPS Director review is only applicable when a site plan is not required.
- c. Alternative to DPS review: require applications that request such a waiver to submit a site plan when not otherwise required. Concerns related to this suggestion include:
 - i. Particularly onerous financially for small properties,
 - ii. Little to be gained by additional review, and
 - iii. Sufficient criteria establish guidance for the Planning Board and DPS.
- d. Waiver provision applies to all CR-Zoned properties.
- e. Waiver guided by existing code language on parking facility objectives.
- f. Alternative to waiver language: enumerate specific criteria and/or circumstances that may be provided in support of a waiver of the parking requirements in the ordinance. Concerns related to this suggestion include:
 - i. Waivers are given for reasons too numerous to codify,
 - ii. Waivers for similar circumstances may not be applicable in different contexts, and
 - iii. The list may be interpreted as being the only criteria/circumstances under which a waiver may be granted.

4. *Public Use Space Requirements*

- a. Proposed to ease burden on small properties and interim uses that would have to provide public use space that would provide little benefit to the public.
- b. Removes requirement for public use space for properties under 5,000 square feet and limits calculation of public use space area to a larger development's limits of disturbance.
- c. Applies to standard method projects that require a site plan.
- d. Alternative: establish waiver provisions of public use space. Concerns related to this suggestion include:
 - i. Difficult to set waiver parameters that apply to all situations, and
 - ii. Requirements for public use space should remain a disincentive to standard method development except for small businesses and interim uses, i.e., encouragement of optional method development should remain for most properties.

5. *Public Benefit Reductions*

- a. Proposed to ease development burden on properties within specific areas or that meet specific criteria that a Plan designates as needing such consideration.
- b. Allows development that meets the Plan-designated criteria to achieve full incentive density (up to 30%) in four categories (connectivity, diversity, design, and environment) for the provision of only 1 public benefit.
- c. Applies to areas specifically recommended for such consideration in a master or sector plan.
- d. Alternative: establish universal criteria for such consideration in the Zoning Ordinance rather than Plan area by Plan area. For example, all lots under 20,000 square feet or zoned at or under CR2.0. This alternative has been a matter of great debate between Staff and property owners and municipal representatives. There is no agreement regarding the best approach, the basic difference coming down to which of two goals should be encouraged:
 - i. Rigidity and universal applicability (codify the criteria in the Ordinance), or
 - ii. Flexibility within and between Plans given economic context and vision of different areas (allow Plans to establish areas/criteria).

6. *BLT Exemption*

- a. Proposed to ease development burden on properties within specific areas that a Plan designates as needing such consideration and/or where other environmental benefits are desired.
- b. Allows for a Plan to delineate an area where properties are exempted from the requirements for BLT purchases/payments.
- c. Applies to areas specifically recommended for such consideration in a master or sector plan.
- d. An alternative would be to establish the criteria/circumstances in the Ordinance for reasons similar to issue #4, above. Staff recommends leaving the criteria to the master plans to allow for flexible application.

7. *Additional Public Benefits*

- a. Proposed to allow public benefits to be established that are specific to a Plan's context.
- b. Allows master or sector plans to indicate additional public benefits that may be proffered and approved by the Planning Board during optional method development review.
- c. Applies to properties that are within master or sector plans that indicate such additional public benefits.
- d. Alternative: establish and codify a set of additional public benefits with current ZTA and/or codify a new set of additional public benefits with each new master or sector plan that applies the CR Zones. Concerns related to this suggestion include:
 - i. Although both alternatives ensure flexibility and adaptability for properties and plan areas, the proposed solution does not require additional ZTAs; and

- ii. The newly generated stream of ZTAs would change application of CR Zones within areas that were zoned CR prior to adoption of new public benefits.

8. *Historic Resource Protection*

- a. Proposed to modify payee for fee-in-lieu provision of historic resource protection benefit.
- b. Allows a developer to make a payment for a historic resource protection project in lieu of material conservation. Payment under amended language could be made for projects on private or park land.
- c. Applies to development using the historic resource protection public benefit for incentive density.

Text Amendment/Master Plan Synchronization

ZTA Item	Kensington Sector Plan	Takoma/Langley Sector Plan	Wheaton Sector Plan
1. <i>Limited uses</i>	No additional language/direction needed.	No additional language/direction needed.	Discussion on buffer ensured by this section of the ordinance provides visual and noise screening along East Avenue.
2. <i>Shared Parking Flexibility</i>	Should create a shared-parking program with established boundaries, spaces, and criteria for participation and tracking.	Should create a shared-parking program with established boundaries, spaces, and criteria for participation and tracking.	No additional language/direction needed.
3. <i>Parking/Drive-Through Design</i>	Guidance on parking waivers may be provided.	Guidance on parking waivers may be provided.	Guidance on parking waivers may be provided.
4. <i>Public Use Space</i>	No additional language/direction needed.	No additional language/direction needed.	No additional language/direction needed.
5. <i>Public Benefit Reductions</i>	Delineate areas and/or criteria where reduced benefits may be provided.	Delineate areas and/or criteria where reduced benefits may be provided.	Delineate areas and/or criteria where reduced benefits may be provided.
6. <i>BLT Exemption</i>	If used, delineate area where properties are exempted.	If used, delineate area where properties are exempted.	If used, delineate area where properties are exempted.
7. <i>Additional Public Benefits</i>	If used, indicate new public benefit list and any criteria required to apply the benefit(s).	If used, indicate new public benefit list and any criteria required to apply the benefit(s).	If used, indicate new public benefit list and any criteria required to apply the benefit(s).
8. <i>Historic Resource Protection</i>	No additional language/direction needed.	No additional language/direction needed.	No additional language/direction needed.

The Honorable Nancy Floreen
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The Planning Board and its staff will be available to assist the Council in the review of the proposed changes to the CR Zones.

Sincerely,

A handwritten signature in cursive script that reads "Françoise M. Carrier". The signature is written in black ink and is positioned above the printed name.

Françoise M. Carrier
Chair

Attachments

cc: Planning Board
Rollin Stanley

Zoning Text Amendment No: 10-
Concerning: Commercial/Residential
(CR) Zones - Modifications
Draft No. & Date: 1- 12/02/10
Introduced:
Public Hearing:
Adopted:
Effective:

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

By:

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Modify the Commercial/Residential (CR) zones by: adding restrictions to certain land uses located adjacent to residentially or agriculturally zoned property; amending the parking requirements to allow more flexibility in shared parking arrangements and adding waiver provision language consistent with Section 59-E; granting DPS the same authority as the Planning Board to waive certain restrictions on parking and drive aisle design, and drive-through design under certain circumstances; modifying public use space requirements for standard method projects; modifying public benefit reductions for specific master plan-determined areas; eliminating the BLT requirement if specifically recommended for such in a master or sector plan; allowing guidelines for public benefit incentive density to include those additional public benefits specifically indicated in an approved master or sector plan; modifying the fee-in-lieu option for historic resource protection; and to generally amend the development standards, density incentives, and approval procedures for development under the Commercial/Residential zones.

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

DIVISION 59-C-15 "COMMERCIAL/RESIDENTIAL ZONES"
Sections 59-C-15.5 through 59-C-15.9

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

~~[[Double boldface brackets]]~~ indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

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: