



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 26, 2013

Council Woman Nancy Floreen  
Chair of the PHED Committee  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council Woman Floreen and members of the Committee:

We received Councilmember Elrich's powerpoint presentation titled "The Zoning Rewrite: Proposed Changes/Topics for Further Discussion" the evening of September 24, 2013. In the short time available to us since receiving it, we have worked to prepare this response because we are eager for the PHED Committee members and the public to have the benefit of seeing these issues fully vetted as the zoning rewrite moves forward.

We read the presentation with great interest and concern, because we share the Committee's desire to ensure that all stakeholders in this process – from community members who may have only a casual interest in planning and zoning to elected officials who will ultimately decide if the rewrite is adopted – have accurate information about what the rewrite will achieve. And if a PHED Committee member is concerned about the impact of the zoning rewrite we are concerned.

We are pleased to report, as detailed in this response, that the current draft of the zoning code rewrite addresses the majority of the issues identified in the presentation. And we are confident that the zoning rewrite will ensure equal if not greater fidelity to master plans and protection of existing residential communities than the current code.

But before turning to these substantive issues, a word about timing. The presentation notes that the rewrite has taken a long time, and asks "why rush now." That the rewrite has gone on for a long time is something on which all can agree. As Committee staff has pointed out on several occasions, the rewrite project has taken longer than many significant historical sagas. But the time that the process has taken has little to do with where we are now. We are not trying to "rush" anything, but we see no reason to delay the rewrite's adoption, given the extensive process we have followed as we progressed from initial inception of the rewrite effort as captured in the Zoning Discovery document to the carefully drafted code and comprehensive zoning map that are before you now.

As the Committee knows, Planning Department Staff have conducted more than 80 community meetings. The rewrite was the subject of over 40 Planning Board work sessions, where every nuance was explored and numerous changes were made. Moreover, this Committee has expended considerable effort in reviewing and revising the rewrite. It is because of this intensive vetting process and the careful consideration given at each step along the way that we are confident about the quality of the protections that the zoning code rewrite affords, and why we strongly believe that it is appropriate for the PHED Committee and the full Council to move ahead at this point.

### **Residential Neighborhood Protection Is a Hallmark of the Rewrite**

Protecting residential neighborhoods has been foremost among the concerns that have shaped the rewrite. The rewrite protects existing residential neighborhoods through continuity, by buffering neighborhood properties through new compatibility and screening requirements, and by creating stricter standards for non-residential uses that opt to locate within residential neighborhoods, which the current zoning code allows with little protection for surrounding residential lots.

The rewrite's strong protection of existing residential neighborhoods extends to the conversion of existing zones to new zones. The presentation contains some statements that would appear to reflect some confusion about the conversion, which we will attempt to clear up. First, *all* zones do not convert to new zones under the conversion. This is especially the case with residential zones. Out of the 20 existing residential zones, 17 are not changed at all. Both the name and the density allowed are the same as the existing code. In addition, the proposed code has greater protections for residential neighborhoods in the form of stricter requirements for setback and height (compatibility standards) and screening for nonresidential buildings on property in a Residential zone. While uses that are allowed under current zoning have been consolidated under new names, the presentation's claim that "[a]ll zones would convert to new zones which have more by-right and conditional uses and more potential for mixed use everywhere," is incorrect. No uses currently approved under a Special Exception in the Agricultural, Rural Residential and Residential zones become a limited or permitted use in the proposed code (with the exception of a Bed and Breakfast in the R-200 and less dense residential zones). Further, no *new* conditional uses have been added to the Agricultural, Rural Residential, and Residential zones. In general, uses are not more permissive in these zones. The few permitted and limited uses that were introduced to the Residential zones are primarily agricultural in nature. Finally, the implication that there is more potential under the rewrite for mixed use development in existing residential neighborhoods is simply incorrect.

In addition, the proposed code protects residential zones<sup>1</sup> that abut or confront property in a Commercial/Residential, Employment, Industrial, or Floating zone through compatibility standards and the increased likelihood for site plan review. For example, development in any Commercial/Residential, Employment or Industrial zone that abuts property in an R-90, R-60 or R-40 zone that is vacant or improved with an agricultural or residential use will be subject to

Increased setbacks and will be limited to the height in the abutting zone at the setback line. Height can only be increased at a 45 degree angle away from the abutting property. These protections do not exist today for residential property abutting or confronting a CBD zone, commercial zone such as C-1, C-2, O-M, C-T, C-O, or any industrial zone.

Furthermore, standard method development in any Commercial/Residential, Employment, or Industrial zone must also satisfy screening requirements.<sup>2</sup> In addition to requiring plantings and walls or fences for screening, the screening requirements often increase the setbacks because of the widths required for the screening.

Along with the compatibility and screening standards, the requirement for site plan review under standard method is much more context sensitive. For standard method, the requirement for site plan review is based on the requested use, amount of development (over a certain FAR, or height), and the abutting and confronting zone. These measures ensure that more standard method projects abutting or confronting an Agricultural, Rural Residential, or Residential zone will require a site plan. All optional method development will require a site plan and potentially more projects will have to go through optional method since the allowable standard method density has been significantly reduced (to 0.5 FAR or 1.0 FAR depending on the zone). In addition, for site plan approval, the proposed code adds a finding of substantial conformance with the master plan. Under the current code, the Planning Board does not need to find conformance of any kind with a master plan in order to approve a site plan.

The rewrite's focus on protecting existing residential neighborhoods extends to the Planning Staff's most recent proposal on Floating zones. The proposal includes locational restrictions, such as fronting on a non-residential street or serving as a transitional area. In addition, any Floating zone request that seeks to increase density must satisfy 6 out of 15 additional prerequisites. The effect of these criteria is to substantially limit where a property owner can

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<sup>1</sup> Applies to properties that are vacant or improved with an agricultural or residential use

<sup>2</sup> If the subject property abuts property in an Agricultural, Rural Residential, or Residential zone that is vacant or improved with an agricultural or residential use.

apply for a floating zone. There are no similar restrictions for floating zone requests in the current code.

In reviewing the last 26 Local Map Amendments approved by the Council, 14 of these involved re-zoning a residential base zone to a floating zone with a potential for commercial development. Of the 22 existing floating zones, there are only three – LSC, MRR, and RS – that require a specific master plan recommendation, and another two that require a more general master plan recommendation for mixed use – TSR and TSM. Seven of the current floating zones are allowed

where recommended by a master plan **or** where some other general criterion is met. And 10 of the 22 existing floating zones – including the frequently applied PD zone – have no requirement for a master plan recommendation.

Under the rewrite, a property owner may apply for a floating zone only if a master plan expressly recommends it **or** the property meets certain threshold compatibility criteria. For example, it is possible to apply for an Apartment Floating (AF) or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone only if it fronts on a nonresidential street or confronts or abuts a property that is not in an Agricultural, Rural Residential, or Residential Detached zone. Again, the application must also meet at least 6 prerequisites – 2 from each of 3 categories. These criteria significantly limit the places where a property owner can propose AF or CRNF zoning.

Similarly, in order to apply for any Commercial Residential Floating (CRF), Commercial Residential Town Floating (CRTF), Employment Floating (NRF, GRF, EOFF, LSCF), or Industrial Floating (ILF or IMF) zone for a property with a Residential base zone, the property must front on a nonresidential street or must confront or abut a property that is not in an Agricultural, Rural Residential, or Residential zone, and the application must satisfy the additional prerequisites as mentioned above.

These changes ensure substantial threshold protections for existing residential neighborhoods from the application of floating zones. Beyond that, the rewrite retains the existing robust public process for considering an application for a Local Map Amendment. A public hearing would be held before the Planning Board and the Hearing Examiner prior to a County Council decision to grant a re-zoning. And the Council will not be required to approve a Local Map Amendment just

because it meets the requirements of the floating zone. The rewrite strikes a balance between providing the flexibility that floating zones are designed to achieve, and having upfront rules that limit where a floating zone can be applied. And it does so at the same time that it simplifies the code, having one set of rules and limits on what a property owner can request based on the property's base zone and property area.

### **The Rewrite Significantly Emphasizes Master Plan Conformance**

The rewrite and conversion ensure master plan conformance in several important ways. At the front end, the conversion ensures master plan conformance by retaining existing zoning throughout the vast majority of the County and following master planned build out limits in those areas where new zones are mapped. The rewrite further ensures master plan conformance

at the back end through two steps: It makes more development subject to site plan review, and it requires, for the first time, master plan conformance in all zones as part of site plan review.

The care that the rewrite has taken to ensure master plan conformance extends to overlay zones. Overlay zones remain Euclidean zones in the proposed code, and thus may only be applied by Sectional or District Map Amendment. The proposed code states in Section 4.8.1.A that "Land must only be designated within an Overlay zone when approved by a Sectional or District Map Amendment." This is consistent with language from the current code, which says "In designating an overlay zone on the zoning map, the District Council must follow the applicable procedures of Article 59-H for processing and approving sectional and district map amendments."

The proposed text could be modified to "Land must only be designated within an Overlay zone when recommended by a master plan and approved by a Sectional Map Amendment, or when approved by a District Map Amendment."

While we're on the topic of overlay zones, we want to clarify several misstatements from the presentation. Contrary to what is posited in the presentation, Article 59-2 contains the intent statement for the Overlay zones, which is taken straight from the current code. In addition, each Overlay zone has a specific purpose statement tied to it. These purpose statements, which were taken straight from the existing Overlay zones, appear at the beginning of each Section in Division 4.8 Overlay zones.

The rewrite would create four new Overlay zones – Germantown Transit Mixed Use, Regional Shopping Center, TDR, and Twinbrook – that promote continuity with current zoning and are consistent with master plan recommendations.

The TDR Overlay creates a simpler mechanism for mapping TDR receiving areas. In the conversion process, the TDR Overlay zone will be mapped only on those properties that are currently recommended by master plan and zoned as TDR receiving areas.

The other three Overlays contain specific rules that apply to a particular area or use within an area based on existing zoning and master plan recommendations. For example, the Germantown Transit Mixed Use was created to ensure that for the Germantown Master Plan area, optional method development for properties that are currently zoned TMX but are being proposed for CR will continue to be required to provide more BLTs than other CR zoned areas.

### **The Rewrite Will Not Have the Dire Potential Consequences Predicted by the Presentation**

Finally, the presentation identifies several “potential consequences” of adopting the rewrite. We can say with a high degree of certainty that these consequences will not come to pass.

The zoning conversion will not result in a greater build-out than would be allowed under current zoning, as the presentation argues, because the conversions would allow either the same maximum density as the current zoning, or, in certain cases where a master plan recommends lesser density or height than allowed by the zone, a lesser build-out. Because the zoning conversion does not seek to allow greater densities than current zoning, concerns about inadequate public facilities to support a greater build-out are misplaced. And, in any event, the adequacy of public facilities is tested and regulated apart from zoning.

For the reasons discussed above, the rewrite will not compromise the integrity of existing residential neighborhoods, as the presentation states. The rewrite contains more protections for residential neighborhoods than the current code, not fewer as the presentation argues. Neither will development in residential neighborhoods be subject to fewer reviews. The rewrite will not make any use that currently requires a special exception in a residential zone subject to a lesser review. And, as explained in detail above, the rewrite contains robust limitations on the application of mixed-use and commercial floating zones in residential neighborhoods.

Finally, the rewrite, which has been undertaken with great openness to review and public comment, which are the hallmarks of planning and zoning in this County, will not undermine public trust in the land use process. If anything, it should improve it by making the zoning code

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easier to understand, making the optional method approval process more transparent, enhancing the role of site plans to guide the development of the County's most intensively used areas, and ensuring master plan conformance at virtually every stage of the development approval process. A more detailed point-by-point discussion of the issues identified in the presentation is contained in the attached appendix. We look forward to discussing these issues further with the PHED Committee and with the full Council as the rewrite moves forward.

Sincerely,

A handwritten signature in cursive script, reading "Rose G. Krasnow". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Rose G. Krasnow

Acting Deputy Director

## Attachment to Letter dated 9/26/2013; Response to Councilmember Elrich's Powerpoint Presentation

### Potential Issues Identified by Community Members

#### General Building Provisions

- ▶ Text and illustration appear on pp. 4-4 and 4-5 of the rewrite.
- ▶ Considerable PHED Committee discussion, unresolved.
- ▶ Do the text and illustration clarify or complicate the presence of non-residential buildings for permitted non-residential uses in residential neighborhoods? Given that these buildings already exist in the County, what is the advantage of defining and illustrating them? Focus on discussion on p. 12 of 9/17/13 Council staff packet and on additional testimony at upcoming public hearing.

During worksession #9, Planning Staff brought back a revised proposal for the "general building" and the PHED committee voted in favor of the proposal with the nonresidential building. The general building was identified as a structure type in the Planning Board Draft so that it could be regulated more stringently than a detached house in the Rural Residential and Residential zones. Removing the general building would only remove the protections the proposed code has provided for neighborhoods.

Building types regulate the form of development allowed within each zone. The building type **only** determines the applicable development standards. Having a defined general or nonresidential building type does not specify the uses that are allowed within the zone. The uses allowed within a zone are determined under Article 59-3 indicated in the use table.

Under the existing code, development standards for a dwelling and a main building are established for the residential zones, however, there is no difference in standards between the two building types. They are treated the same. By creating a clear distinction between a building intended for a residential use (detached house) and a building intended for a primarily non-residential use (detached building), the proposed code places greater restrictions on the nonresidential building type, providing greater protections for the neighborhoods in which they're placed. For instance, nonresidential building requires a larger lot width at the front lot line than a detached house, larger side and rear setbacks, and requires screening from abutting properties. None of these protections occur in the current code.

Many special exceptions contain development standards that are more restrictive than the development standards for a dwelling, thus providing additional protection. These standards have been retained in the proposed draft; however, some special exceptions do not provide additional set back or screening requirements. Permitted uses, such as cultural institutions and religious assembly, do not have these additional standards either. By providing standards for a nonresidential building, all nonresidential uses will have a minimum development requirement that is more protective to neighboring properties than under the current code.



## Proposed Changes to Land Use Table

- ▶ Certain uses have a history of intrusiveness when operating in close proximity to single-family residential neighborhoods, especially on the edges.
- ▶ When the following uses abut or confront a property zoned residential that is vacant or improved with a residential use, change the land use table of the rewrite as follows for the CRT and CR zones:
- ▶ Page 3-8: Hotel/motel – from P (Permitted) to L (limited)
- ▶ Page 3-9: Funeral home – from L to C (Conditional)
- ▶ Page 11: Drive-thru and Vehicle Repair (minor) – from L to C

The CR zone, along with the CRN and CRT zone, was recently approved by County Council and as such is the most up-to-date/timely zone regarding land use practices. The CRT and CR zones were passed with Hotel, Motel as a permitted use. Hotels and motels are also permitted in most of the CBD zones and several other mixed-use zones. The proposed code has compatibility standards regarding height and setback that would apply to these uses when abutting or confronting an Agricultural, Rural Residential, or Residential zone that is vacant or improved with a residential or agricultural use, as would the screening requirements. In addition, since standard method only allows 1.0 FAR in CRT and 0.5 FAR in CR, a Hotel, Motel would go through the optional method process, which includes public input. These restrictions occur even when the use is permitted.

In the current CR and CRT zones, a drive-thru requires a site plan and has certain design and setback requirements; both the site plan and all the design and setback requirements are retained in the proposed code. Automobile Repair and Services was passed as a limited use in CRT and a permitted use in CR, with no distinction between the types of repair (major vs. minor). The proposed code has Vehicle Repair (Minor) as a limited use in both the CRT and CR zone. The limited use standards include a requirement that all buildings to be set back a minimum of 50' from an abutting residential lot line; the minimum site is 20,000 SF; access to the site from a street with a residential classification is prohibited and in the CRT zone, site plan approval is required. Major Vehicle Repair is a conditional use in both CRT and CR.

The Funeral Home was added to the CRT and CR zone due to zone consolidation. The limited use standards for a Funeral Home includes a requirement for site plan when abutting or confronting an Agricultural, Rural Residential, or Residential zone that is vacant or improved with a residential or agricultural use.

## Seasonal Outdoor Sales

- ▶ See page 3-19 of the rewrite, which loosens the standards for seasonal outdoor sales, a limited (L) use in all agricultural and residential zones.
- ▶ Does not appear to solve existing problems but does appear to create new ones.
- ▶ Recommend keeping the existing standards for seasonal outdoor sales to avoid increasing the duration and number of events.

The standards for Seasonal Outdoor Sales have not been loosened; rather, the use has been updated/modernized so that it is no longer exclusively for Christmas trees. The use standards directly address community concerns as brought up and discussed during the PHED worksessions when the PHED approved the revised language. Specifically, language was added that says the duration of the required temporary use permit is a maximum of 45 days and that only a maximum of 2 temporary permits can be issued per site annually. Further, language was added that requires a plan be submitted by the applicant demonstrating adequate vehicular circulation, parking, and queuing. The current code does not have any standards associated with this use. Instead, the use is limited by its name: Christmas trees, sale of between December 5 and December 25. A use that is specifically limited to Christmas trees seems a very exclusionary use, particularly as the diversity of the County continues to grow.

### **Animal Husbandry**

- ▶ Page 3-6 of the rewrite lists Animal Husbandry as a permitted use in the agricultural zones and as a limited use in all residential zones.
- ▶ PHED Committee recommended changes, including a minimum 15-foot setback from any lot line, a solid roof on the accessory structure housing the animals, and a fenced area behind the rear building line.
- ▶ More changes should be made. The standards on page 3-18 should require an accessory structure to shelter 3 or more of any combination of hens, ducks, miniature goats, or rabbits.
- ▶ In addition to setting the number of square feet of *lot area* for each animal, require a minimum number of square feet for the accessory structure to house them.
- ▶ Add language requiring registration with the Maryland Department of Agriculture's Poultry Registration Program, which is MANDATORY for chickens and waterfowl.
- ▶ Develop executive regulations for care and housing and a fact sheet for all registrants. Many other jurisdictions have these requirements.

As currently proposed, the accessory structure has to meet all the standards of any other accessory structure (with the exception of the greater 15' setback for this use). A requirement to provide a structure for 3 or more animal or fowl could be added if the committee so desires. A reference to the requirement to register with the Maryland department of Agriculture, as applicable, could be added. On what should a requirement for a minimum number of square feet for the accessory structure be based?

## Affordable Housing

- ▶ Changes to public benefits lists for CR zones to prioritize affordable housing above the 12.5% minimum.

The PHED committee draft has includes several elements that will preserve and expand the County's affordable housing goals such as:

- Zones that currently allow density bonuses for MPDUs will continue to allow them.
- A new incentive for providing MPDUs - existing C/R zones will have an added incentive to provide more than the required 12.5% of units as MPDUs. The gross floor area of any MPDUs provided above 12.5% is exempt from the calculation of FAR.
- A new incentive for providing Workforce Housing.
- More housing equals more opportunities for affordability and MPDUS. The proposed zone translation has the potential to increase the housing supply in the County by making the provision of housing a permitted use – where currently residential uses are only allowed by special exception or under limited locational criteria. By increasing the overall number of units, however slight, it follows that the total number of MPDUs will also increase.
- Greater zoning flexibility allows for more housing options. Introducing building types across all zones allows for development of small detached houses on small lots in areas zoned for mixed-use, townhouse or multi-family units. This does not increase the density within these zones but allows for a smaller scale detached house – a housing type not seen much within the County but becoming more popular with older adults and young couples as these units are typically more affordable.
- In a similar fashion, for MPDU optional method development in the Rural Residential and Residential zones, the minimum lot size per unit has been slightly reduced while the percentage of open space required has been increased. The density of such development has not changed, but the reduced lot size allows for greater flexibility in siting and construction while the increase in open space allows for a greater buffer area around new development.

## Zone Conversion Issues

- ▶ The NR (Neighborhood Retail) zone introduces residential uses into local-serving commercial (C-1) in low-density, non-transit-serviced areas (Cloverly, for example); contrary to adopted master plans

The C-1 zone currently allows dwellings as a special exception so the NR is not introducing residential uses to this land. While there is no limit on the amount of dwellings that can currently be approved by special exception on C-1 land, there is a limit (30% of the total gross floor area on the subject site) under the proposed draft. As can be seen in the comparison of parking requirements table beginning on page © 10 in the packet for PHED worksession #7, for a majority of uses, the minimum parking requirement has stayed the same as under the current code when outside a Parking Lot District (note in reading the table, when “- -” appears in the column, it is almost always because this use is not allowed in those areas, so the parking requirement does not apply).

- ▶ R-60 residential properties adjacent to already developed C-2 area would be converted to CRT with reduced parking where transit is more than 1/2-mile away, resulting in spill-over parking into the R-60 neighborhood (Wheaton)

In Wheaton specifically, there is only one C-2 site that is being converted to CRT.

- ▶ C-1, C-2, C-4, and C-O properties abutting and confronting single-family homes are proposed for conversion to CRT and EOF with higher FAR and height than existing development standards; new zone would also allow by-right uses not currently permitted. (Four Corners)

There are no properties currently zoned C-1 in the Four Corners area.

For properties zoned C-2, if abutting or confronting property in an R-90, R-60, or R-40 zone that is vacant or improved with a residential use, height is limited to 45 feet in the conversion. The C-2 zone limits height to 3 stories or 42 feet (as noted above height in the C/R zones is applied in 5 foot increments so it was rounded to 45 feet). Residential density is limited to 0.75 FAR in the conversion to the CRT zone – this is the estimated density possible under the C-2 zone. And, commercial FAR is limited to 1.5, the maximum commercial density allowed under the C-2 if not mixing commercial and residential uses.

For the C-4 conversion, optional method development allows for a maximum commercial FAR of 0.75, and a height of 40 feet. Optional method is assumed to be allowed unless the applicable master plan specifically states that the higher FAR is unsuitable for a particular site. The Four Corners plan does not include this prohibition so the proposed conversion to CRT has a commercial FAR limit of 0.75, and a height limit of 40 feet.

- ▶ West Howard Avenue antiques district: I-1 zoned properties with existing maximum height of 42 feet and possible 1.0 - 1.5 FAR recommended for conversion to I-M with 2.5 FAR and a height of 120'. (Kensington)

Under the I-1 zone, development can be approved for a height of 120 feet unless the master plan states that an employment center is unsuitable for a particular site. The master plan does not have to recommend the employment center, it is the default unless the master plan states otherwise. The Kensington master plan does not state that an employment center is unsuitable. However, because the master plan indicates that the maximum height for the plan should be in the center of Kensington, and because the zoning text allowing for

an employment center has been rarely, if ever, used since the last comprehensive rewrite, Planning Staff have revised the default conversion for the I-1 zone, limiting the height to 50 feet.

The I-1 zone currently has no FAR limit. Planning Staff looked at a number of existing I-1 zoned properties to determine an FAR that would appropriately capture what has been able to be built to date in the I-1 zone across the county.

- ▶ CBD-1 zone with a maximum 2.0 FAR (standard method) and 3.0 (optional method) and maximum height of 60 feet standard/90 feet optional is recommended for rezoning to the CR zone with a 3.0 FAR and 90 feet height. (Bethesda )

As an example, the CBD-1 properties located near the intersection of Wisconsin Avenue and Bradley Boulevard are proposed to convert to CR-3.0 C-3.0 R-2.5 H-75, which is identical to the maximum amount of development that would be allowed today under optional method in the CBD-1 zone (75' is the max height recommended by the master plan). Under the proposed zoning, a development could achieve a maximum FAR of 3.0 and a height of 75' only under the optional method development process, which requires a site plan review by the Planning Board and the provision of public benefit points.

Under standard method in the proposed code, a development in this zone could only develop with an FAR of 0.5 or 10,000 SF of gross floor area (whichever amount is greater). Any development above this threshold would have to go through the optional method process. Note that a standard method project under the CBD-1 zone can currently build to a maximum FAR of 2.0 with just a building permit.

- ▶ When Council adopted the CR zone, a master/sector plan recommendation was needed before the CR zones were applied. This provision has been removed and CR zone is being applied throughout the county in places where it has not been recommended in a master or sector plan.

Under current code, C/R zones must be recommended in a master plan; however when the Council adopted changes to establish the CRT and CRN zones, it said the following in its opinion:

“The Council retained the provision that only allowed the application of CR, CRN, and CRT zones by the specific recommendation of a master plan. In doing so, the Council did not intend to prejudge if that provision might be retained or amended when it considers a rewritten zoning ordinance.”

This provision was included with the anticipation that the proposed ordinance may require a District Map Amendment, and as such, may apply the C/R zones in a manner other than a Sectional Map Amendment.

Planning Staff has spent over 2 years working on the proposed map conversion. The first zone conversion table was proposed in January 2012. This proposed conversion was posted on the project website, and presented to the Zoning Advisory Panel (ZAP). General rules for conversion were established with the goal of translating the height and density allowed under the existing ordinance. In addition, Planning Staff read each master plan, incorporating any master plan recommendations on height, density, and commercial or residential use.

During the spring, Planning Staff held 6 Open Houses around the county to show communities the proposed zone conversion and to help educate the public about the ongoing drafting. In September 2012, the Planning Board began its review of the draft code. Following worksessions on the code text, the Planning Board held a public session on March 12, 2013 followed by 9 worksessions devoted to the proposed zone conversion. During these worksessions the Planning Board voted to convert existing zones with density and height limits provided in the current ordinance, unchanged by master plan recommendations.

On May 2, 2013 the Planning Board voted unanimously on a District Map Amendment (DMA) to accompany the proposed code. Included in this DMA is a proposal to convert property to the C/R family of zones.

### **Master Plan Conversion Issues: Example**

The Wheaton Sector Plan, approved in 2012, contains the following language about the Westfield District:

- ▶ The 76-acre Westfield Wheaton Mall is the eastern County's regional shopping mall. ... The Mall is currently zoned C-2 and built to approximately 0.4 FAR... the CR Zones would not work effectively with the existing mall. The main mall portion of the property could be rezoned for mixed-use development as part of the comprehensive rewrite of the County's Zoning Ordinance underway at the time of Plan adoption.
- ▶ Confirm the existing C-2 zoning on the remainder of the site (Parcels 3 and 10). Buildings of appropriate heights should also be located along University Boulevard West to be compatible with surrounding uses.

Proposed conversion is to GR (General Retail) 1.5 FAR; Height 130 feet. Does this reflect the master plan?

As of August 31, the proposed zoning for Westfield Wheaton Mall is GR- 2.5 H-75. Planning staff adjusted the zone from the one referenced in the question to better reflect what's currently allowed. As noted on page 52 of the Wheaton Sector Plan, the C-2 zone normally allows a maximum FAR of 2.5 and a maximum building height of 75', which is now reflected in the GR formula.

The 130' height maximum found on our map before August 31 comes from a provision in the current code<sup>1</sup> which reads:

*To accommodate development at a regional shopping center ... building height may be increased to (1) 90 feet for a building that includes a theater complex, and (2) 130 feet for a hotel...*

The extra height allowance for hotels and malls is accommodated in the Regional Shopping Center Overlay Zone<sup>2</sup>, which covers Westfield Wheaton and Westfield Montgomery Malls.

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<sup>1</sup> 59-C-4.351.(c) added by ordinance 15-44 in 2004

<sup>2</sup> Section 4.8.8. page 4-86 (Sept 4 Preliminary PHED draft.)

As mentioned as a possibility in the plan, the proposed zoning for Westfield Wheaton Mall does allow mixed-use development. The zone proposed for the Westfield Wheaton Mall property (GR) allows residential uses to occupy up to 30% of total gross floor area of the subject site; this allowance for residential is the main difference between C-2 and GR. Other uses and development standards in the GR zone are modeled on C-2 and were considered most appropriate for the Westfield site for the foreseeable future.

- ▶ **Delay the mapping conversion (DMA) to allow adequate time for everyone to review all the changes to the Proposed Ordinance**

As noted in the September 11, 2013 PHED Committee packet for Worksession #8, scheduled for September 13, 2013, "County staff is assuming that the effective date for the code and the DMA would be 180 days after the Council's approval. This will give time for an application to submit plans in progress during the 180 days" and for stakeholders to continue to review the mapping before its implementation.

In addition, the rewrite project has been open for public review since the spring of 2009 and staff has produced several iterations of the draft text and zoning map based on feedback from the Planning Board, the PHED committee, and other county stakeholders and citizens.

- ▶ **Determine if DMA is the appropriate vehicle to move forward**

If the DMA is not adopted in conjunction with the revised zoning code, the County will be operating under two separate zoning codes. This scenario would not only create a nightmare for County staff responsible for implementing and enforcing the zoning code, but it would make the development review process even more bewildering for citizens trying to understand what to expect from neighboring developments and how to participate in the process.

- ▶ Review the master plan driven translations (see on-line reports on each master plan) for adjustments/consistency. These master plans have been identified by the communities and businesses as potential problems

- ▶ Wheaton
- ▶ Woodmont Triangle
- ▶ Kensington
- ▶ Burtonsville
- ▶ Sandy Spring Ashton
- ▶ Four Corners
- ▶ Potomac

The Master Plan page on the Zoning Montgomery website notes that the Master Plan packets have not yet been updated to reflect the proposed zones found on the August 31 interactive map. Staff spent a significant amount of time inputting changes made to the map by the PHED committee and meeting with property owners to discuss specific issues. Planning Staff will update and post revised master plan reports as soon as feasible.

Planning staff is happy to discuss any problems or concerns about the master plans listed above.

### **Alternative to DMA: Apply through SMAs**

- ▶ Address commercial zone conversion issues by developing an expedited review workprogram for recently approved and adopted plans such as Twinbrook, Germantown, Shady Grove, White Flint, Great Seneca, Kensington, Takoma/Langley, and any others where the need for commercial area revisions are needed.
- ▶ Others can be addressed as they come up for review over the next few years: Long Branch, Glenmont, White Oak, Bethesda, Aspen Hill, White Flint II, Westbard.

If this option involves running two codes concurrently which, as mentioned previously, this would be a nightmare for anyone involved in the development review process, including citizens trying to participate and understand the laws.

- ▶ Floating zones are also an option for change.

Under this scenario, a property owner must either apply for or agree to any Local Map Amendment. Re-zoning the County through an LMA process would be both inefficient and time-consuming. This too would involve operating 2 codes concurrently.

### **Floating Zones in Rewrite Intensify Development**

- ▶ Residential Floating Zones
  - ▶ Can go from RE-2 density to RE- 1 density if property is 12 acres (increase from .5 to 1 du/acre)

A developer could apply for such a floating zone in this scenario, but County Council would have to approve it after finding that the floating zone would:

1. Conform with the applicable master plan;
  2. Further public interest;
  3. Be compatible with existing and approved adjacent development; and
  4. Provide adequate and safe internal infrastructure, amenities, and circulation.
- ▶ Can go from R-90 density to TMD density with 1.24 acres: (increase from 4.84 to 12 du/acre)

This is actually more restrictive than the existing RT floating zones (Residential Townhouse), which allow the same amount of density on tracts of less than an acre. Under the current code, RT-12 (12 du/ acre) is allowed in R-90 on tracts of 20,000 square feet. RT-15 (15du/ acre) is allowed on tracts of 40,000 square feet. The RT requires either a master plan recommendation **OR** the property must be a buffer between single-family detached and residential uses. In this scenario, a developer would have to gain approval from County Council as mentioned previously.



- ▶ Can go from R-60 density to R-30 density if property is less than one acre: (increase from 7.26 to 14.5 du/acre)

Again this is far more restrictive than the existing RH floating zone (Multiple-family, high-rise planned residential), which theoretically allows 43 du/acre (equivalent to R-10 density) on an R-60 property. The RH zone requires a 200' frontage, but it does not require a master plan recommendation. In this scenario, a developer would have to gain approval from County Council as mentioned previously.

### **Proposed Floating Zone Changes**

- ▶ Are industrial and employment floating zones needed ?
  - ▶ Fairland, Great Seneca Science Center, I-270 Corridor, Bethesda, Silver Spring have already been defined as key employment areas
  - ▶ The existing industrial areas should suffice unless we continue to eliminate them.

Industrial floating zones are intended to provide flexibility, under limited circumstances, to accommodate unanticipated uses that may arise in the future.

In the past 5 years, Council has approved 5 applications for the O-M floating zone (Office building, moderate intensity) and 2 applications for the C-T zone (Commercial, transitional). These 2 zones are comparable to the proposed floating employment floating zones and are appropriate for transitional areas. These floating zones are not meant to detract from key employment areas, but rather to allow for flexibility where Council finds it conforms to the master plan, furthers the public interest, etc.

- ▶ Use floating zones for residential and/or mixed uses only in areas where new transportation facilities are planned and where edge conditions generate transitional areas. The proposed densities have to be supported by planned public facilities.

This is much more restrictive than what the Council has approved to date.

- ▶ Need further discussion of Council staff recommended changes in PHED Committee 9/17/13 packet re: prerequisites and other issues

This is a topic for discussion at the worksession on 9/27.

### **Overlay Zones**

- ▶ No provisions or directions for what an overlay zone is and how one could be created.

Overlay zones are typically recommended by a Master Plan and implemented through a Sectional Map Amendment (to add the Overlay boundary to a map) and a ZTA (to add the language to the zoning code). The proposed code does state in Section 4.8.1.A that "Land must only be designated within an

Overlay zone when approved by a Sectional or District Map Amendment.” This is consistent with language from the current code, which says “In designating an overlay zone on the zoning map, the District Council must follow the applicable procedures of Article 59-H for processing and approving sectional and district map amendments.”

The proposed text could be modified to “Land must only be designated within an Overlay zone when recommended by a master plan and approved by a Sectional Map Amendment, or when approved by a District Map Amendment.

Article 59-2 contains the intent statement for the Overlay zones, which is taken straight from the current code. In addition, each Overlay zone has a specific purpose statement tied to it. These purpose statements, which were taken straight from the existing Overlay zones, appear at the beginning of each Section in Division 4.8 Overlay zones.

- ▶ Overlay zones might be needed in the future to protect communities.

New Overlay zones will be created in the future the same way they have been created in the past; a master plan will recommend an overlay and it will be implemented by Sectional Map Amendment and ZTA . Under the conversion proposed Overlay zones will be mapped by a District Map Amendment. The Overlay zones contained in the draft code can be recommended in future master plans and mapped to new areas.

- ▶ How would we add new TDR overlay areas?

A new TDR Overlay area (with a maximum allowed density designation) would be recommended in a master plan. The Overlay zone boundary would then be added to the zoning map through a Sectional Map Amendment approved by County Council.

### **Proposed Changes for Overlay Zones**

- ▶ Current Ordinance
  - ▶ C.18.2 Land must not be designated as an overlay zone unless the land is recommended for an overlay zone on a master or sector plan. The applicable master or sector plan must recommend boundaries of the overlay zone, and the goals and objectives for the development and use of land within the overlay zone. Land must only be designated within an Overlay zone when approved as part of a Sectional or District Map Amendment.
- ▶ PHED Version
  - ▶ 4.8.1. Land must only be designated within an Overlay zone when approved as part of a Sectional or District Map Amendment.

▶ Proposed language

- ▶ *Land must not be designated within an overlay zone unless the land is recommended for an overlay zone in a master or sector plan. The applicable master or sector plan must recommend boundaries of the overlay zone, and the goals and objectives for the development and use of land within the overlay zone.* Land must only be designated within an Overlay zone when approved as part of a Sectional or District Map Amendment.

Since the draft of the zoning code is a large ZTA and the mapping is proposed as a District Map Amendment, it is not possible to implement the 4 new proposed Overlays, and retain the language from the current code that states: “Land must not be designated as an overlay zone unless the land is recommended for an overlay zone on a master or sector plan.” Instead the proposed text could be modified to read: “Land must only be designated within an Overlay zone when recommended by a master plan and approved by a Sectional Map Amendment, or when approved by a District Map Amendment.”