

**MEMORANDUM**

September 5, 2013

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Legislative Attorney  
SUBJECT: Zoning Text Amendment 13-06, Fenton Village Overlay – Building Height

**Background**

Zoning Text Amendment (ZTA) 13-06, sponsored by Councilmember Elrich, was introduced on June 11, 2013.

Currently, the Fenton Village Overlay zone generally allows a 60-foot building height limit along the west side of Fenton Street, but a substantially residential building may be taller. ZTA 13-06 would require that any building taller than 60 feet must step back from Fenton Street. Starting with buildings 60 feet tall along Fenton Street, every additional one foot in height would require a setback of one foot from Fenton Street.

The Sector Plan language recommends that building heights taper down from Georgia Avenue to Fenton Street in order to ensure compatibility with residential neighborhoods to the east of Fenton Street. The Plan does not provide guidance on how the taper should be implemented in terms of dimensions or height setbacks from Fenton Street.

**Public Hearing**

The Council held a public hearing on July 16, 2013. The Planning Board representative, two representatives of landowners in the Fenton Village area, and one citizens association representative spoke. The Planning Board recommended approval of ZTA 13-06 with a grandfather provision for approved project plans and preliminary plans. (Planning Staff recommended approval with only plain English changes. One representative supports a grandfather provision.) The attorney for a client with a relatively recent project plan approval spoke in favor of a grandfather provision. The attorney for a client that may submit a project plan spoke against the ZTA. The opponent suggested that the rigid standard is unnecessary to assure compatibility.

**Issues**

**Is the proposed ZTA too rigid a standard for a building height stepback?**

The building height stepback proposed in ZTA 13-06 is identical to the currently required stepback in CR zones. The CR zones refer to a 45 degree angular plan. As any student of trigonometry can tell, a 45 degree angular plan is equal to one foot back for every one foot up.<sup>1</sup> For instance, any builder who wants walls perpendicular to the ground and a height that accommodates humans would step back from the edge of a building 11 feet and then build an 11 foot wall. (The roof area created by the stepback can be used for a balcony.) When the height of the building steps back, it is less visible and less imposing to observers on the ground.

Planning Staff provided illustrations for the proposed height taper to a less gentle height taper (© 24-26). The Planning Board did not object to their reduced flexibility. Although the stepback requirement was characterized as ridged by a landowner, it can also be characterized as providing certainty to neighbors. *Staff recommends the stepback as proposed in ZTA 13-06.*

**Is a grandfather provision warranted?**

The Council has a history of providing grandfather provisions, even though such provisions are not required by law. Under the Zoning Ordinance Rewrite, approved preliminary plans and project plans would be grandfathered. Staff recommends including a grandfather provision for approved preliminary plans and project plans.

| <u>This Packet Contains</u>   | <u>© number</u> |
|-------------------------------|-----------------|
| ZTA 13-06                     | 1 – 4           |
| Planning Board Recommendation | 5 – 15          |
| Planning Staff Recommendation | 16 – 26         |

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<sup>1</sup> An equal distance in height and setback creates a bilateral triangle when a line is draw between the starting height and the ending height. The 2 acute angles of an equilateral triangle are both 45 degrees.

Zoning Text Amendment No.: 13-06  
Concerning: Fenton Village Overlay –  
Building Height  
Draft No. & Date: 1 – 6/04/13  
Introduced: June 11, 2013  
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**

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By: Councilmember Elrich

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- 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-18.  
Section 59-C-18.19.

“Overlay Zones.”  
“Fenton Village Overlay Zone.”

**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.*  
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*\* \* \* 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:*

1           **Sec. 1. Division 59-C-18 is amended as follows:**

2    DIVISION 59-C-18. OVERLAY ZONES.

3    \*   \*   \*

4    **Sec. 59-C-18.19. Fenton Village Overlay Zone.**

5    \*   \*   \*

6    59-C-18.192. Regulations.

7    \*   \*   \*

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

10   (1)   Building height in the Overlay Zone:

11           (A)   along a major highway must not exceed 90 feet;

12           (B)   along any street confronting any block that includes property  
13                   zoned in a one-family residential classification, must not exceed  
14                   60 feet and, when a building is allowed to be higher than 60  
15                   feet behind the Fenton Street frontage of the building, each  
16                   additional foot in building height above 60 feet requires at least  
17                   an additional one foot setback from the front of the building  
18                   along Fenton Street;

19           (C)   within the area between a major highway and a street that  
20                   confronts a block that includes property zoned in any one-  
21                   family residential classification, must not exceed 60 feet but  
22                   may increase up to 90 feet the maximum height allowed if at  
23                   least 33% of a project's floor area is residential; however, if  
24                   additional building height is necessary [to allow] to  
25                   accommodate workforce housing units and at least 33% of the  
26                   project's floor area is residential, up to 110 feet and where the  
27                   additional height is placed near a major highway and decreases

28 in the direction of the closest property zoned in any one-family  
29 residential classification;

30 \* \* \*

31 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of  
32 Council adoption.

33

34 This is a correct copy of Council action.

35

36

37 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council



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

**OFFICE OF THE CHAIR**

The Maryland-National Capital Park and Planning Commission

July 16, 2013

**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. 13-06

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 13-06 at our regular meeting on July 11, 2013. By a vote of 4-0, the Planning Board recommends approval of the text amendment as modified by the Board for plain language clarifications. The text amendment language as modified is included as an attachment to this memorandum, separate from the technical staff report.

ZTA No. 13-06 would amend the provision for building heights in the Fenton Village Overlay zone. Currently, the Fenton Village Overlay Zone generally allows a 60 foot building height limit along the west side of Fenton Street, with higher heights allowed for projects with a certain percentage of residential located between Georgia Avenue and the west side of Fenton Street. The ZTA would require that any portion of a building taller than 60 feet be set back or stepped back from Fenton Street at a ratio of one foot for each foot of height above 60 feet.

The Approved and Adopted Sector Plan for the Silver Spring CBD 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” (Sector Plan, 2000, p. 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 (Fenton Village 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.

⑤

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 (up to 110 feet) to accommodate workforce housing in between Georgia Avenue and the west side of Fenton Street, where the building height remained limited to 60 feet. 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 specific building height recommendations of the sector plan.

Height limitations were 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'. Consistent with 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. "Properties between Georgia Avenue and Fenton Street not fronting on either street are limited to 60 feet but may go up to 90 feet for projects that are at least 33 percent residential and where the additional height is placed closest to Georgia Avenue and tapered down moving west to Fenton Street", Sector Plan pg. 68.

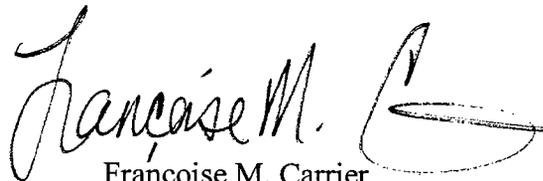
The Sector Plan language is clear in its directive to taper heights down from Georgia Avenue to Fenton Street in order to ensure compatibility with adjacent residential neighborhoods to the east of Fenton Street, pg. 64. However, it does not provide guidance on how the tapering should be implemented in terms of dimensions or height setbacks from Fenton Street. The lack of guidance could result in an applicant proposing a 60-foot tall building on Fenton Street that immediately jumps up to 90' (110' if providing workforce housing) within a few feet of the front building line (see Attachment 3). The Planning Board believes that in the limited context of the Fenton Village Overlay Zone, for buildings fronting on Fenton Street, a one to one setback (1-foot of setback for every additional 1-foot of height over 60') is a reasonable measure to ensure adequate tapering of heights between Georgia Avenue and Fenton Street.

Testimony during the Planning Board hearing resulted in support for height specificity that is directly pertinent to preserving the Fenton Village character that is expressed through building design and architecture. The testimony in support recommended a consistent 60 foot height definition that accounts for the 1:1 step-back from the building or lot line. Additional testimony resulted in concern over the entitlement process for sites that have approved project

and preliminary plans which have already established building setbacks and step-backs, and recommended a grandfathering provision be added to the ZTA. The Board supported the grandfathering provision. Finally, testimony was provided that recommended more flexibility in the step-back to allow for more creative building designs that would achieve the full density on the site without imposing specific step-back requirements. The Board was convinced that creative building designs would be implemented with the step-backs and that the 1:1 ratio would provide the compatibility with the single-family neighborhoods called for in the Sector Plan.

### 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, July 11, 2013.



Françoise M. Carrier  
Chair

FC:RK

# ATTACHMENT 1

Zoning Text Amendment No.: 13-06  
Concerning: Fenton Village Overlay –  
Building Height  
Draft No. & Date: 1 – 6/04/13  
Introduced: June 11, 2013  
Public Hearing:  
Adopted:  
Effective:  
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**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
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9        in the underlying zones, except:

10       (1)   Building height in the Overlay Zone:

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12           (B)   along any street confronting any block that includes property  
13                zoned in a one-family residential classification, must not exceed  
14                60 feet; ~~[[and,]] when a building is allowed to exceed [[be~~  
15                ~~higher than]] 60 feet, however, [[behind the Fenton Street~~  
16                ~~frontage of the building, each additional foot in building~~  
17                ~~height]] the building façade for any portion of the building~~  
18                ~~above 60 feet [[requires at least an additional]] must be at least~~  
19                ~~one foot for every foot in building height above 60 feet~~  
20                ~~[[stepback from the front]] behind the facade of the portion of~~  
21                ~~the building that is at or below 60 feet along Fenton Street;~~

22           (C)   along Fenton Street is limited to 60 feet at the lot line, and may  
23                exceed 60 feet, up to the maximum height otherwise allowed in  
24                the zone, by one additional foot for each foot that the portion of  
25                the building above 60 feet is setback from the lot line or  
26                stepped back from the building face.

27

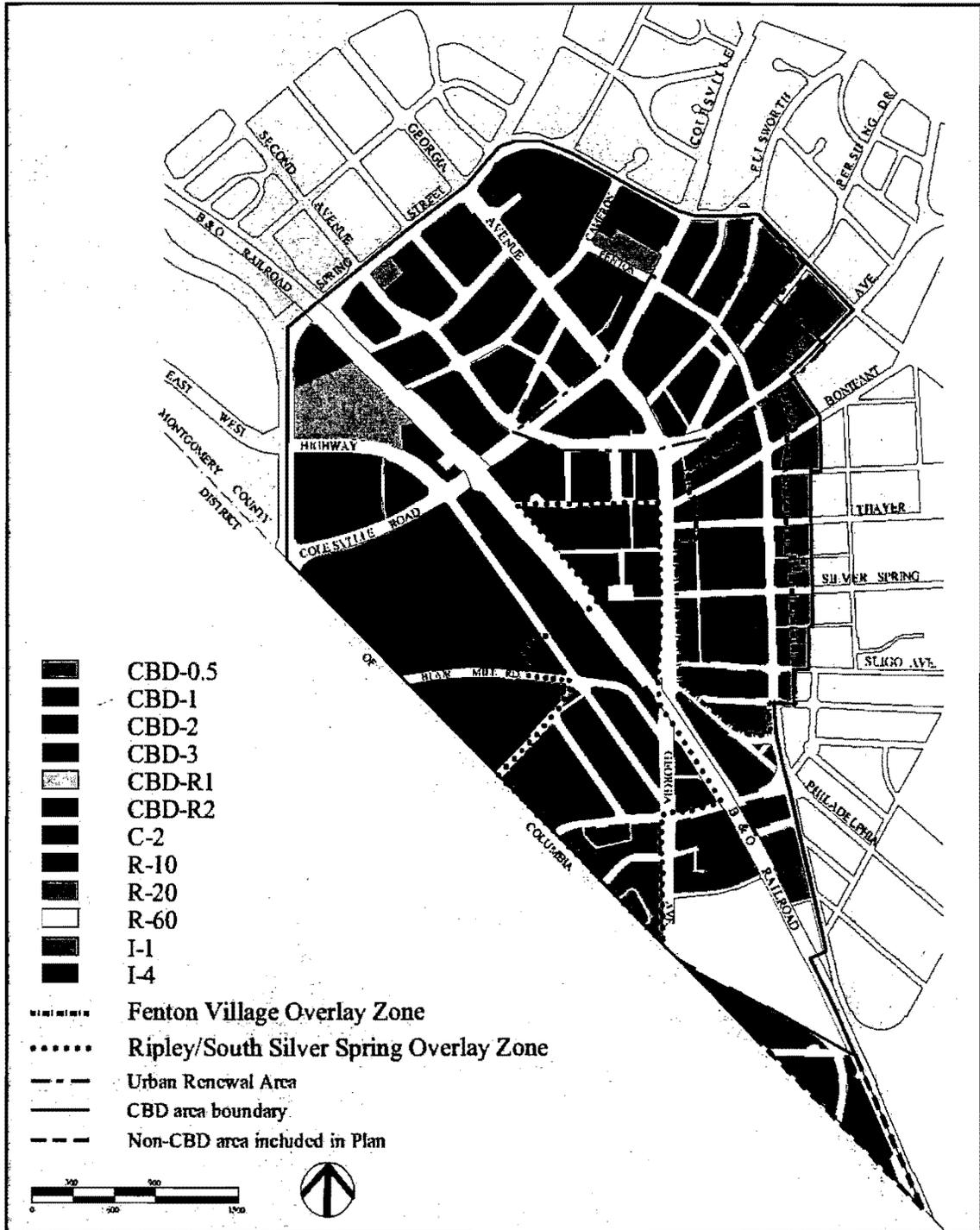
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38  
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40 Linda M. Lauer, Clerk of the Council



ATTACHMENT 3

60' ON WEST SIDE  
OF FENTON STREET, IMMEDIATELY  
STEPPING UP TO 90- FEET

$\geq 1'$

30'-0"

60'-0"

FENTON  
STREET

CBD-1 WITH  
FENTON OVERLAY  
60' W/ RESIDENTIAL USE

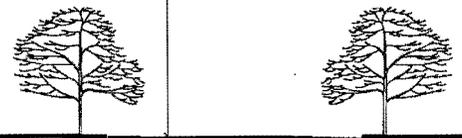
45' COMMERCIAL ONLY

OPTIONAL METHOD MAXIMUM HEIGHTS  
IN FENTON VILLAGE OVERLAY ZONE

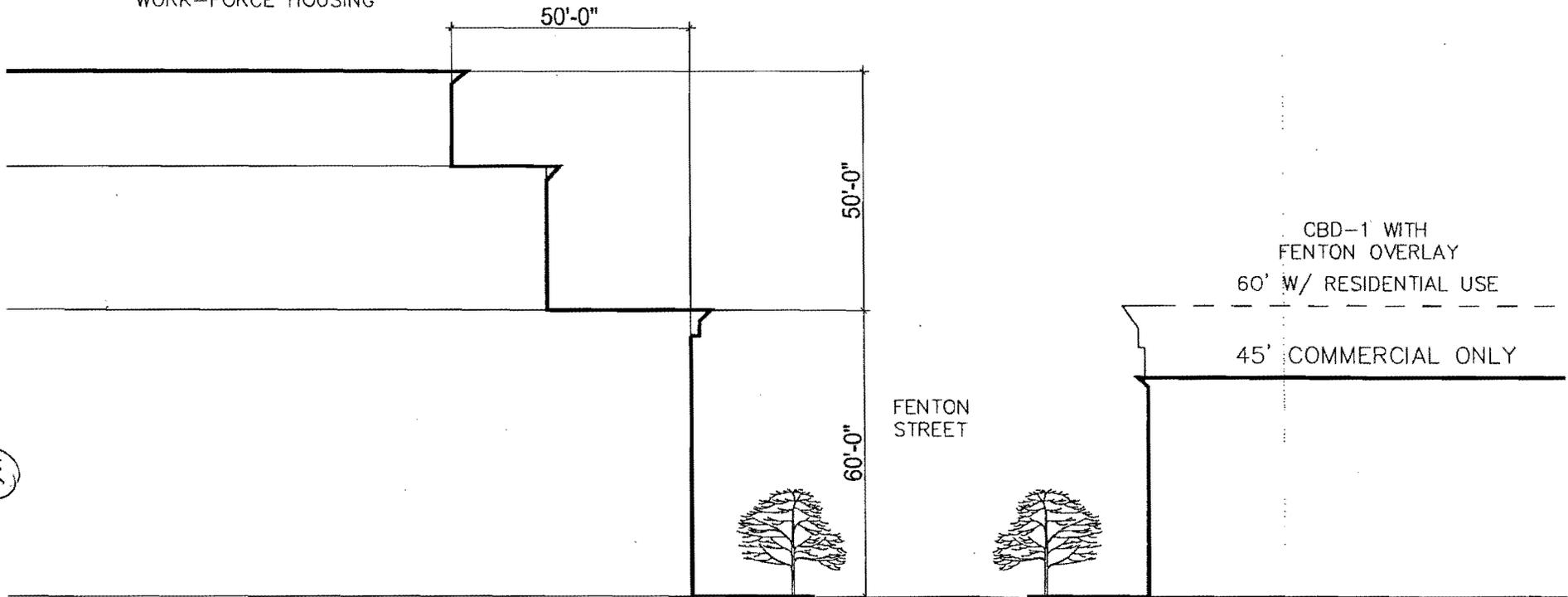
13

1 Fenton Street

1 SCALE: 1"=20'-0"

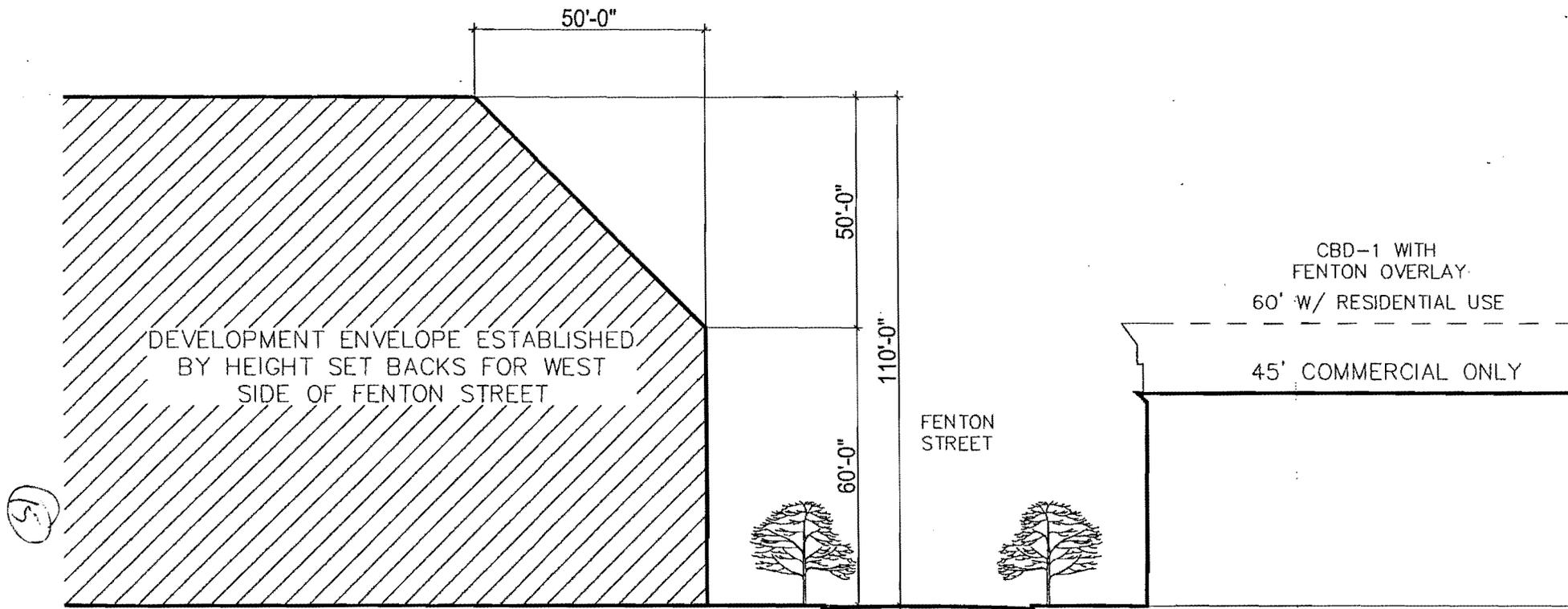


60' ON WEST SIDE OF FENTON STREET  
STEPPING UP TO 110- FEET TO ACCOMMODATE  
WORK-FORCE HOUSING



OPTIONAL METHOD MAXIMUM HEIGHTS  
IN FENTON VILLAGE OVERLAY ZONE PER  
ZTA 13-06

1 Fenton Street  
1 SCALE: 1"=20'-0"



OPTIONAL METHOD MAXIMUM HEIGHTS  
IN FENTON VILLAGE OVERLAY ZONE PER  
ZTA 13-06

1 Fenton Street

SCALE: 1" = 20'-0"



**Zoning Text Amendment (ZTA) No. 13-06, Fenton Village Overlay – Building Height**

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Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174



Mary Dolan, Chief, FP&P, [mary.dolan@montgomeryplanning.org](mailto:mary.dolan@montgomeryplanning.org), 301-495-4552

Completed: 07/03/13

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**Description**

ZTA No. 13-06 would amend the provision for building heights in the Fenton Village Overlay zone. Currently, the Fenton Village Overlay Zone generally allows a 60 foot building height limit along the west side of Fenton Street, with higher heights allowed for majority residential projects located between Georgia Avenue and the west side of Fenton Street. The ZTA would require that any portion of a building taller than 60 feet be set back from Fenton Street at a ratio of one foot for each foot of height above 60 feet.

**Summary**

**Staff recommends approval, with modifications, of ZTA No. 13-06 to establish step back/setback parameters for building heights above 60 feet along the west side of Fenton Street. The plain language modifications are proposed to clarify the intent of the legislation.**

**Background/Analysis**

The Approved and Adopted Sector Plan for the Silver Spring CBD 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” (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 (Fenton Village 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.

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 (up to 110 feet) to accommodate workforce housing between Georgia Avenue and the west side of Fenton Street where the building height is limited to 60 feet. 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 specific building height recommendations of the sector plan.

Zoning Text Amendment 13-06 (Attachment 1) proposes a revision to Section 59-C-18.192(b)(1)(B) (Fenton Village Overlay Zone-building height) that would require that any portion of a building taller than 60 feet be set back from the west side of Fenton Street at a ratio of one foot for each foot of height above 60 feet. Currently the overlay zone limits building heights along the west side of Fenton Street to 60 feet but provides no guidance on setbacks from the street for building heights above 60 feet. 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. Attachment 3 includes several sketches depicting optional method maximum development heights in Fenton Village based on the existing overlay text and the overlay language as proposed in ZTA 13-06.

#### Conformance with the Applicable Sector Plan

Height limitations were 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. "Properties between Georgia Avenue and Fenton Street not fronting on either street are limited to 60 feet but may go up to 90 feet for projects that are at least 33 percent residential and where the additional height is placed closest to Georgia Avenue and tapered down moving west to Fenton Street", Sector Plan pg. 68.

The sector plan language is clear in its directive to taper heights down from Georgia Avenue to Fenton Street in order to ensure compatibility with adjacent residential neighborhoods to the east of Fenton Street, pg. 64. However, it does not provide guidance on how the tapering should be implemented in terms of dimensions or height setbacks from Fenton Street. The lack of guidance could result in an applicant proposing a 60-foot tall building on Fenton Street that immediately jumps up to 90' (110' if providing workforce housing) within a few feet of the front building line (see Attachment 3). Staff believes that a one to one setback (1-foot of setback for every additional 1-foot of height over 60') is a reasonable measure to ensure that a minimum tapering of heights takes place between Georgia Avenue and Fenton Street.

#### Conclusion

With the proposed changes to the ZTA language as depicted in Attachment 1 (plain language clarifications), staff recommends approval of ZTA 13-06. Providing certainty on height-tapering from Georgia Avenue to Fenton Street can assist in minimizing compatibility concerns with adjacent

residential communities located to the east of the Fenton Village Overlay zone while also maintaining 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.

**Attachments**

1. ZTA No. 13-06 as modified by staff
2. Map of Fenton Village Overlay
3. Example Sketches of Height Elevations along Fenton Street per ZTA 13-06

## ATTACHMENT 1

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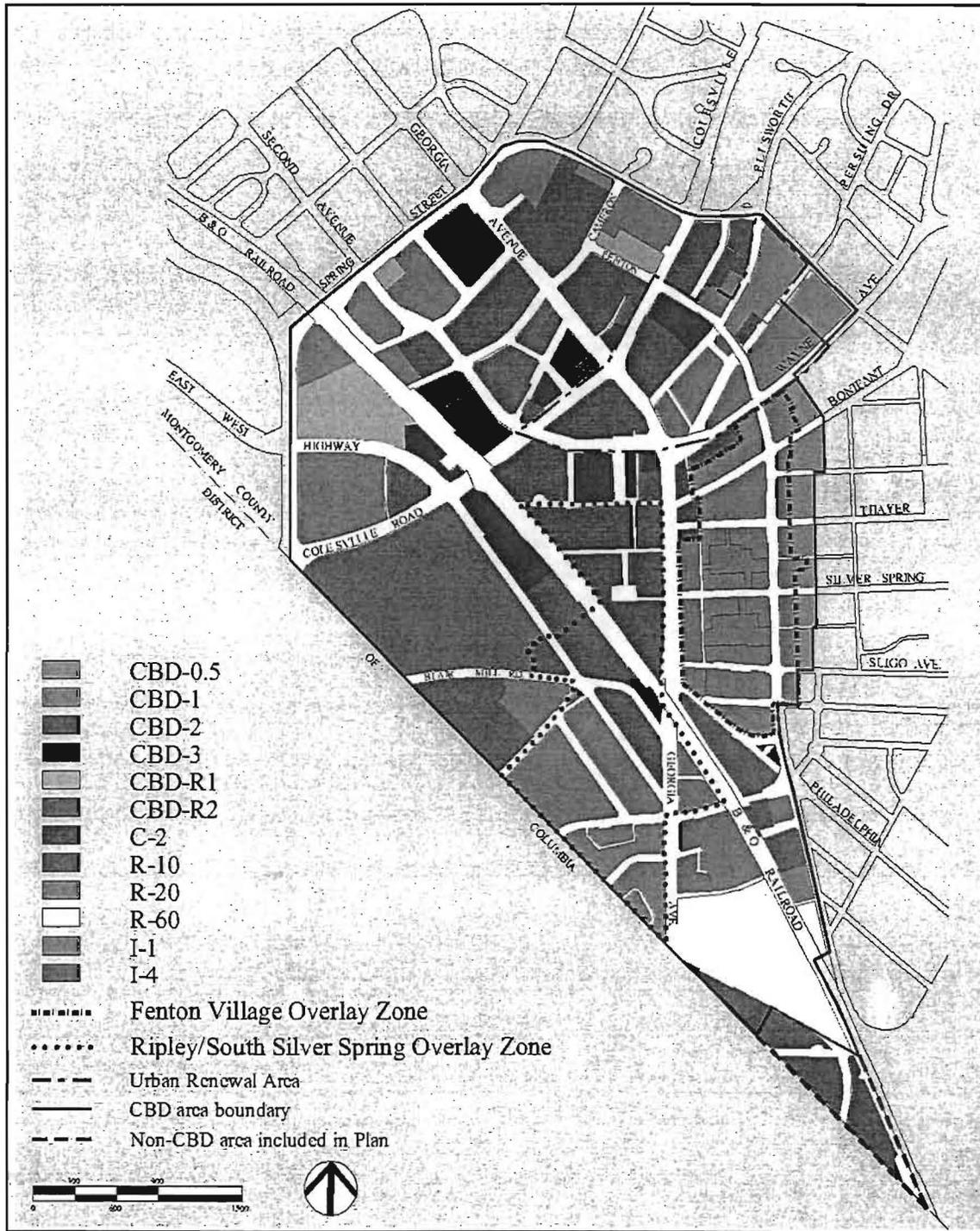
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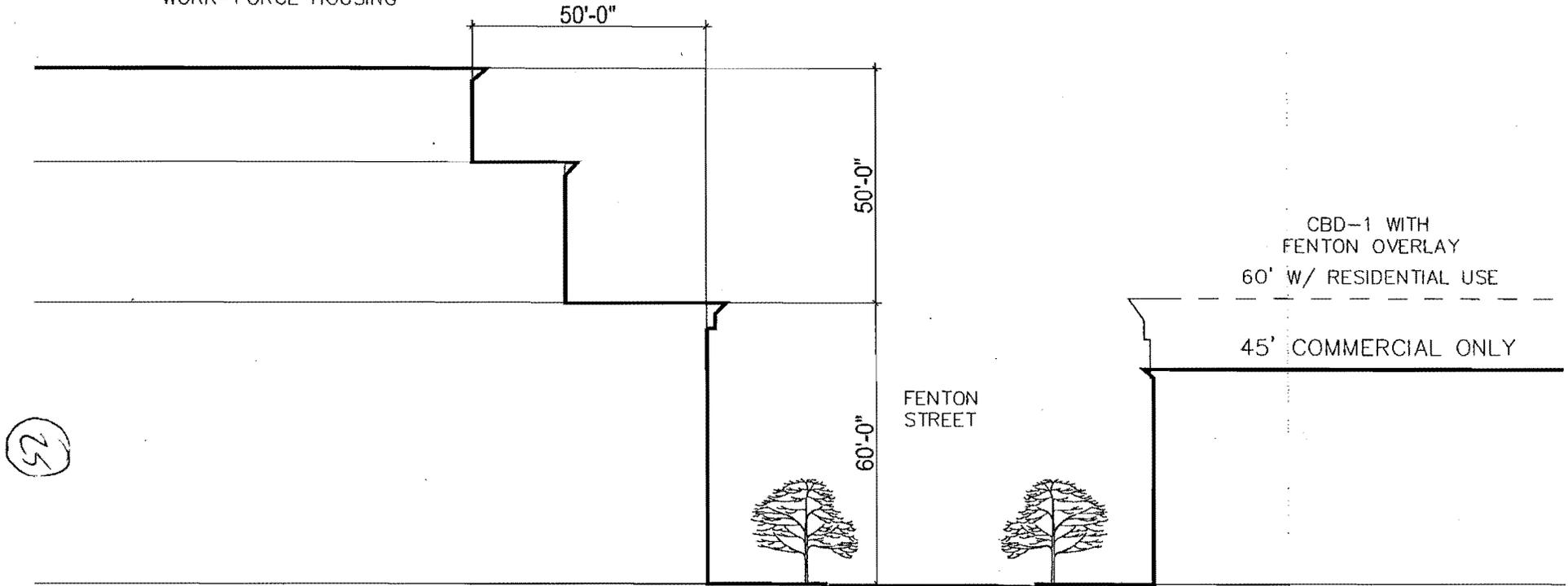
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h2

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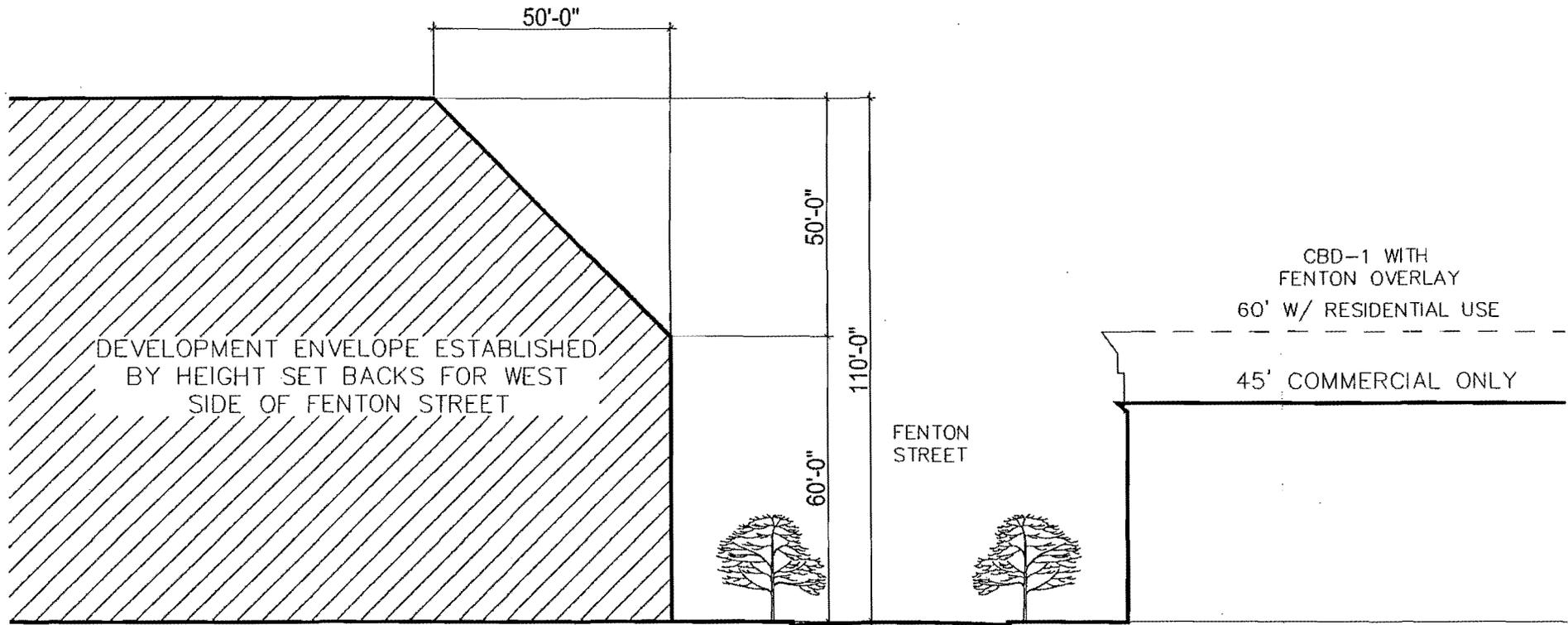
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WORK-FORCE HOUSING



52

OPTIONAL METHOD MAXIMUM HEIGHTS  
IN FENTON VILLAGE OVERLAY ZONE PER  
ZTA 13-06

1 Fenton Street  
1 SCALE: 1" = 20'-0"



OPTIONAL METHOD MAXIMUM HEIGHTS  
IN FENTON VILLAGE OVERLAY ZONE PER  
ZTA 13-06

26

1 Fenton Street

SCALE: 1"=20'-0"