

MEMORANDUM

January 26, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 11-06, Fenton Village Overlay Zone – Building Height

Zoning Text Amendment (ZTA) 11-06, sponsored by Councilmember Floreen, was introduced on November 8, 2011. For any building that includes residential uses or a mix of residential and commercial uses, Zoning Text Amendment 11-06 proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) and the CBD-0.5 zone that would allow the height of buildings on properties that front on both Wayne Avenue and Fenton Street to be 75 feet. The current building height limit in this area is 60 feet. The additional building height must be within 200 feet of the right-of-way line for Fenton Street, as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan.

The Planning Board recommended approval of ZTA 11-06 with a revision to assure that the additional height is set back from residentially zoned property.¹ The Planning Board and Planning Staff believed that the ZTA as modified protects single-family residences located along “the edges” of the CBD and Overlay Zone. In their opinion, ZTA 11-06 would meet one of the overall Sector Plan objectives for maintaining compatibility with surrounding properties.

A public hearing on ZTA 11-06 was held on January 17, 2012. The two speakers included a property owner and a representative of the nearby civic association. Both speakers supported ZTA 11-06.

Issues

What is the geographic scope of ZTA 11-06?

There are 4 areas that are within 200 feet of the intersection of Wayne Avenue and Fenton Street (see maps at the end of the attached Planning Staff report). The 2 sites on the north side of Wayne Avenue include newly constructed buildings (the Whole Foods grocery store and a hotel). These sites are zoned CBD-1 and are not located in the Fenton Street Village Overlay Zone. As such, these sites are not

¹ Any building using additional height must be set back from adjoining residentially zoned land not recommended for commercial or industrial zoning on an approved and adopted master or sector plan no less than the setback required in the adjacent residential zone or the height of the building, whichever is greater.

currently within the scope of ZTA 11-06. The 2 areas south of Wayne Avenue at the intersection of Fenton Street are in the Fenton Street Overlay Zone. There is also a CBD-0.5 zoned area within 200 feet of the intersection but not in the Fenton Street Overlay Zone. A church and the future Silver Spring Library site are located South of Wayne Avenue. The Silver Spring Library site is zoned CBD-1. The church site is zoned CBD 1 and CBD .5.

With the goal of keeping height closest to Fenton Avenue and further from the single family community, **Staff recommends expanding the geographic scope of ZTA 11-06.** Additional height could be allowed along Fenton Street if it results in lower height nearest the single family residential community.

Should ZTA 11-06 provide for minimum setbacks?

As introduced, ZTA 11-06 provides for additional height, but does not provide for any additional setback protection for residentially zoned property. The Planning Board recommended such a provision. Staff believes that the following setback provision would accomplish the objects of the Planning Board.

However, any building using additional height must be set back from adjoining residentially zoned land no less than the setback required in the adjacent residential zone or the height of the building, whichever is greater.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 11-06	1 – 5
Planning Board Recommendation	6 – 11
Planning Staff Recommendation	12 – 16

Zoning Text Amendment No.: 11-06
Concerning: Fenton Village Overlay
Zone – Building Height
Draft No. & Date: 1 – 11/1/11
Introduced: November 8, 2011
Public Hearing: January 17, 2012
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**

By: Councilmember Floreen and Council President Ervin

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- modify building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone
- generally amend the provision for building heights in the Fenton Village Overlay zone

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

Division 59-C-6	“Central Business District Zones”
Division 59-C-6.235	“Development Standards”
Division 59-C-18	“Overlay Zones”
Section 59-C-18.192	“Regulations”

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 that text 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. 59-C-6 is amended as follows:

Sec. 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.

* * *

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
59-C-6.235. [Maximum] Maximum Building Heights (in feet).												
(a) Standard method of development.												
—Normally:	45		60		60		60		72		60	
—If adjoining or directly across a street from land which is recommended for or developed in a residential zone with a maximum density of less than 15 dwelling units per acre:	35		35		35							
plus an additional 8 feet for air conditioners or similar rooftop structures and mechanical appurtenances pursuant to [division] <u>Division 59-B-1(b)</u> .												
(b) Optional method of development.												
—Normally:		60		60		60		143		143		143

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
—If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased to:		60 ^{12,*}		143		90 ¹		200 ¹¹		200		200

* For certain properties adjacent to the Fenton Village Overlay Zone, permitted heights may be increased under Section 59-C-18.192(b)(1)(E).

* * *

Sec. 2. Division 59-C-18 is amended as follows:

* * *

59-C-18.192. Regulations

* * *

(b) Development Standards. The development standards are the same as those in the underlying zones, except:

(1) Building height in the Overlay Zone:

* * *

(D) for property located in a block that includes property zones in any one-family residential classification, must not exceed 45 feet for all uses, except the building height must not exceed 60 feet for:

- (i) residential use; or
- (ii) mixed-use optional method project, if at least 33% of the project’s floor area is residential and the project includes a hotel;

(E) for properties with frontage on both Wayne Avenue and Fenton Street, notwithstanding the height limitations in Subsection (b)(1)(B)-(D), may be increased by 15 feet for a building that includes residential uses or a

mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan.

[(E)] (F) Building heights may be approved under the standards of this subsection without regard to the building height recommendations of the sector plan.

[(F)] (G) Any project plan approved before August 18, 2008 may be constructed under the conditions of its approval and any site plan thereafter that implements the previously approved project plan. Any site plan approved before [the] August 18, 2008 may be constructed under the conditions of its approval. Any building constructed under this subsection is conforming and may be maintained and reconstructed under the conditions of their approval.

* * *

Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

January 13, 2012

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 11-06

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 11-06 at its regular meeting on January 12, 2012. By a vote of 5:0, the Board recommends approval of the text amendment as modified by the Planning Board to require greater setbacks for any building that takes advantage of the additional height provision created by this ZTA.

The modified language is included as an attachment to this memorandum.

ZTA 11-06 modifies building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone. Specifically, under this ZTA, the height of any building on a property that fronts on both Wayne Avenue and Fenton Street may be increased by 15 feet if the building includes residential uses, or a mix of residential and commercial uses, and such additional height is not more than 200 feet from the right-of-way line for Fenton Street.

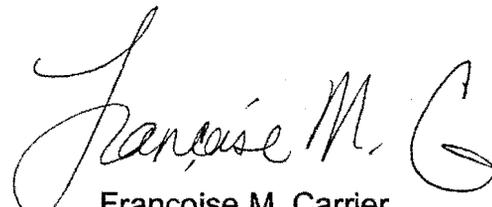
Currently, the maximum optional method height in the Overlay Zone for properties located on the east side of Fenton Street is 60 feet. ZTA No. 11-06 would allow the height to increase to 75 feet, up to 200 feet from the right of way line for Fenton Street. The 15 foot increase in height would also apply to a portion of a property that fits the criteria stated above but is located outside of the Fenton Village Overlay Zone (and therefore is adjacent to the Overlay Zone) and is zoned CBD-0.5. ZTA 11-06

was introduced to allow properties located in Fenton Village near the intersection of Fenton Street and Wayne Avenue to concentrate their allowable density closer to the intersection and to scale down heights and density as development approaches the one-family residences to the east of the overlay zone. The Sector Plan also envisioned this overall approach but recommended building heights for the affected Fenton Village properties (east of Fenton Street) of 45 feet to 60 feet (based on location and use restrictions). As with several previous ZTA approvals by the District Council, the height restrictions of the Fenton Village area of the sector plan were overridden by a change in the height requirements of the Fenton Village Overlay zone. In both cases, the overall Sector Plan recommendation to step down heights from Georgia Avenue to the edge of the CBD was maintained. The County Council also added language to the Fenton Village Overlay zone that permits the specific building height language of the Sector Plan to be overridden by the building height requirements of the Overlay Zone.

The Planning Board believes that the ZTA, as modified by technical staff and the Board to provide additional setbacks from one-family residential zones, maintains the overall intent of the sector plan to provide incentives for increasing housing, to activate street fronts, and to establish development at a scale that is less than the core CBD areas and transitions appropriately to the residential neighborhoods located to the east of the Overlay Zone.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, January 12, 2012.



Françoise M. Carrier
Chair

FC: GR

As modified by the Planning Board on 1/12/12

Zoning Text Amendment No.: 11-06
Concerning: Fenton Village Overlay
Zone – Building Height
Draft No. & Date: 1 – 11/1/11
Introduced:
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**

By: Councilmember Floreen and Council President Ervin

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- modify building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone
- generally amend the provision for building heights in the Fenton Village Overlay zone

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

Division 59-C-6	“Central Business District Zones”
Division 59-C-6.235	“Development Standards”
Division 59-C-18	“Overlay Zones”
Section 59-C-18.192	“Regulations”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
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** * * indicates existing law unaffected by the text amendment.*

Sec. 1. 59-C-6 is amended as follows:

Sec. 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.

* * *

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
59-C-6.235. [Maximum] Maximum Building Heights (in feet).												
(a) Standard method of development.												
—Normally:	45		60		60		60		72		60	
—If adjoining or directly across a street from land which is recommended for or developed in a residential zone with a maximum density of less than 15 dwelling units per acre:	35		35		35							
plus an additional 8 feet for air conditioners or similar rooftop structures and mechanical appurtenances pursuant to [division] <u>Division 59-B-1(b)</u> .												
(b) Optional method of development.												
—Normally:		60		60		60		143		143		143

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
—If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased to:		60 ^{12,*}		143		90 ¹		200 ¹¹		200		200

* For certain properties adjacent to the Fenton Village Overlay Zone, permitted heights may be increased under Section 59-C-18.192(b)(1)(E).

* * *

Sec. 2. Division 59-C-18 is amended as follows:

* * *

59-C-18.192. Regulations

* * *

(b) Development Standards. The development standards are the same as those in the underlying zones, except:

(1) Building height in the Overlay Zone:

* * *

(D) for property located in a block that includes property zones in any one-family residential classification, must not exceed 45 feet for all uses, except the building height must not exceed 60 feet for:

- (i) residential use; or
- (ii) mixed-use optional method project, if at least 33% of the project's floor area is residential and the project includes a hotel;

(E) for properties with frontage on both Wayne Avenue and Fenton Street, notwithstanding the height limitations in Subsection (b)(1)(B)-(D), may be increased by 15 feet for a building that includes residential uses or a

mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan. However, any building utilizing additional height must be setback from adjoining residentially zoned land not recommended for commercial or industrial zoning on an approved and adopted master or sector plan no less than the setback required in the adjacent residential zone or the height of the building, whichever is greater.

[(E)] (F) Building heights may be approved under the standards of this subsection without regard to the building height recommendations of the sector plan.

[(F)] (G) Any project plan approved before August 18, 2008 may be constructed under the conditions of its approval and any site plan thereafter that implements the previously approved project plan. Any site plan approved before [the] August 18, 2008 may be constructed under the conditions of its approval. Any building constructed under this subsection is conforming and may be maintained and reconstructed under the conditions of their approval.

* * *

Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.



MCPB
 Item No. 9
 Date: 1-12-12

Zoning Text Amendment (ZTA) No. 11-06, Building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone

GR

Gregory Russ, Planner Coordinator, gregory.russ@montgomeryplanning.org, 301-495-2174

MD

Mary Dolan, Acting Chief, mary.dolan@montgomeryplanning.org, 301-495-4552

Completed 1/5/12

Description

ZTA No. 11-06 modifies building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone. Specifically, the height of any building on properties that front on both Wayne Avenue and Fenton Street may be increased by 15 feet if the building includes residential uses or a mix of residential and commercial uses and such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan. Currently, the maximum optional method height in the Overlay Zone for properties located on the east side of Fenton Street is 60 feet. ZTA No. 11-06 would allow the height to increase to 75 feet, up to 200 feet from the right of way line for Fenton Street. The 15 foot increase in height would also apply to a portion of a property that fits the criteria stated above but is located outside of the Fenton Village Overlay Zone (and therefore is adjacent to the Overlay Zone) and is zoned CBD-0.5. A map in Attachment 3 depicts the applicability of the ZTA.

Summary

Staff recommends approval of ZTA 11-06 with modifications to ensure that appropriate setbacks are provided from land zoned one-family residential when additional height is granted for an adjacent property. Staff recommends that the building setback from property zoned one-family residential be no less than the height of the building or the setback of the adjoining residential property, whichever is greater. This protective measure can be found throughout the Zoning Ordinance for areas where non-residential or mixed use projects can potentially locate next to one-family residential zones.

ZTA 11-06 was introduced to allow properties located in Fenton Village near the intersection of Fenton Street and Wayne Avenue to concentrate their allowable density closer to the intersection and to scale down heights and density as development approaches the one-family residences to the east of the overlay zone. The Sector Plan also envisioned this overall approach but recommended building heights for the affected Fenton Village properties (east of Fenton Street) of 45 feet to 60 feet (based on location and use restrictions). As with several previous ZTA approvals by the District Council (one supported by the Planning Board in the case of ZTA 08-08), the height restrictions of the Fenton Village area of the sector plan were overridden by a change in the height requirements of the Fenton Village Overlay zone. In both cases, the overall Sector Plan recommendation to step down heights from Georgia Avenue to the edge of the CBD was maintained. The County Council also added language to the Fenton Village Overlay zone that permits the specific building height language of the Sector Plan to be overridden

by the building height requirements of the Overlay Zone. Staff believes that the ZTA as modified further protects single-family residences located along "the edges" of the CBD and Overlay Zone and meets one of the overall Sector Plan objectives for maintaining compatibility with surrounding properties.

ZTA 11-06-Applicability

Zoning Text Amendment 11-06 (Attachment 1) proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) that would allow the height of buildings on properties that front on both Wayne Avenue and Fenton Street to be increased by 15 feet for any building that includes residential uses or a mix of residential and commercial uses, as long as such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan.

The map on Attachment 2 depicts the boundary of the Fenton Village Overlay Zone and the underlying zoning classifications within the zone and the surrounding properties. As seen on the map, applicability of ZTA 11-06 would be limited to property located in the southeast and southwest quadrants of the intersection of Wayne Avenue and Fenton Street. The remaining two quadrants are outside of the Overlay zone and are zoned CBD-1. Currently, the maximum optional method height in the Overlay Zone for properties located on the east side of Fenton Street is 60 feet. The height along the west side of Fenton Street could range from 60 to 90 feet if part of a development that includes residential units. The height limit would be based on the highest structures being located along Georgia Avenue, decreasing in height towards Fenton Street. ZTA No. 11-06 would allow the building height at the southwest and southeast corners to increase to 75 feet within 200 feet of the right of way line for Fenton Street. The 15 foot increase in height would also apply to a portion of a property that fits the criteria stated above that is located outside of the Fenton Village Overlay Zone (and therefore is adjacent to the Overlay Zone) and is zoned CBD-0.5. As seen on the map in Attachment 3, potentially, this situation could occur at the southeast corner should the adjacent properties zoned CBD-0.5 be combined with the CBD-1 zoned properties.

The southwest corner of the intersection of Wayne Avenue and Fenton Street is currently vacant but is the future site of the Silver Spring Library. The Mandatory Referral (No. 10719-DGS-1) for the library depicts a maximum building height of 120 feet, stepping down in height from the adjacent Crescent Building (143 feet) located to the west. The portion of the library along Fenton Street would step down in height to approximately 70 feet.

The southeast corner of the intersection of Wayne Avenue and Fenton Street currently houses the First Baptist Church of Silver Spring and is the more likely site to redevelop using the provisions of the ZTA. As depicted on Attachment 3, applicability of the 75 feet height within the area 200 feet from the right of way line for the east side of Fenton Street extends into the CBD-0.5 properties and ranges from 18 feet away from R-60 zoned property at Wayne Avenue to 110 feet away from R-60 zoned property at Bonifant Street. Typically, where non-residential or mixed use projects are proposed adjacent to one-family residential zones, the Zoning Ordinance provides measures to ensure compatibility of the uses. *Staff recommends that additional language be included in the text that requires any project using the additional height provision to be setback from property zoned one-family residential by at least the height of the building or the setback of the adjoining residential property, whichever is greater.*

Conformance with the Applicable Sector Plan

The Approved and Adopted Sector Plan envisioned Fenton Village as a “diverse community of people living and working to create a tightly-knit urban neighborhood conducive to strolling and browsing ... providing ... a traditional town atmosphere not found in shopping centers or malls” (Silver Spring CBD Sector Plan, 2000, pg 60). To this end, the Sector Plan envisioned maintaining and improving small-scale retail, capturing some of the Class C and Class B office space market in Montgomery County, and bringing new housing development to Fenton Village. A height incentive for housing in Fenton Village was recommended in the Sector Plan and implemented via an Overlay Zone to spur residential development and provide a mixed use aspect to Fenton Village. It was expected that new housing development would improve the physical environment, activate the streets and provide a resident population to support businesses within the overlay zone.

Height limitations were also recommended by the Sector Plan in order to ensure the compatibility of new development in Fenton Village with the adjacent neighborhoods (East Silver Spring and north Takoma Park) and to sustain Fenton Village as a *transitional* area between the Core and the surrounding single family residences (i.e. the tent effect goal of the Sector Plan). The Sector Plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core which allows building heights from 143’ to 200’. Per the Sector Plan recommendation, the Fenton Village Overlay Zone (which implements the recommendations in the Sector Plan) limits height to 90’ on the east side of Georgia Avenue and 60’ on the west side of Fenton Street. For properties in between and not fronting on either Georgia or Fenton Street, the height may go up to 90’ if that project is at least 33% residential; this reflects the aforementioned height incentive that was created specifically to achieve the housing goal in the Sector Plan.

On July 29, 2008 (effective August 18, 2008), the District Council approved Zoning Text Amendment No. 08-08 (Ordinance No. 16-24) allowing additional building height for mixed-use, optional method development projects with a hotel and residences in the Fenton Village Overlay Zone and allowing additional building height to accommodate workforce housing. The County Council believed that the ZTA maintained the overall intent of the Sector Plan to incentivize housing development, to activate streets, and to maintain an appropriate scale of development that is less than that of the core CBD areas (143 feet to 200 feet) and compatible with the adjacent single-family neighborhoods located to the east (35 to 40 feet height limits). To further clarify that the height limits in the sector plan are established as a guide to assist in accomplishing the overall goals, the County Council added language to the Overlay Zone permitting building heights to be established therein without regard to the building height recommendations of the sector plan.

Staff believes that ZTA 11-06, as modified in Attachment 1 to provide additional setbacks from one-family residential zones, maintains the overall intent of the sector plan to provide incentives for increasing housing, to activate street fronts, and to establish development at a scale that is less than the core CBD areas and transitions in scale to the residential neighborhoods located to the east of the Overlay zone.

ATTACHMENTS

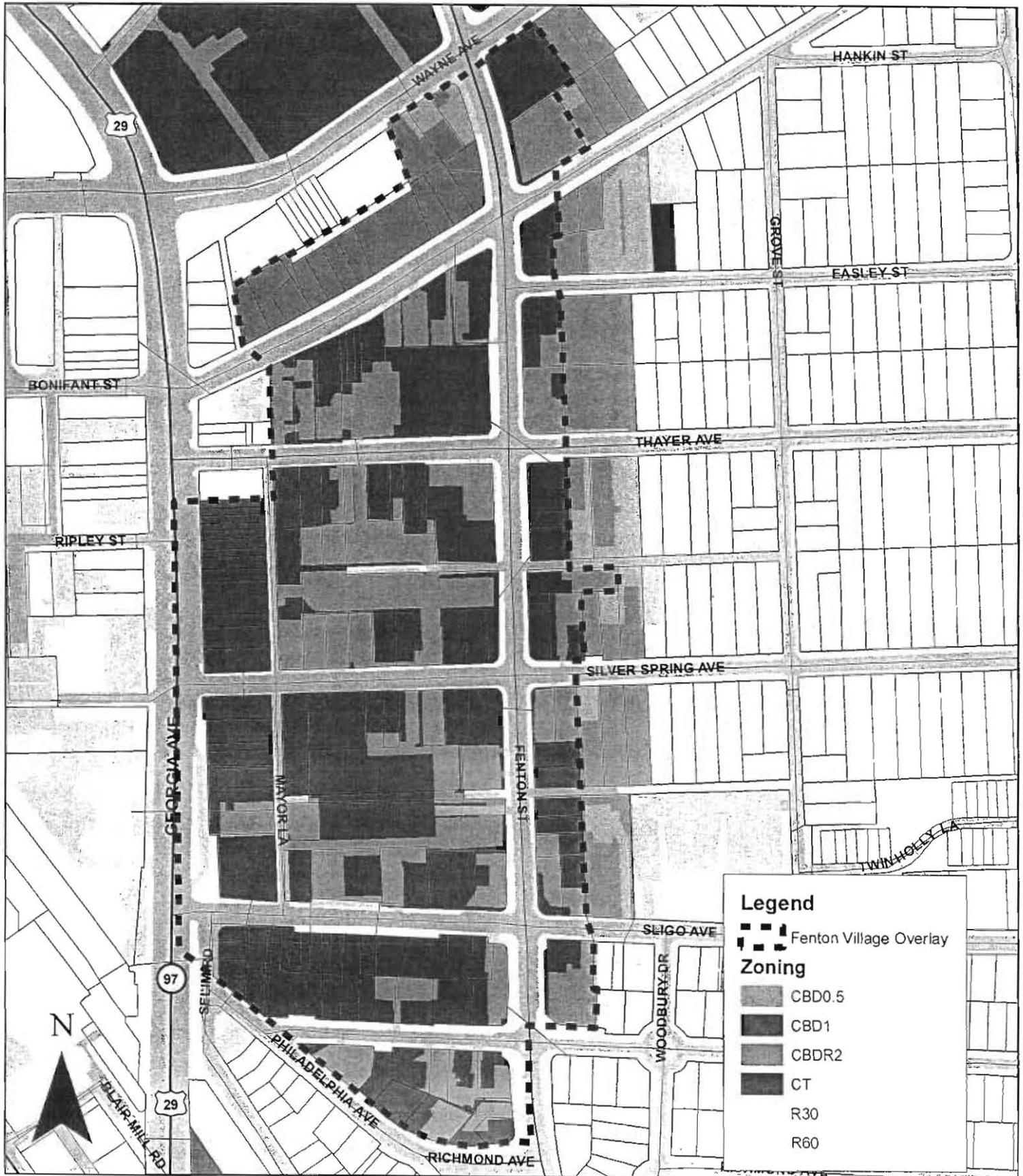
1. ZTA 11-06 as modified by staff
2. GIS Map of the Fenton Village Overlay Zone and Surrounding Properties
3. GIS Map Zoom-In of Fenton Village Properties near the intersection of Wayne Avenue and Fenton Street

Fenton Village

ZTA 11-06

Silver Spring, MD

January 2012



0 200 400 800 Feet

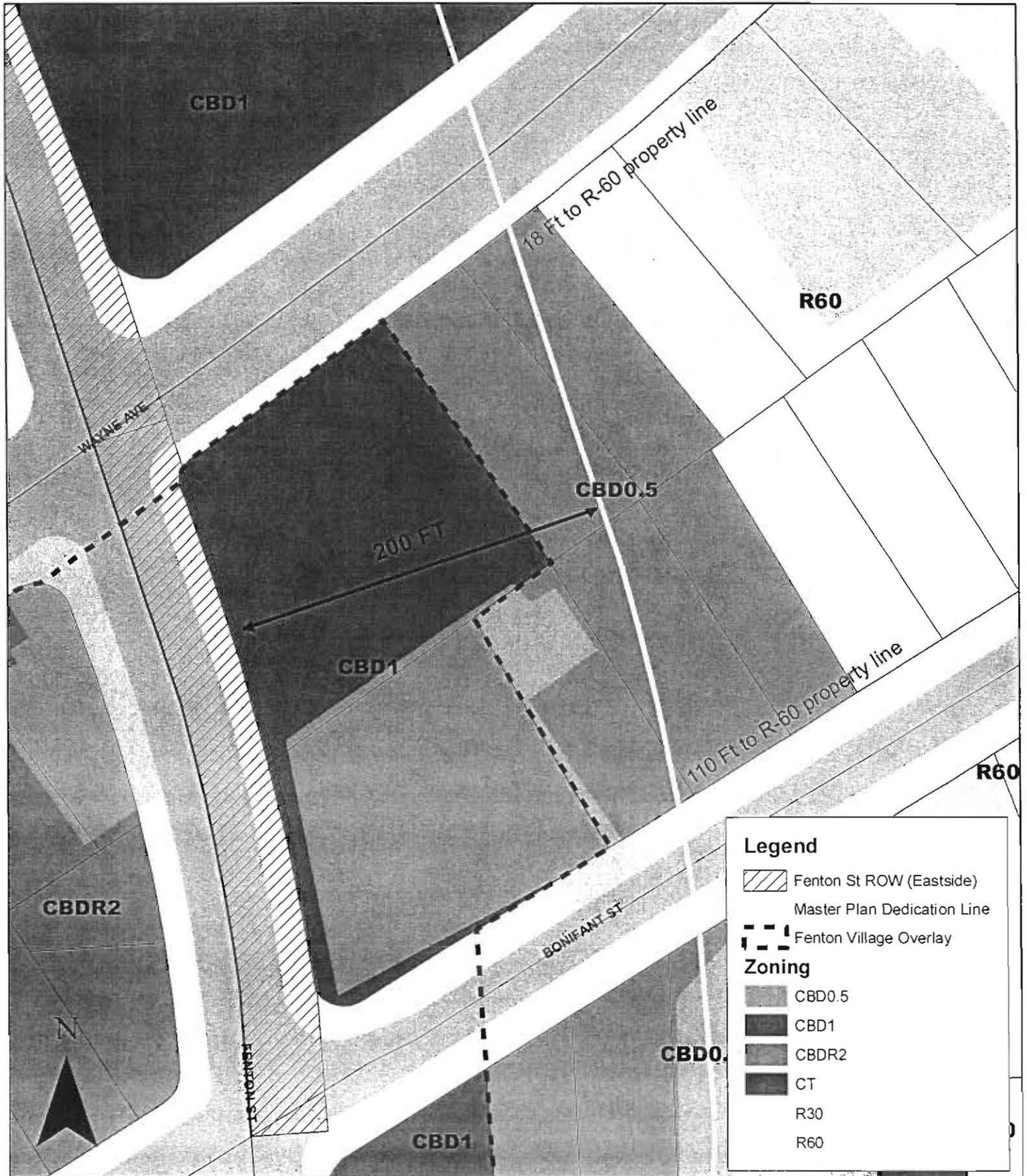
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Fenton Village

Silver Spring, MD

ZTA 11-06

January 2012



Legend

-  Fenton St ROW (Eastside)
-  Master Plan Dedication Line
-  Fenton Village Overlay

Zoning

-  CBD0.5
-  CBD1
-  CBDR2
-  CT
-  R30
-  R60