



ZTA 20-05 - Commercial/Residential Zones – Additional Height



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Completed: 01/05/2021

Description:

ZTA 20-05 would allow the Planning Board to approve a maximum building height of 200 feet if certain criteria are met. Currently, height recommendations are generally developed during the master or sector planning process.¹

Summary:

Staff recommends denial of ZTA 20-05. Staff's concerns are that the ZTA is too narrowly focused and likely intended to benefit a limited amount of property owners; it would circumvent the public engagement process of the Silver Spring Downtown and Adjacent Communities Plan and thereby weaken the public's confidence in the planning process; and that there is limited applicable time and geographic scope to the ZTA.

Background:

ZTA 20-05 was introduced on November 10, 2020 to allow additional building height in the Commercial Residential (CR) zone under certain circumstances.

As introduced, the amendment to Chapter 59 would allow the Planning Board to approve a maximum building height of 200 feet on a property that is:

1. in a Central Business District
2. located within ¼ mile of a Metrorail Station
3. mapped with a maximum building height of 145
4. abutting or confronting², on at least two sides, properties that are zoned CR and are mapped with a building height of at least 200 feet; and

¹ There are certain instances where the code allows properties to exceed their mapped height. See "Precedents for Additional Height."

² The code defines confronting as properties that are directly across a right-of-way with a master plan width of less than 80 feet from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45-degree diagonal across an intersection are also confronting. Abutting is defined as properties that share a property line or easement line.

5. required by an approved sketch plan and site plan to provide:
 - a. a major public facility³ under Section 4.7.3.A; and
 - b. at least 15% moderately priced dwelling units or at least 15% of residential floor area for moderately priced dwelling units under Chapter 25A.

The proposed amendment has a sunset provision, with the proposed amendments expiring two years after the effective date of the amendment approval.

Analysis:

Planning staff analyzed the properties within ¼ mile of Metrorail Stations in the county's four Central Business Districts (Friendship Heights, Bethesda, Wheaton, and Silver Spring) to understand the scope of the amendment.

Staff found nine properties that fit the criteria of the proposed amendment (see attachment 2 for maps). Of the nine properties, eight are in Silver Spring, and one is in Bethesda. Friendship Heights has no properties mapped above 200 feet and Wheaton has no properties that fit the criteria. Three of the nine properties are owned by public entities – WMATA, Montgomery County, M-NCPPC – and are unlikely to take advantage of the proposed amendment. That leaves six properties in Silver Spring that could potentially take advantage of the ZTA. It should be noted that there may be other properties that, if assembled, could fit under the scope of the amendment.

Given the very limited applicable geographic scope and the prescriptive criteria of the proposed amendment, this amendment could allow a limited number of property owners to move forward while the Silver Spring Downtown & Adjacent Communities Plan process is ongoing.

Sunset Provision:

The proposed amendment has a sunset provision of two years after the effective date of the proposed amendment. Planning staff could find no other examples of a sunset provision in Chapter 59. Given the limited applicable geographic scope of the amendment to the downtown Silver Spring area, Planning staff believes the sunset provision is a stop gap for the Silver Spring Downtown & Adjacent Communities Plan, which is expected to be adopted in two years and is currently in the existing conditions analysis phase of the sector plan process.

One of the hallmarks of Montgomery County's planning process is a vigorous public engagement process that involves the community and other stakeholders in developing a vision for not only the plan area, but specific properties. In the case of the Silver Spring Downtown & Adjacent Communities Plan, this process is already underway, and staff will thoroughly vet all density and height recommendations

³ Major public facilities include, but are not limited to, such facilities as a school, library, recreation center, park, County service center, bike share station, public transportation or utility upgrade, or other resource delineated in an applicable master plan. Major public facilities provide public services at a convenient location where increased density creates a greater need for civic uses and greater demands on public infrastructure.

vigorously. The proposed amendment seems contrary to the public nature of the engagement process, and could be seen as an attempt to circumvent the planning process.

Precedents for Additional Height:

Under the CR zone, uses, density, and height are generally established together through the master or sector planning process, to provide greater predictability as to what can be built and how property can be used. Height and density recommendations are developed with community and stakeholder input during the master or sector planning process, and the mapped zoning will specify those recommended densities and heights. Staff is concerned that the intent of this proposed amendment will weaken the public confidence in the planning process, given the significant stakeholder outreach underway in the Silver Spring Downtown & Adjacent Communities Plan.

While the application of additional height outside of the master or sector planning process is uncommon, it is not without precedent. There are instances where the code allows properties to exceed their mapped height. These instances include:

1. Section 4.5.2. Density and Height Allocation

- a. For any application that includes more than 12.5% of the gross residential floor area as Moderately Priced Dwelling Units (MPDUs), qualified under Chapter 25A, the following provisions apply:
 - i. The height limit of the applicable zone and master plan **does not apply to the extent required to provide the MPDUs**. The additional height is calculated as the floor area provided for MPDUs above 12.5% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.
- b. With Planning Board approval, any Optional Method project in a CR zone **that includes the provision of a major public facility under Section 4.7.3.A may add the height of any floor mostly used for above grade parking** to the maximum height otherwise allowed, when the major public facility diminishes the ability of the applicant to provide parking at or below grade.
- c. For Commercial/Residential-zoned properties designated with a T, the following provisions apply:
 - i. On a property within a designated central business district mapped at a height up to 145 feet, **height may be increased above the number following the H on the zoning map by up to 1.5 times** if:
 1. the height is the minimum necessary for both:
 - a. the floor area devoted to a **publicly owned or operated facility**; plus
 - b. the floor area provided for **workforce housing units**, divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet; or

2. additional height is **specifically recommended for the provision of MPDUs** above 12.5% in an applicable master plan.
 - ii. **Height on a portion of a building may be increased above the number following the H on the zoning map so long as the average height of the building is no greater than the maximum height allowed by the mapped zone.** Average building height is calculated as the sum of the area of each section of the roof having a different height multiplied by that height, divided by the total roof area. Height is measured at the midpoint of each roof section along each frontage.
2. ***Section 4.9.2. Bethesda (B) Overlay Zone***
 - a. If a project exceeds 17.5% MPDUs and is located in the Height Incentive Area as delineated in Subsection E, **the height limit of the applicable zone does not apply to the extent required to provide MPDUs.** The additional height is calculated as the floor area provided for MPDUs above 15% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.
 3. ***Section 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone***
 - a. For a property zoned CR and mapped at 200 feet, the Planning Board may approve a maximum building height of 200 feet only in an **optional method development project that provides ground floor retail.**
 - b. For a property zoned CR and mapped at 200 feet, the Planning Board may approve a maximum building height of 270 feet, **if an optional method development project includes the provision of an on-site or off-site major public facility under Section 4.7.3.A and also provides a ground floor level grocery store or other qualifying basic service under Section 4.7.3.C.3 of at least 10,000 square feet of floor area.**
 4. ***Section 3.5.8.D Office and Professional: Signature Business Headquarters***
 - a. **If the subject property has a mapped height of 150 feet or more, height may be exceeded by up to 100 feet,** but no greater than a total height of 300 feet, if the Planning Board finds that the additional height is compatible with abutting and confronting development.

With ZTA 20-05, there are two criteria used to justify the need for additional height that state that the sketch plan and site plan must provide either 15 percent MPDUs or a major public facility. Staff notes that this increase in MPDUs only applies to Silver Spring and Wheaton. Both Bethesda and Friendship Heights already have a 15 percent requirement. Staff also notes that there already is a provision to allow additional height for additional MPDUs.

The other criteria in the proposed amendment is the provision of a major public facility. While it may be in the benefit of the public for a developer to trade a major public facility over additional height, staff believes there needs to be more specificity on what the major public facility is, to fully allow the Planning Board and County Council to weigh the tradeoffs between a major public facility and additional height.

Correspondence:

Staff received correspondence that suggested one way to expand the applicability of the proposed amendment was to broaden the language (see attachment 3). The proposed language includes replacing “abutting or confronting, on at least two sides, properties that are zoned CR and are mapped with a building height of at least 200 feet; and” with “on at least two sides, adjacent to, confronting, or **directly across a public right-of-way** from properties that are zoned CR and are mapped with a building height of at least 200 feet; and”

Conclusion:

The proposed amendment to allow additional building height in the Commercial Residential (CR) zone under certain circumstances has only a narrow application to a small number of properties in the Silver Spring area. While there is precedent for the provision of additional height currently in Chapter 59, staff is concerned about the sunset provision and the narrow scope of the proposed amendment as it could potentially circumvent the public process currently underway for the Silver Spring Downtown & Adjacent Communities Plan. Staff is unsure how to achieve consistency with the vision of the Silver Spring Downtown & Adjacent Communities Plan without stakeholder and Planning Board input outside the process currently underway.

Given these concerns, staff is recommending denial. Staff recommends that any property owner that intends to take advantage of the ZTA work with Planning staff and the community through the public process underway for the Silver Spring Downtown & Adjacent Communities Plan.

Attachments:

- 1.) Zoning Text Amendment 20-05 as introduced
- 2.) ZTA 20-05 Mapping Analysis
- 3.) ZTA 20-05 Correspondence, revised criteria, and revised criteria mapping as submitted

Zoning Text Amendment No.: 20-05
Concerning: Commercial/Residential
Zones – Additional
Height
Draft No. & Date: 3 – 11/7/2020
Introduced: November 10, 2020
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsors: Councilmembers Hucker and Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Allow additional building height in the Commercial Residential (CR) zone under certain circumstances

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.5. “Commercial/Residential Zones ”
Section 4.5.4. “Optional Method Development”

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

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

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

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

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

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

ORDINANCE

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

Sec. 1. Division 4.5. Commercial/Residential Zones

Section 4.5.4. Optional Method Development

The CRT and CR zones allow development under the optional method.

A. General Requirements

* * *

B. Development Standards

* * *

2. Lot, Density, and Height

- a. Lot standards for detached house, duplex, and townhouse building types are determined by the site plan approval process under Section 7.3.4.
- b. The maximum total, nonresidential, and residential FARs and the maximum height are established by the mapped zone unless increased under Section 4.5.2.C [and], Section 4.5.2.D, or Section 4.5.4.B.2.d.
- c. [In the CR zone, a] A designated historic resource that does not occupy more than 10% of the gross floor area is excluded from the FAR calculation.
- d. The Planning Board may approve a maximum building height of 200 feet on a property that is:
 - i. in a Central Business District;
 - ii. located within ¼ mile of a Metrorail Station;
 - iii. mapped with a maximum building height of 145;
 - iv. abutting or confronting, on at least two sides, properties that are zoned CR and are mapped with a building height of at least 200 feet; and

v. required by an approved sketch plan and site plan to provide:

(A) a major public facility under Section 4.7.3.A; and

(B) at least 15% moderately priced dwelling units or at least 15% of residential floor area for moderately priced dwelling units under Chapter 25A.

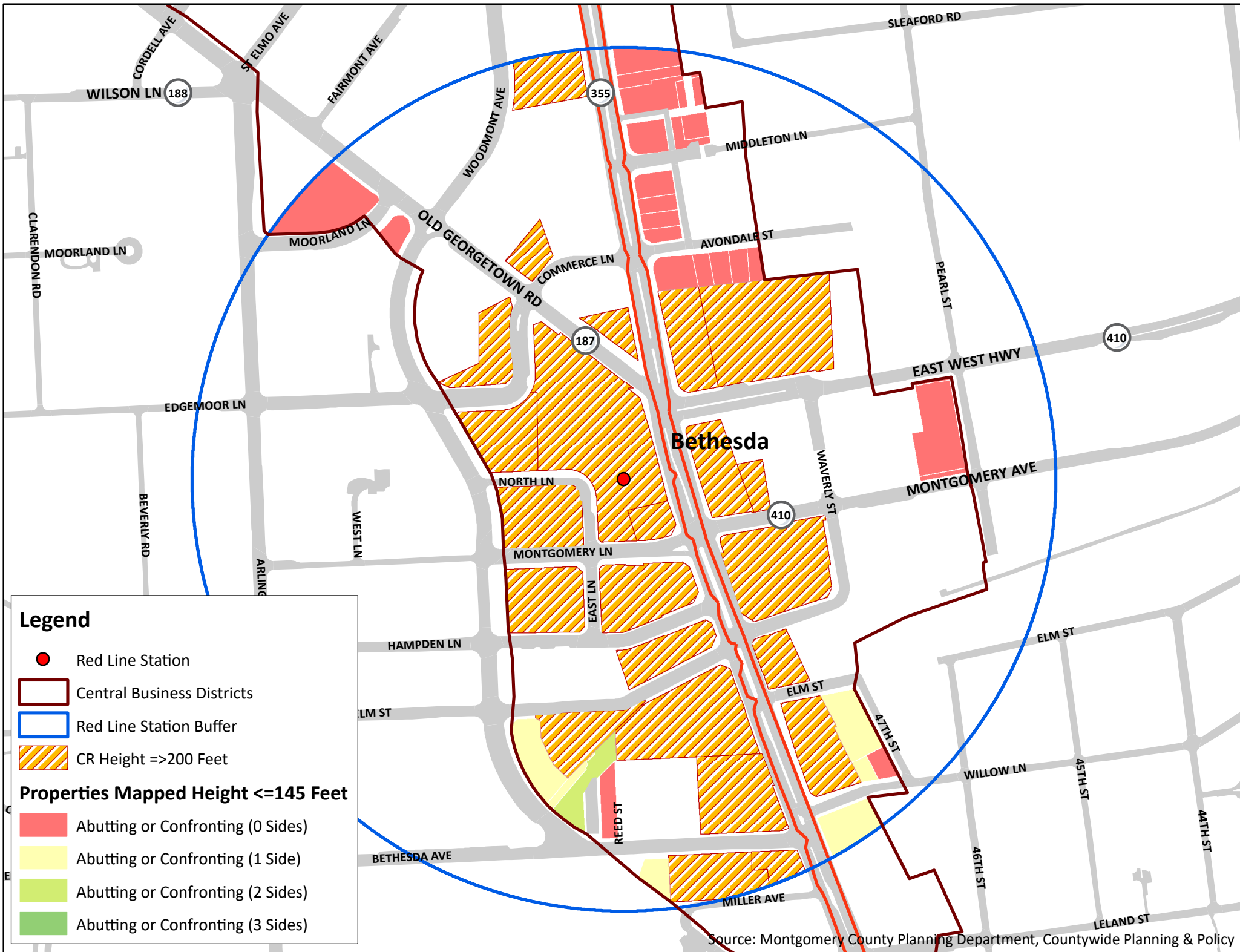
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Sec. 2. Effective date. This ordinance becomes effective immediately upon the Council's adoption.

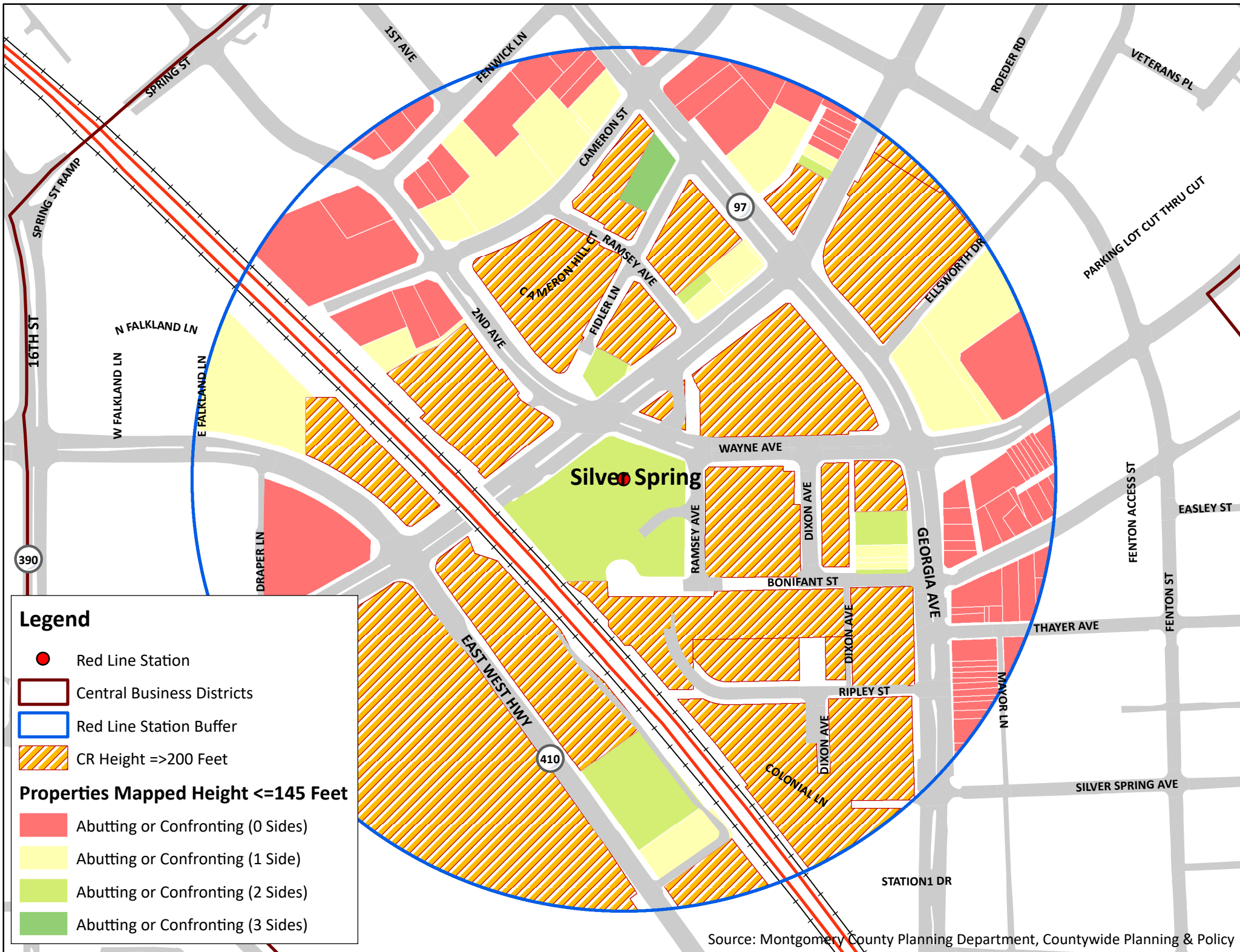
Sec. 3. Sunset date. Subsection 4.5.4.B.2.d. will expire automatically on [effective date plus 2 years]. A complete application for sketch plan under this Subsection 4.5.4.B.2.d. must be filed and accepted as complete by the Planning Director before [effective date plus two years]. Any such sketch plan application that is subsequently approved will allow the applicant to proceed through any other required application step in the process, including amendments to all applications.

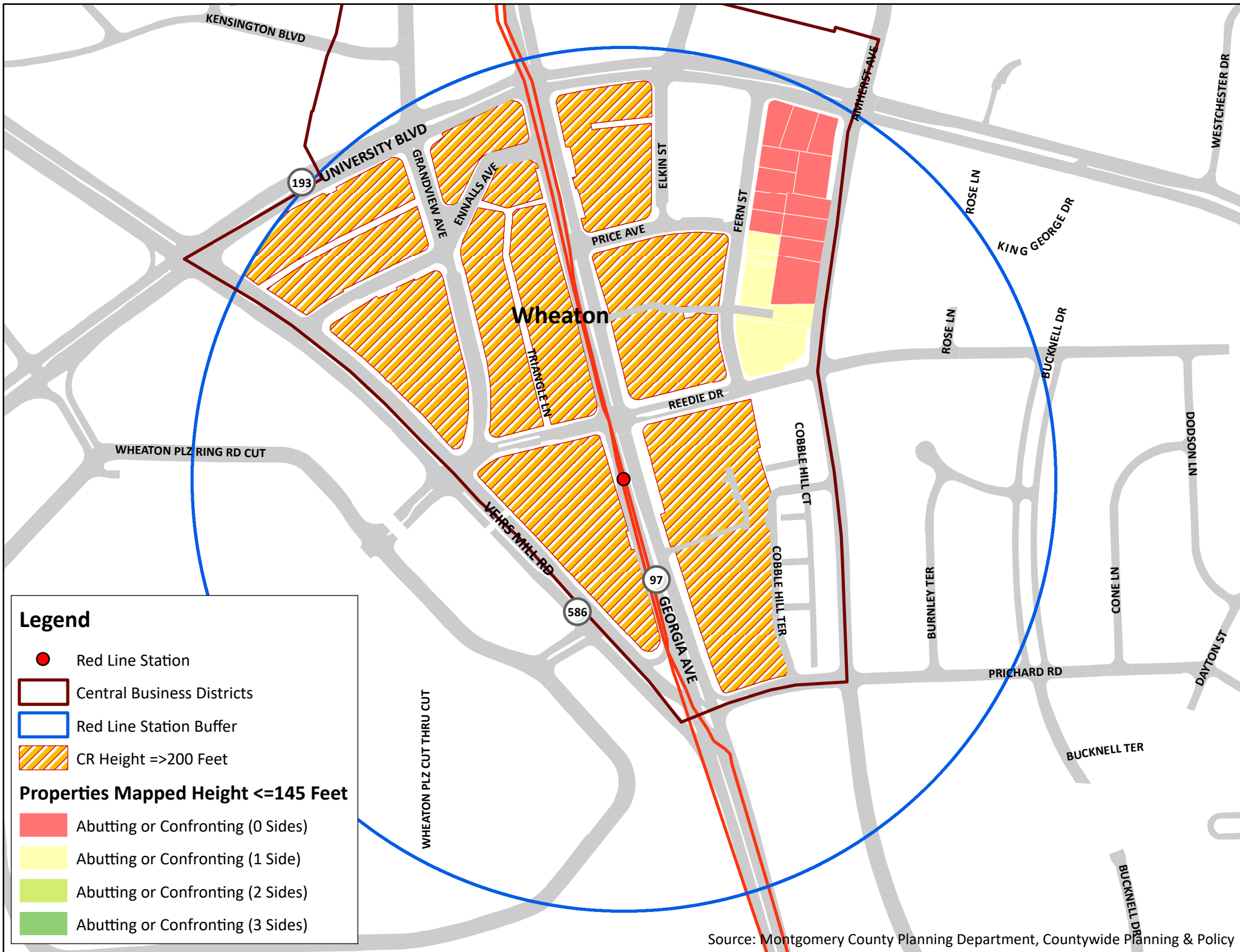
This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council









From: [Kominers, William](#)
To: [Govoni, Lisa](#)
Subject: ZTA No. 20-05 (Revision)
Date: Wednesday, December 30, 2020 12:01:48 PM
Attachments: [Zoning Text Amendment No. 20-05.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Lisa,

Per our discussion yesterday, attached is my suggested revision to the ZTA language (handwritten in red) to address the “confronting” right-of-way width issue. Using the revised text will at least accomplish what was intended in proposing the ZTA.

Just to confirm how the language should read, I have reproduced below a “clean” version of how Subsection 4.5.4.B.2.d.iv. should read after making the suggested change in text:

“iv. on at least two sides, adjacent to, confronting, or directly across a public right-of-way from properties that are zoned CR and are mapped with a building height of at least 200 feet; and”

Please let me know if you have any questions about this suggested change. (Though I recognize that, as you advised me, Staff does not support the ZTA generally.)

Thank you.

Bill

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Lerch Early COVID-19 Resource Center

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12/30/20

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2 Section 4.5.4. Optional Method Development

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10 building types are determined by the site plan approval process
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13 the maximum height are established by the mapped zone unless
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15 Section 4.5.4.B.2.d.

16 c. [In the CR zone, a] A designated historic resource that does not
17 occupy more than 10% of the gross floor area is excluded from
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ADJACENT TO,

OR DIRECTLY ACROSS A
PUBLIC RIGHT-OF-WAY FROM

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33 * * *

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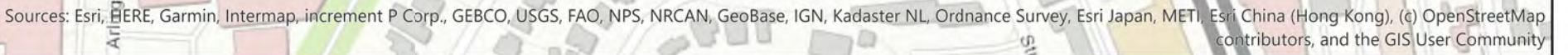
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




43 This is a correct copy of Council action.

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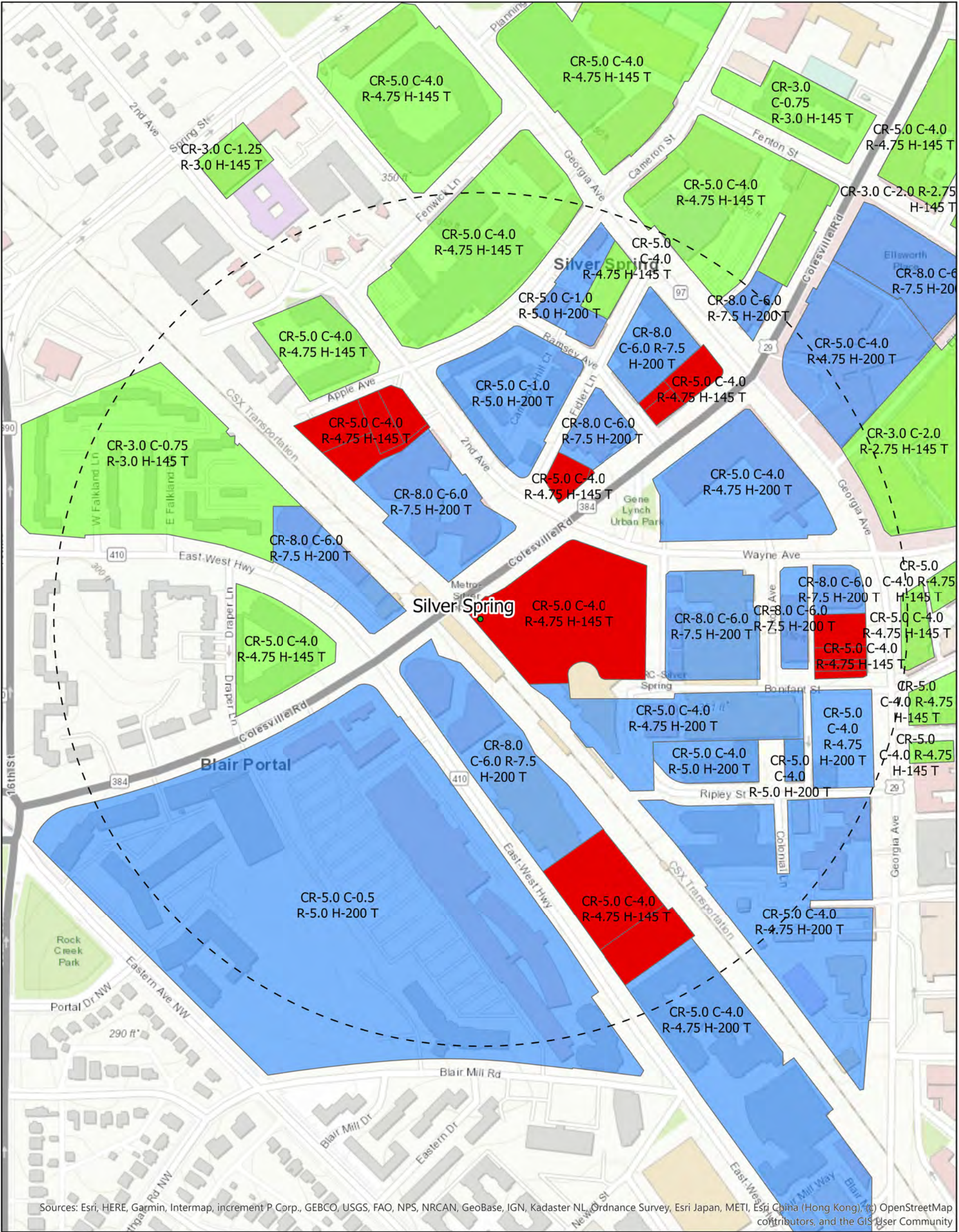
46 _____
47 Selena Mendy Singleton, Esq.
 Clerk of the Council



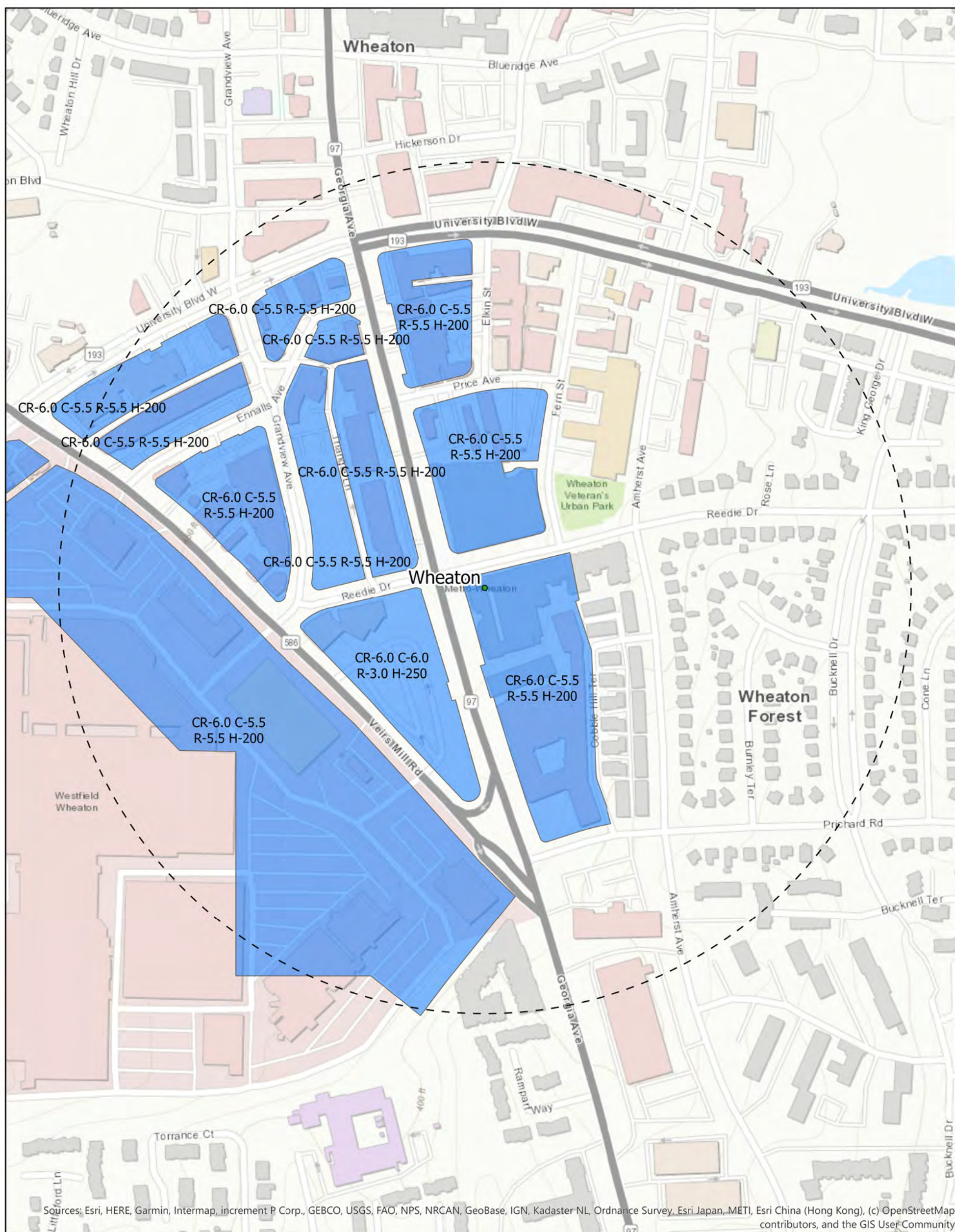
-  METRO STATION
-  QTR_Mile_Radius_from_Metro_Station
-  MC_zoning_CR_H-145
-  Zoned_Parcel_CR_H-200-300
-  Silver_Spring_QTR_Mile_CR_H-145_Selection



- METRO STATION
- [- -] QTR_Mile_Radius_from_Metro_Station
- MC_zoning_CR_H-145



- METRO STATION
- [- -] QTR_Mile_Radius_from_Metro_Station
- MC_zoning_CR_H-145
- Zoned_Parcel_CR_H-200-300
- Silver_Spring_QTR_Mile_CR_H-145_Selection



- METRO STATION
- [-] QTR_Mile_Radius_from_Metro_Station
- [-] Zoned_Parcel_CR_H-200-300