



Zoning Ordinance Implementation

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Description

Staff Memorandum: Implementation of the New Zoning Ordinance
Public Hearing March 7, 2013
Zoning Ordinance Revision
Fall 2012 Planning Board Review

Summary:

Implementation of the new zoning ordinance entails three steps:

1. Adopting the new ordinance itself;
2. Adopting a new zoning map; and
3. Tracking and scheduling regular updates to make necessary corrections and modifications.

To ensure a broad understanding of the significance of the new zoning ordinance, this Planning Department Staff memorandum summarizes:

1. Brief history and resources,
2. Public notice of changes,
3. Protections for existing structures, site design, uses, and lots,
4. General impacts to new development,
5. Renaming of the Agricultural Reserve,
6. Text amendments affecting the Rural Residential and Residential Zones,
7. Translation of the Commercial and Mixed Used Zones,
8. Translation of the Industrial Zones, and
9. Translation or retention of Floating Zones.

Implementation of the New Zoning Ordinance

1. BRIEF HISTORY AND RESOURCES

The first proposal to consolidate and convert existing zones to new zones was presented in 2009 when the Zoning Advisory Panel first convened.¹ At that time, it was hoped that we could integrate and consolidate the 120+ existing zones into about one dozen families of zones with ranges of intensity within those families. We were optimistic, to say the least.

Further discussions on zone consolidation and reorganization were presented at public forums, open houses², and to the zoning advisory panel throughout 2011 and 2012.³ In many cases, the feedback received led Staff to propose the larger number of families of zones in the consolidated draft published in the summer of 2012.

Finally, over the course of the past five months, many presentations, publications, discussions and worksessions have provided thorough comparisons of uses and development standards between the current and proposed zoning ordinance.⁴ This body of work is not assessed again in this memorandum. Instead, the primary focus here is to present the rationale for zone conversions, review how the application process may be different, and highlight the most significant use and development standard changes.

A complete summary of current zones, acreage, and area percentage is attached to this report. A set of maps will be posted on-line showing the areas of the county under each zone. The following table summarizes the families of zones.

¹ See the Zoning Rewrite Team's Green Paper, "Land Use Districts: Consolidation and Focused Integration" available on the Zoning Montgomery Website under Resources/Other.

² These open houses included presentations of potential zoning maps for each master plan area, available at http://www.montgomeryplanning.org/development/zoning/master_plan.shtm.

³ Various documents are available at <http://www.montgomeryplanning.org/development/zoning/documents.shtm>.

⁴ Most recently: <http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/development/zoning/documents/59-212.21.12forWeb.pdf>. Further discussions on potential changes were discussed in the Planning Board worksessions on uses and development standards.

Montgomery County Existing Zoning by Acreage & Percentage (excluding municipalities and rights-of-way)		
Current Zone or Category	Acres	%
Agricultural (RDT)	106,735	37.8
Rural Residential (RR, RC, RNC, RNC/TDR ... no land is zoned LDRC)	32,573	11.5
Residential Estate (RE-2, RE-2/TDR, RE-2C, RE-2C/TDR, RE-1, RE-1/TDR)	50,153	17.8
Residential Low Density (R-150, R-150/TDR, R-200, R-200/TDR, RMH-200)	37,977	13.4
Residential Medium Density (R-90, R-90/TDR, R-60, R-60/TDR, R-40, R-MH)	33,485	11.8
Residential Townhouse (RT-6, RT-8, RT-10, RT-12.5, RT-15)	1,081	0.4
Residential Multi-Family (R-30, R-20, R-10, R-H)	2,718	1.0
Central Business District (CBD-0.5, CBD-1, CBD-2, CBD-3, CBD-R1, CBD-R2)	364	0.1
Commercial/Residential (CRN, CRT, CR)	637	0.2
Mixed-Use (MXN, MXPD, MXTC, MXTC/TDR, RMX-1, RMX-1/TDR, RMX-2, RMX-2C, RMX-2C/TDR, RMX-3/TDR, RMX-3C, TMX-2, TOMX-2, TOMX-2/TDR, TS-M, TS-R)	2,690	1.0
Commercial (C-T, 1, 2, 3, 4, 6, C-Inn, C-T, H-M)	1,163	0.4
Office (C-O, C-P, O-M, I-3, LSC)	43	0.02
Industrial (I-1, I-2, I-4, R&D, R-S)	3,100	1.1
Planned Development (PCC, PN, PRC, TS, PD-2 ... PD-100)	7,783	2.8



2. PUBLIC NOTICE OF CHANGES

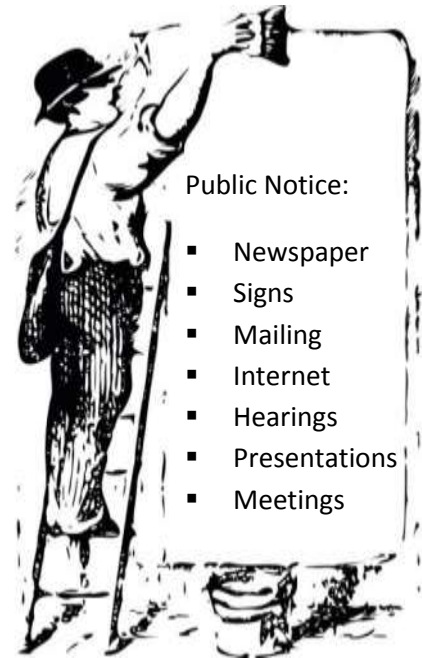
Under state law and the current zoning ordinance, both zoning text amendments and district map amendments only require notice via newspaper advertisements. This is done by the District Council when hearings for the amendments are established. The Council may decide to provide additional notice, but they are under no legal requirement to do so.

That said, throughout this process, outreach has been a primary component of this project and resulted in:

- Over 80 public meetings,
- Dozens of Planning Board worksessions,
- Numerous Council presentations,
- Regular email “blasts” to hundreds of parties following the project,
- Press releases for project milestones, and
- Almost weekly web site and agenda updates.

Planning Department Staff has decided to provide more public notice than required by law because it is important to the integrity of the final product that numerous voices be heard and opinions considered. The results of this project may have significant impacts to some property owners – primarily those that own and develop commercial, industrial and mixed-use properties. Thus, a separate mailing was made to all property owners for any property in a commercial or mixed-use zone, such as CBD, RMX, and C-1, and for those zones that will be consolidated into a new zone, such as C-Inn, R-150, and RMH, to let them know we are in the final phase of Planning Board review.

Most of the county, however, is zoned under a rural or residential zone that will see minimal changes in name, development standards, or uses (almost 56%). We have made tremendous efforts to maintain the integrity of these areas as is hopefully clear from the detailed discussions on uses and development standards for these zones over several months of public hearings and worksessions. Property owners subject to these zones were not specifically notified by letter as the changes to their zones are more akin to the zoning text amendments that are routinely passed with only the required newspaper notice. Despite our efforts at education and outreach, numerous misunderstandings remain and this memorandum, in part, will address some of these issues. Likewise, property owners in the Agricultural Reserve (RDT zone, almost 38% of the county) were not specifically notified by letter because the change in their zoning is mainly a name change. As becomes obvious, about 6% of the County is seeing some kind of change that is significant in terms of use, development standards, general regulations, and/or process. In most cases, as described below, this is due to changing development trends, demographic shifts, and contemporary policy goals. That said, total allowed densities and heights allowed in these areas have been maintained – not increased.



3. PROTECTION FOR EXISTING STRUCTURES, SITE DESIGN, USES, AND LOTS



Through generous “grandfathering” provisions and regulations to reduce or eliminate nonconforming situations, the Updated Zoning Ordinance is intended to have little impact on existing development, including modest expansions of existing uses. Further, legally existing structures, site design (such as parking lot design, landscaping, etc), uses, and lots that would not be in conformance with the new ordinance are explicitly protected by specific regulations.

Division 8.7, Exemptions and Nonconformities⁵, provides the specific regulations governing:

- Existing conforming structures, site design, or uses,
- Previously buildable lots,
- Pending applications (or accepted within 180 days of ordinance adoption/map amendment),
- Special provisions for properties deemed conforming that are currently subject to special exceptions or development plans to ensure consideration of binding elements, covenants, and previous conditions of approval,
- Existing nonconformities,
- Special provisions for conditions predating 1958,
- Special provisions for the area of the City of Takoma Park annexed into Montgomery County,
- Exemptions for unplatted parcels containing detached dwelling units, and
- Several specific regulations for nonconforming uses and structures regarding continuation, exceptions, and certain noncomplying multi-unit dwellings.

The general intent is that existing conforming structures, site design, uses, lots, and developments that have approved or pending applications that have not been built are:

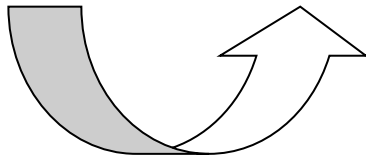
1. Deemed conforming,
2. Can be “continued, renovated, or repaired to the same size and footprint”,
3. Can be reconstructed to the same size and footprint for up to 15 years even if they would not conform to the new ordinance, or
4. Can be enlarged but only up to the lesser of 10% or 30,000 square feet under the ordinance in effect the day before the new ordinance is adopted (or the new zoning map is adopted) and applicable previous approvals.



⁵ See preliminary Planning Board draft:

<http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/development/zoning/documents/59-812.21.12forWeb.pdf>.

Further protections for existing structures, site design, uses, and lots are covered under individual provisions in Article 59-7, General Development Regulations⁶ considering interim development and new parking and landscaping requirements and the allowance to provide alternative compliance plans showing that development can meet or exceed the functional results and performance standards of new requirements.



Thus, in many cases, change will be incremental and current site design and development standards will be allowed until significant redevelopment becomes economically viable or is encouraged by new zoning under an updated master plan. Of course, property owners have the option to develop under the new zoning ordinance if they find the more contemporary and progressive regulations and standards more in line with emerging market demographics and environmental priorities.

⁶ See preliminary Planning Board draft:
<http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/development/zoning/documents/59-712.21.12forweb.pdf>.

4. GENERAL IMPACTS TO NEW DEVELOPMENT

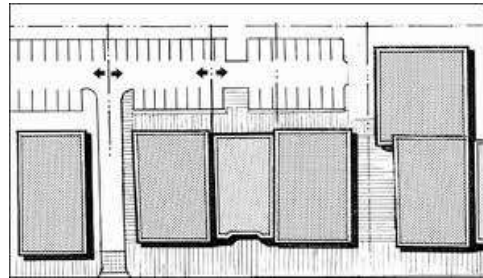
Before discussing the text amendments and zoning translations affecting individual zones, the following section describes changes to general regulations that may affect various properties, although primarily in the industrial and mixed-use zones. Article 59-7, General Development Regulations, contains regulations that apply across most zones. These include:

- Site access (for limited building types and zones),
- Parking, queuing, and loading,
- Open space,
- Landscaping and outdoor lighting,
- Outdoor display and storage, and
- Signs.

These regulations will impact most new development as discussed in the associated staff report and during the worksessions on this Article.⁷ But, as discussed above, there are considerations for existing sites, interim development, and the allowance for alternative compliance plans. In some case, however, these new or revised regulations will impact new development; the following sections detail some of the most significant changes.

4.1. Site Access

Site access considerations will now be codified for more intense uses in high-density residential and non-residential zones when a site plan or conditional use approval is required. These provisions will push development towards more pedestrian-oriented design solutions to reduce curb cuts, consolidate driveways, share drive aisles across properties, and provide vehicular access from alleys.



4.2. Parking

Unlike the regulations for site access, which are new to the ordinance, parking requirements are standardized in the existing ordinance and, in many cases, the standards have not changed since the 1950s. Throughout the country, parking standards are being studied, modified, and tested. The reasons are numerous – to reduce vehicle miles travelled, minimize congestion, decrease pollution, ensure



access and support of local retail, enhance the pedestrian's and bicyclist's realm – but the trend is obvious: reduce parking requirements in commercial and mixed use areas, make parking more dynamic and responsive, and provide more sustainable methods to visit residents and patronize shops, restaurants, and facilities.⁸ The updated

⁷ See staff report and draft:

http://www.montgomeryplanningboard.org/agenda/2012/documents/20121213_AdministrationandProcedures_004.pdf.

⁸ See, for example, the International Parking Institute's "2012 Emerging Trends in Parking".

parking numbers are also based on a parking study that analyzed numerous industry standards and jurisdictions; the recently approved Transit Mixed Use (TMX) and Commercial/Residential (C/R) zones; the Institute of Transportation Engineers' (ITE) latest parking generation rates; and the Urban Land Institute's (ULI) latest shared parking model rates. It is safe to say that most parking requirements in our current code have either been maintained or decreased. Thus, most property owners will see little impact, except that they are "over parked" under the new ordinance. In some cases, however, the changes would result in parking above the maximum allowed (in C/R and Employment zones within Parking Benefit Districts); but these parking situations would be protected under Division 8.7, as discussed above.

The opposite side of the coin, of course, is that residents worry that lower parking requirements may result in overflow parking on residential streets. Although we are often at pains to point out that public roads belong to the public and that there are residential permit programs to protect neighborhoods, the new ordinance does not intend to exacerbate the perceived problem. All conditional uses (previously called special exceptions) require specific findings regarding parking and allow the Board of Appeals to require additional parking when they deem it necessary. Further, maximum caps only apply within Parking Benefit Districts, and all site plans will continue to require compatibility findings by the Planning Board.



On-Street Parking Spaces for Shared Cars

BY ANDREA OSGOOD



Whereas queuing and loading standards are not currently codified – they are based on regulations determined by the Department of Permitting Services, new standards are proposed in the ordinance. This should provide more consistency, clarify expectations, and reduce review issues. The specific recommendations for parking in all zones were presented during two worksessions in February of 2013 (comparison tables attached).

4.3. Open Space

Open space is currently required in many different types and at varying levels. Four types of open space are proposed in the new ordinance, and the levels are based on several variables to ensure appropriate open space for a variety of contexts. The following sections summarize the differences between existing and proposed open space for all zones. It should be noted that not every waiver, nuance, or footnote is captured in these tables, only the bulk of standard and optional method requirements for the majority of development.



4.3.1. Rural and Residential Zones

Rural and Residential Zones					
Current			Proposed (Consolidated Review Draft , December 14, 2012)		
Zone	Type	Amount	Zone	Type	Amount
RNC (MPDU optional method)	Common Open Space & Rural Open Space	Unspecified & 65-85%, respectively (based on master plan)	RNC (MPDU optional method)	Common Open Space & Rural Open Space	5% & 65%, respectively (master plan conformance required)
RE-2C through R-40 (MPDU optional method)	Green Area	0– 2,000sf per unit	RE-2C through R-40 (MPDU optional method)	Common Open Space	5-40%
RC (cluster optional method)	Open Space	60% (or less)	RC (cluster optional method)	Rural Open Space	60%
RE-2C through R-60 (cluster optional method)	Common Open Space (green area also referenced)	Unspecified	RE-2C through R-60 (cluster optional method)	Common Open Space	5-40%
RNC/TDR (TDR optional method)	Common Open Space & Rural Open Space	Unspecified & 65-85% based on master plan	RNC w/TDR Overlay (TDR optional method)	Common Open Space & Rural Open Space	Varies by TDR designation & 65% (master plan conformance required)
RE-2/TDR through R-60/TDR (TDR optional method)	Green Area	0-50% based on TDR designation	RE-2 through R-60 w/TDR Overlay (TDR optional method)	Common Open Space	0-50% based on TDR designation
RT-6.0 through RT-15.0 (standard method)	Green Area	30-50%	TLD, TMD, and THD (townhouse units – standard method)	Common Open Space	50%, 45%, 40%
RT-6.0 through RT-15.0 (MPDU optional method)	Green Area	30-45%	TLD, TMD, and THD (MPDU optional method)	Common Open Space	45%, 45%, 30%
R-30 through R-10 (standard method)	Green Area	50-65%	R-30 through R-10 (townhouse or apartment/condo - standard method)	Common Open Space	60-65%
R-30 through R-10 (MPDU optional method)	Green Area	35%	R-30 through R-10 (MPDU optional method)	Common Open Space	35%
R-30 through R-10 (TDR optional method)	Green Area	30-40%	R-30 through R-10 (TDR optional method)	Common Open Space	50%

As proposed, the R-150 and RMH-200 zones would be rezoned into the R-200 zone with new open space requirements. This does not change the amount of open space required for MPDU, cluster, or TDR optional method development for previously zoned R-150 properties. Further, RMH-200 does not have any TDR designation, is not currently listed in the MPDU optional method section (59-C-1.62), and has identical development standards (except for the minimum area of development) as the R-200 zone for cluster optional method. Thus, this consolidation will not have a substantive impact on required open space.

The R-MH zone, however, which currently has a minimum green area requirement of 30% over the entire site, is proposed for rezoning into the R-60 zone because the density will remain unchanged. But these areas are built-out and any redevelopment would require either typical R-60 lots with individual yards or common open space under an optional method of development with comparable area requirements.

Although the required open space amounts have changed little for these zones, the descriptions of the various types of open space have been revised in keeping with the intent of the open space for each predominant use. As described in Division 7.3, open spaces have specific definitions, restrictions, and regulations making them more appropriate for each zone, use, and building type.

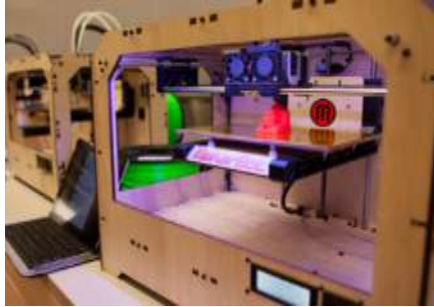
Last, the R-fourplex and LDRC zones are not currently mapped in the County and are not recommended for retention. The RH zone is being retained in its entirety as a grandfathered zone – one that will be maintained to accommodate existing development but not available for future rezoning.



4.3.2. Industrial Zones

Industrial Zones					
Current			Proposed (Consolidated Review Draft , December 14, 2012)		
Zone	Type	Amount	Zone	Type	Amount
RS	Open, non-impervious surface	40%	IM	Amenity Open Space	5% for lots ≤ 10,000sf or 10% for larger lots
I-1	Green Area	10%+	IM	Amenity Open Space	5% for lots ≤ 10,000sf or 10% for larger lots
I-2	Green Area	10%	IH	Amenity Open Space	5% for lots ≤ 10,000sf or 10% for larger lots
I-3	Green Area	35%	EOF	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
I-4	Green Area	10-20%	IL	Amenity Open Space	5% for lots ≤ 10,000sf or 10% for larger lots
R&D	Green Area	30%	IM	Amenity Open Space	5% for lots ≤ 10,000sf or 10% for larger lots
LSC	Public Use Space	20%	LSC	Public Open Space or Amenity Open Space	0-10% depending on development method, lot size, & frontage

A general revision of the standards for industrial zones is proposed in keeping with contemporary trends in development and the types of uses being pursued in these zones, such as computer, technological, and scientific research, design, and production. Further, many of these zones are currently in more urban areas with uses blurring the lines between commercial, industrial, and mixed-use. Low intensity industrial development can blend into the fabric of these areas – think Twinbrook, White Flint, Kensington, White Oak, and Burtonsville – with more progressive standards.



A change that will have more impact is the definition of amenity open space, which will replace green area, and require more useful and vegetated open space. And, as noted below, minimum requirements for screening and buffering are now required between industrial uses in general building types and residential uses.



Last, the MRR zone is not currently mapped in the County and is not recommended for retention.

4.3.3. Commercial Zones

Commercial Zones					
Current			Proposed (Consolidated Review Draft , December 14, 2012)		
Zone	Type	Amount	Zone	Type	Amount
C-T	Green Area	10%	CRN	Common Open Space or Public Open Space	0% for lots ≤ 10,000sf or 10% for larger lots
O-M	Green Area	10-15%	EOF	Common Open Space or Amenity Open Space	0-10% depending on development method, lot size, & frontage
C-O	Unspecified	Unspecified	EOF	Common Open Space or Amenity Open Space	0-10% depending on development method, lot size, & frontage
C-P	Green Area	40%	EOF	Common Open Space or Amenity Open Space	0-10% depending on development method, lot size, & frontage
C-1	Green Area	10%	NR, CRN, or CRT	Common, Amenity, or Public Open Space	0% for lots ≤ 10,000sf or 10% for larger lots
C-2	Green Area or Public Use Space	10%	GR or CRT	Common, Amenity, or Public Open Space	0-10% depending on development method, lot size, & frontage
C-3	Green Area	10%	GR	Common Open Space or Amenity Open Space	0% for lots ≤ 10,000sf or 10% for larger lots
C-4	Green Area	10%	CR or CRN	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
H-M	Green Area	45%	CRT	Common Open Space or Public Open Space	0% for lots ≤ 10,000sf or 10% for larger lots

Like the industrial zones, the open space requirements for commercial zones have been modified to reflect new development trends and to ensure that open space is both useful and appropriate for contemporary urban environments. In many cases, development in commercial zones will be under the optional method, which requires public benefits that must reflect master plan priorities and take into consideration adjacent uses. Thus, most additional open space will be required through the public process of optional method review. Also, new landscaping requirements and screening and buffering requirements, as discussed below, may be required that will further “green” these developments.

In zones with the most significant changes, the impacts will be controlled through future development review. The C-P zone currently applies to one property surrounded on two sides by I-270 and the I-270 spur (and under the control of a site plan) and the H-M-zoned properties are under proposed “mini-master plan” review or are in areas being rethought as mixed-use, transit-oriented environments such as the Great Seneca Science Corridor.

Last, the C-Inn, C-5, and C-6 zones are being removed; properties will either revert to their previous zoning designation, in the case of C-Inn, or be rezoned under a pending master plan, and are not recommended for retention.



4.3.4. Mixed-Use Zones

Commercial Zones					
Current			Proposed (Preliminary Planning Board Draft , December 21, 2012)		
Zone	Type	Amount	Zone	Type	Amount
CBDs	Public Use Space	5-10% standard method; 20% optional method	CR	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
MXPD	Green Area	50% of residential area; 40% of commercial area (or comparable amenities and facilities)	CRT	Common Open Space or Public Open Space	0% for lots ≤ 10,000sf or 10% for larger lots
MXN	Green Area and Public Use Space	50% (or comparable amenities and facilities)	CRT	Common Open Space or Public Open Space	0% for lots ≤ 10,000sf or 10% for larger lots
TS-R	Public Use Space; Area for Recreational Purposes	10%; 20%	CR	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
TS-M	Public Use Space; Area for Recreational Purposes	10%; 25% if providing more than 50 units	CR	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
RMX (standard method)	Same as R-200 and C-2 zones	See above	CRT	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
RMX (optional method)	Green Area; Outside Amenity Area	10-20%; 20-50%	CRT	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
MXTC	Public Use Space (or Green Area)	10-20% depending on development method and lot size	CRT	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
TOMX	Public Use Space	5-20% depending on development method and to accommodate MPDUs	CR	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage
TMX	Public Use Space	5-20% depending on development method and to accommodate MPDUs	CR	Common Open Space or Public Open Space	0-10% depending on development method, lot size, & frontage

Currently, there are many amenities that may be provided in lieu of public use space (which is being renamed “public open space”, such as entertainment venues and public buildings; there are also many off-site and payment-in-lieu options. Thus, a change that may seem dramatic at first may have less of an impact than suspected. Because these are generally developed under the optional method with

significant public review, these changes – as adopted in the current CR zones⁹ – are appropriate and reflect contemporary design trends focusing on consolidated open spaces, recreation networks, and pedestrian-oriented streetscapes.¹⁰ Further, these projects are being reviewed to comply with the applicable master plan and with greater coordination between the Parks Department and other agencies to look at open space and recreation networks generally. Also, new landscaping requirements and screening and buffering requirements, as discussed below, may be required that will further “green” these developments.



The MXP and MXN are currently low density mixed-use zones that only allow development resulting in floor area ratios of 1.0 and 0.5, respectively. Thus, most of the open space will be found in individual lots for houses, along sidewalks, and consolidated in parks and trails. Moving to development standards that separate open space by building type and allow for more traditional mixed-use development patterns will allow those properties that are being redeveloped to concentrate density and open spaces appropriately and through a public review process. The RMX zones allow higher densities but have similar development patterns and a public review process.

Most of the Planned Development Zones, PD, TS, PNZ, PRC, and PCC, are being retained in their entirety as grandfathered zones and will be maintained to accommodate existing development but will not be available for future rezoning.

4.4. Recreation Facilities



As before, current requirements for recreation will be assessed under guidelines adopted by the Planning Board. Although Staff recommended that these guidelines be codified, the Planning Board recommended that the requirement to adopt, publish, and maintain guidelines be established by the Ordinance and apply to development that provides 20 or more residential units.

⁹ In fact, most CR-zoned approvals have at least 20% open space.

¹⁰ An excellent example of earlier networked open space is, of course, Olmsted’s “Emerald Necklace” in Boston; for more contemporary examples showing new trends in open space, see ULI’s Urban Open Space Awards at <http://www.uli.org/awards/uli-urban-open-space-award-winners-and-finalists-through-the-years/>.

4.5. Landscaping and Outdoor Lighting

In the current ordinance, there are no definitions or standards for basic landscaping and outdoor lighting except for parking lots. These have now been defined and basic standards have been laid out.

4.5.1. Open Space Landscaping

Regarding landscape plant material and illumination levels, there are currently no specific restrictions or requirements for open space. Open space landscaping is proposed to restrict where farm crops are allowed, and to establish where ornamental planting is allowed, minimum amounts of permeable area, and minimum amounts of tree canopy. Further, illumination levels are restricted in rural and common open space and for public open space and amenity open space when those areas about a property developed with an agricultural or residential use and in an Agricultural, Rural, or Residential Zone.

4.5.2. Parking Lot Landscaping

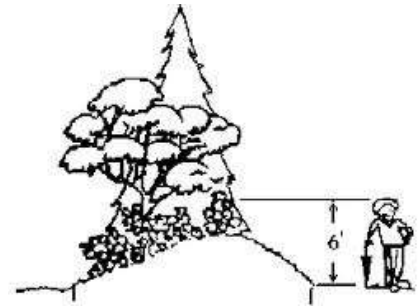
The following table summarizes the impacts of proposed changes to parking lot landscaping.

Parking Lot Landscaping		
Standard	Current	Proposed
Minimum landscaped area	5%	5%
Minimum contiguous square feet to qualify towards landscaped area	8 to 8.5 feet wide	100sf
Maximum Spaces between islands	n/a	20
Minimum tree canopy	n/a	25%
Perimeter planting width (abutting ag, rur, or res zone)	4' or setback	10'
Perimeter planting hedge (abutting ag, rur, or res zone)	Landscaped berm if space permits	6' high hedge, fence, or wall
Perimeter tree planting (abutting ag, rur, or res zone)	40' o.c.	Canopy trees 30' o.c. and two understory trees per canopy tree
Perimeter planting width (abutting other zone or r.o.w.)	10'	6'
Perimeter planting hedge (abutting other zone or r.o.w.)	3' high hedge, fence, or wall	3' high hedge, fence, or wall
Perimeter tree planting (abutting other zone or r.o.w.)	40' o.c.	Canopy trees 30' o.c.
Light fixture height	n/a	
Maximum in parking lots with 100 or more spaces		40'
Maximum in parking lots with less than 100 spaces		30'
Maximum in pedestrian areas		15'
Maximum within 35 feet of property with detached house building type		15'
Lighting type	n/a	Full or partial cut-off
Minimum coverage of parking garage facing r.o.w. or open space	n/a	50% by green wall or artwork
Maximum height of parking garage lighting	n/a	30' generally, 15' within 30' of deck perimeter

For interim conditions, the applicable review body may allow deviations from the new requirements if an approved phasing plan is established to show how conformance will be met at full build-out and if that body finds that the interim design is compatible, safe, and efficient.

4.5.3. Buffering and Screening

This section is entirely new and applies to many townhouse, apartment/condo, multi-use, and general building types. Requirements for similar types of buffering and screening were previously applied under the discretionary standards of the Planning Board and Board of Appeals.



4.5.4. Outdoor Display and Storage

Like the buffering and screening requirements, this section is generally new but applies only to commercial and industrial uses. Requirements are adapted from the current special exception requirements for outdoor display and storage and other research. In many cases, the standards of the zone and/or use under which the material is being stored will determine the setbacks.



5. RENAMING OF THE AGRICULTURAL RESERVE

Staff recommends, and the Planning Board has agreed, to change the name of the current Residential Density Transfer (RDT) Zone to the Agricultural Reserve (AR) Zone. This has been widely supported and is in keeping with the purposes of the zone and the goals of the Preservation of Agricultural and Rural Open Space Functional Master Plan. This will have no impact on the intent, purposes, and densities, in the zone; development standards are minimally changed.



6. TEXT AMENDMENTS AFFECTING THE RURAL RESIDENTIAL AND RESIDENTIAL ZONES

The revised code includes very few text amendments that substantively affect the Rural Residential and Residential Zones. Nevertheless, it is recognized that the introduction of building types to the zoning ordinance, as well as the introduction of limited uses, has led to some confusion. As discussed below, these changes primarily have an impact on non-residential uses and buildings in these zones. With respect to permitted uses, development standards, density, etc., there are no substantive changes, as demonstrated by the fact sheets that have been published for each zone on the Planning Department's web site (selected fact sheets are also attached).¹¹

6.1. Building Types

There are several building types¹² defined by the proposed code:

- Detached House,
- Duplex,
- Townhouse,
- Apartment/Condo,
- Multi-Use Building, and
- General Building.



¹¹ See individual fact sheets for most zones here:

http://www.montgomeryplanning.org/development/zoning/one_sheets.shtm.

¹² An excellent summary is here:

<http://www.montgomeryplanning.org/development/zoning/documents/BuildingTypeFactSheet.pdf>.

The confusion seems to surround uses versus the buildings that house them. The new ordinance actually provides additional protections in residential zones by implementing standards for general buildings – those that do not contain residential uses – in residential zones. For example, there may be greater setbacks, screening requirements, or limits on density for general buildings, whereas the current zoning ordinance allows the same setbacks, does not set any screening requirements, and has no limits on density for non-residential uses in these zones.

There are currently numerous non-residential uses allowed in some or all of the residential zones (RE-2 through R-40). And each of these uses needs to be housed in some kind of building – and usually that is not a house. These uses include:

- Housing and related facilities for elderly or handicapped persons
- Life care facilities
- Parking for commercial uses [parking garage]
- Public utility buildings and structures
- Broadcast stations and towers
- Telecom facilities
- Antique shops
- Landscape contractors
- Retail nursery/garden centers
- Wholesale nursery/greenhouses
- Ambulance or rescue squads
- Animal boarding places
- Catering facilities
- Chanceries
- Charitable/philanthropic institutions
- Day care facilities
- Churches
- Clinics
- Domiciliary care
- Educational institutions
- Fire stations
- Funeral parlors/undertaking
- Hospice care facility
- Hospitals
- Vets
- Life sciences center
- Nursing home
- Medical offices
- Professional offices
- Public uses
- Country clubs
- Libraries and museums
- Private clubs/service orgs
- Swimming pools [shower/locker buildings]
- Country markets
- Equestrian facilities
- Farm markets
- Quarries
- Commercial kitchens
- Non-commercial Kennels
- Security pavilions.

Some of these uses will still be allowed in the Residential Zones, some have been consolidated with other uses, and still others have been phased out. But it is a fact that they are typically constructed in a building type that is not a detached house; they are built in what we have defined as a general building.



The confusion that we have tried to alleviate in several different ways is that uses are not building types but that different uses belong in different building types. A detached house is for dwelling and very few other uses, all of which typically require an owner occupant to live there. A general building is for those uses allowed in Residential Zones that do not require an owner occupant and have impacts that are non-residential by definition. Therefore, the general building has more restrictive development standards than a detached house because its character and impacts are not residential in nature. Regulating development standards by building type is a way to protect and enhance compatibility between residential and non-residential uses in communities. The fact is that the uses listed above are allowed in neighborhoods, and Planning Department Staff want them to be treated differently than houses to better preserve neighborhood character.



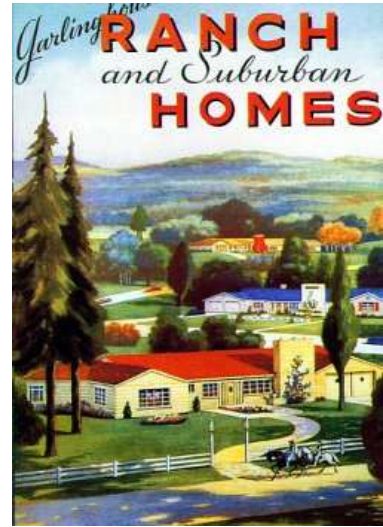
6.2. Limited Uses

Many proposed limited uses are either currently permitted uses that were allowed under certain qualifications enumerated in the footnotes or otherwise buried in text or are currently allowed as special exceptions but had non-discretionary standards of approval. Limited uses are simply uses that are allowed, but subject to development standards above and beyond “by right” permitted uses. In many cases where they are adjacent to agricultural or residential uses in Agricultural, Rural, or Residential Zones, they may require a site plan to ensure compatibility. This is an inherent improvement

over the existing ordinance because the three-tiered approach to uses (permitted, limited, and conditional) is clearer and more definitive than the existing code.

Because we have a consolidated and simplified use table with clear definitions and use standards for any limited use, we have been able to retain existing provisions in a much more clear and transparent manner.

The optional method standards as proposed – for MPDU, TDR, and cluster development – have kept densities the same but have allowed, in only some cases, for smaller lot sizes to accommodate more sustainable design solutions and larger open spaces. Regarding standard method development, a quick perusal of the fact sheets shows that very few development standards have changed. It’s an odd fact that Planning Department Staff originally suggested many more restrictions on non-residential uses in these zones but were met with significant pushback from citizen and legal representatives. This remains an issue that should be revisited in another forum.



7. TRANSLATION OF THE COMMERCIAL AND MIXED USED ZONES¹³

As indicated above, the translation of existing Commercial and Mixed-Use Zones into the new C/R and Employment zones are probably the most significant changes in the proposed zoning ordinance. Many of the changes are reflected in the discussion of the updated parking, open space, and landscaping requirements above. The basic premise of the proposed implementation plan is that currently allowed densities and heights should remain, but that a general policy should be employed to accommodate contemporary policies. In sum, for the minimal devoted to commercial and transit-oriented development (less than 2% of the county), this ordinance focuses on:

- Mixed-uses,
- Contemporary urban space and design trends,
- Pedestrian and bicyclist oriented streets and networks,
- Affordable housing,
- Community amenities, and
- Spaces and uses that attract current and trending demographics and economics.

In addition to the general regulations – especially open space requirements –



¹³ For any address look at the Planning Department’s interactive map at: http://www.mcatlas.org/zc_rewrite/.

discussed above, this section discusses the introduction of residential uses into commercial zones and the translation methodologies proposed to implement and map the new code.

7.1. Introduction of Residential Uses

The most significant change to the existing commercial-only zones is the proposed allowance of residential uses as a permitted use. In most cases, based on traditional Euclidean zoning, this is currently not allowed, severely restricted, or permitted only as a special exception. It is a basic platform of the proposed zoning ordinance that the small part of the county that is devoted to commercial uses – and is typically the most accessible to transit – should not be single-use. In concert with policies regarding trip reduction, jobs/housing balance, and sustainability more generally, it is the Planning Department’s position that mixed-use environments can only help achieve these policy goals.

A quick overview of the proposed zone translations shows that the proposed implementation would not allow wholesale replacement of commercial areas with residential uses. Moreover, in all cases, master plan recommendations trump zoning allowances.

Proposed Commercial Zoning Translation			
Current Zone	Max. FAR ¹⁴	Max. Height (feet)	Proposed Zone ¹⁵
C-T	0.5	35	CRN0.5 C0.5 R0.25 H35
O-M	1.5	72	EOF1.5 H60 or EOF1.5 H75
C-O	3.0	97	EOF3.0 H100
C-P	None	83	EOF1.25 H90
C-1	None	45	NR1.0 H45; CRN0.5 C0.5 R0.25 H35; CRT0.75 C0.5 R0.5 H45; CRT1.0 C0.75 R0.75 H45; or CRN0.25 C0.25 R0.0 H35
C-2	2.5	75	GR1.5 H65; CRT1.5 C1.5 R1.0 H45; CRT2.0 C1.0 R1.5 H45; or CRT2.5 C1.5 R1.5 H75
C-3	None	84	GR1.5 H45 or GR1.5 H85
C-4	1.5	75	CR1.5 C1.0 R1.0 H75 CRN0.25 C0.25 R0.0 H30; or CRN0.75 C0.75 R0.5 H40
H-M	1.0	150	CRT1.0 C1.0 R0.75 H150

A primary goal of the new mapping strategy is that any user should quickly be able to determine what the allowed uses, densities, and heights are. For example, a CRN0.5 C0.5 R0.25 H35 designation on a map means that commercial/residential (CR) uses for a neighborhood (N) are allowed up to 0.5 FAR; all of it may be commercial (C0.5) and up to one-half of it may be residential (R0.25), and the maximum height allowed is 35 feet (H35).

¹⁴ An excellent primer on FAR: <http://montgomeryplanning.org/blog-design/?p=1223>.

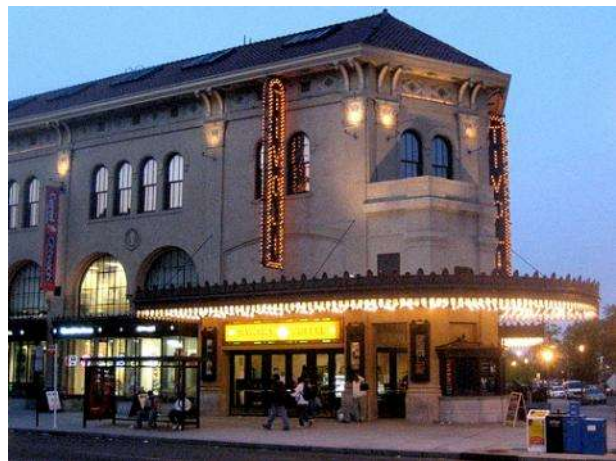
¹⁵ For those not familiar with the proposed mapping convention, the initial letters indicate the classification, the first number indicates the total FAR allowed, the second and third numbers (if enumerated) indicate the non-residential and residential density allowed, respectively, and the fourth number indicates the height allowed.

Still, it can be argued that potential and achievable build-out are not one and the same. That is, a property owner who is allowed 1.0 FAR of commercial density is limited by other factors – parking, open space, market, etc. – and that allowing part of that 1.0 FAR to be built as residential will shift the realized traffic, school, and density equation out of kilter with the master-planned model for growth. To answer this question, two things are informative: what existing mixed-use-zoned areas realize and whether there are other protections.

7.1.1. *Typical Build-Out of Mixed-Use Zones*

An odd thing about density is that not all properties build out to their full allowed density. This seems to be particularly true of residential properties. A property in an R-60 or R-90 zone, for example, can be built to provide much more space within the height and setback restrictions than it typically does – the size and shape is tailored to the user not the allowance because there is no necessary benefit – and many costs (such as upkeep). In commercial zones, however, one would expect the owner to push the bounds of allowed density to maximize the realizable income. This doesn't turn out to be the case though. And this is for many reasons:

- Parking requirements,
- Open space requirements,
- Setbacks,
- Height restrictions,
- Use allowances, and
- “It’s paid for and I’m happy with the income, thank you”.



The point being, of course, if you alter any variable – open space requirements, setbacks, uses, etc. – then the property owner may expand to their new maximum capacity and alter the model. Does this happen in the most liberal zones – the CBD, TMX, and C/R zones? Not necessarily – we have numerous properties that allow a broad mix of uses that are not developed to their full capacity. The market and the conundrum of public review keep many happy with the last bullet – they have income that exceeds their obligations. Furthermore, it is interesting to note that if a property were to develop to its allowed density with commercial uses only it would have a greater traffic impact than if some of that density was

developed residentially. The number and direction of trips arising from residential density – in place of commercial density – should, in most cases, mitigate traffic issues rather than inflate them. Planning Department Staff does not feel comfortable recommending lower densities than currently allowed for the reasons discussed above as well as not wishing to tackle the legal “taking” issues that might arise.

7.1.2. *Protections for Schools and Roads*

If a property were to request the development of residential capacity within its capped total density, the current school and traffic tests under existing codes would remain. School impact fees are assessed for all new residential units and transportation fees must be paid if any nearby road intersections are inordinately impacted. Thus, if redevelopment of commercial areas allows mixed-use environments, not only will the implicit benefits to congestion and affordable housing be realized¹⁶, but many negative impacts will be mitigated by fees paid towards school and transportation improvements.



7.2. Translation Methodologies

For the most part, commercial and mixed-use zones can be translated on a one-to-one basis; i.e., the allowed density and height can be mapped through the new zone. In a few cases, however, the current zones have no maximum density or height; further, there may be different allowed densities or heights based on context. The implementation strategy has, thus, been multifaceted. It includes:

- A reading of every master plan for recommendations regarding commercial or mixed-use zones,
- A reading of every footnote regarding density or height,
- A mapping of each possibility for various allowances, and
- A determination of maximum allowed density and height.

All of this, of course, is balanced against the new requisites of public review. As detailed in the tables and narrative for Article 59-8, Administration and Procedures¹⁷, many projects will now require public

¹⁶ Many studies show a decrease in vehicle trips and more inclusive housing when zoning allows a mix of uses. For example, see: <http://www.reconnectingamerica.org/assets/Uploads/Frank-and-Pivo.pdf> or http://cra.gmu.edu/pdfs/research_reports/recent_reports/Richmond_PHA_April_2010.pdf.

¹⁷ For the latest version see: <http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/development/zoning/documents/59-812.21.12forWeb.pdf>.

review if their context includes adjacent detached houses or agricultural uses. In some cases, though, there may be decreased public review. The key parameter in the proposed ordinance is context. And process and intensity are intertwined – the entire ordinance, in fact, is carefully constructed as a system of gears, levers, and pulleys. Push one place and something kicks in elsewhere, but the cross referencing and the web applications will ensure that each article, division, and section is made apparent.

The primary determinant for translation from an existing to a proposed zone is whether a master plan



limits any use, density, or height.¹⁸ Each of these recommendations has been recorded, documented, and mapped. This makes so many reviews simpler because they can be regulated by the zoning range allowed within the C/R and Employment Zones. Further, it codifies guidelines of master plans in keeping with the recent state statute on master plan regulations.



For many properties, the applicable master plan makes no specific recommendation, but the zoning ordinance allows variations in density or height. That is, there is not always one maximum density or height in the zoning ordinance – there are allowances for different contexts and review processes. The following tables specify the rules recommended by the Planning Department Staff for those properties.

Current Zone			Qualifier	Proposed Zone
Symbol	Max FAR	Max Height		Symbol
C-1	None	45'	Abutting or confronting low density residential or less intense zone	NR1.0 H45
			Abutting medium-density residential zone	CRN0.5 C0.5 R0.25 H35
			Confronting medium density residential zone	CRN0.75 C0.5 R0.5 H45
			Abutting or confronting townhouse or more intense zone	CRT1.0 C0.75 R0.75 H45

¹⁸ Every master plan was reviewed several times by teams of Planning Department Staff. Reports for each are here: http://www.montgomeryplanning.org/development/zoning/master_plan.shtm.



Current Zone			Qualifier	Proposed Zone
Symbol	Max FAR	Max Height		Symbol
C-2	2.5	75'	Abutting or confronting low density residential or less intense zone or regional mall	GR1.5 H65
			Abutting medium-density residential zone	CRT1.5 C1.5 R1.0 H45
			Confronting medium density residential zone	CRT2.0 C1.0 R1.5 H45
			Abutting or confronting townhouse or more intense zone	CRT2.5 C1.5 R1.5 H75



Current Zone			Qualifier	Proposed Zone
Symbol	Max FAR	Max Height		
C-3	None	84'	Used for auto sales and service malls	GR1.5 H85
			Otherwise	GR1.5 H45
C-4	1.5	75'	Within 1/2 mile of Metro	CR1.5 C1.0 R1.0 H75
			Master plan recommendation for low intensity development	CRN0.25 C0.25 R0.0 H30
			No recommendation	CRN0.75 C0.75 R0.5 H40

Generally master plans provide guidance regarding density, height, and use. In other cases, where density or height are not specified, a simple calculation can be made to fill in proposed maximum densities and heights based on typical floor plates, parking requirements, and open space constraints. Fortunately, the requirements for public review for most densities above 1.0 FAR (just above that allowed in an R-90 zone) and/or 40' in height near residential uses, will ensure oversight of any development regardless of its zoning translation. A table from Article 59-8, Administration and Procedures, delineating when a site plan is required, is attached.



8. TRANSLATION OF THE INDUSTRIAL ZONES

An interesting aspect of the current industrial zones is that they have few limits on density but immense setbacks regardless of the intensity of use – even for light industrial uses that may have fewer impacts than more noxious commercial uses. The proposed ordinance tries to ameliorate this heavy-handed approach by using limited uses and concomitant use standards and context-sensitive buffering and screening standards. The fact is that most industrial uses in the DC region are more related to computers, research and development, science, and education than to heavy manufacturing and noxious production. Of course, there are numerous heavy industrial uses that are necessary for any community and these uses have been protected in the Heavy Industrial Zone.



For all industrial zones, the consolidation and resulting recommendations are detailed in the following table.

Current Zone			Qualifier	Proposed Zone
Symbol	Max FAR	Max Height		
RS	0.15	50'	None	IM0.25 H50
I-1	None	120'	None	IM2.5 H120
R&D	0.30	75'	None	IM0.5 H75
I-4	1.0	42'	None	IL1.0 H45
I-2	None	70'	None	IH2.5 H70



Existing industrial zones were mapped, and research shows that the allowed density proposed for those zones, I-1 and I-2, that currently have no maximum density, should accommodate most allowed uses. For those existing uses that exceed the proposed limits, they are, of course, grandfathered, allowed, and deemed conforming.

9. TRANSLATION OR RETENTION OF FLOATING ZONES

Several floating zones are retained within the new zoning ordinance but are no longer available for future rezonings: RT-6.0 through RT-15.0, R-H, PCC, PD, PNZ, PRC, and TS. The regulations governing these zones will simply be kept in the appendix and still apply. For other floating zones, however, the proposed implementation strategy is to translate those zones to “Euclidean” zones¹⁹. Of course, as discussed above, the existing development or schematic development plans and covenants may be followed for any development and – if the property owner wishes to develop under the new regime – must be considered by the Planning Board or Board of Appeals. The key properties that are affected are zoned under the RMH, RS, CT, OM, C-Inn, TSR, TSM, MXN, and MXPD – the proposed new Euclidean zones are enumerated above.

The effects of the translation from these floating zones to new Euclidean zones have been analyzed regarding use, density, height, and development standards. With the protections for existing development, enlargement, and the new general regulations and process standards, Planning Department Staff believes this will have little impact on either property owners or the public. Further, these zones represent only 1,132 acres or 4/10s of one percent of the county’s land area under zoning control. That said, Planning Department Staff is fully aware that even this small percentage affects many people. The revised zoning ordinance is, therefore, full of protections based on context - ; from public review, to height restrictions and buffering standards – which were not previously basic requirements.



Concluding Remarks

As noted above, the proposed ordinance is laid out in a simple format and provides multiple means of understanding – tables, text, and graphics. But it is also an interwoven document; intent, uses, development standards, development methods, zoning requests, general regulations, and process are tied closely together. Pull one lever and another is set in motion – this is the key to the contextual and appropriate requirements of the revised ordinance. This memorandum has been provided to examine the basic changes being proposed from the existing ordinance in order to make it clear that great care has been taken to full understand all of the potential effects on our unique county.

¹⁹ Zones that are mapped by District Map Amendment without request from a property owner.