

MEMORANDUM

September 5, 2013

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ^{JZ}Legislative Attorney
SUBJECT: Zoning Text Amendment 13-07, US 29 Overlay Zone – Land Use

Zoning Text Amendment (ZTA) 13-07, sponsored by Councilmembers Ervin and Floreen, was introduced on July 30, 2013. A public hearing on ZTA 13-07 is scheduled for September 10, 2013 at 1:30 p.m. If there is substantive testimony raised that is contrary to the Planning, Housing, and Economic Development Committee recommendation, it will be addressed at the Council session.

ZTA 13-07 would expand the opportunity for smaller retail uses (with a footprint of 15,000 square feet or less) in the US 29/Cherry Hill Road Employment Area Overlay Zone. Planning Staff recommended deleting the Overlay zone from the Zoning Ordinance. The proposed Sector Plan and the proposed zones would allow more retail uses consistent with ZTA 13-07.

ZTA 13-05 also would amend the US 29/Cherry Hill Road Employment Area Overlay Zone. It would allow multi-family residential and grocery store uses as part of a multi-use project where the underlying zone is I-1; establish development standards for the additional uses; and generally amend the text of the zone to make it more concise, precise, and decisive. Where ZTA 13-05 would amend the same sections of code, its proposed amendments are reflected in ZTA 13-07. **If ZTA 13-05 is not recommended or amended, then ZTA 13-07 would require amendments before approval.**

The staff draft Sector Plan for the Cherry Hill Road Employment Area Overlay Zone area recommends that the entire area (with the exception of a property recommended for the LSC zone) be rezoned from I-1, I-2, I-3, and I-4 to several CR zones, which allow developments with a general retail component. This recommendation was based on stakeholders' interest in seeing the area transform from industrial, office, and service uses to a more diverse mix that includes retail, housing, and additional employment opportunities in technology and, possibly, life sciences.

Issues

Should more retail uses be allowed in the US 29 Overlay Zone in advance of a sectional map amendment?

The Zoning Code allows zoning and preliminary plan approvals that are contrary to a draft master plan to be deferred until the Council takes action on the proposed plan. This ZTA (and ZTA 13-05) allows development consistent with a proposed master plan to proceed in advance of the Council's consideration of the master plan. The code does not allow a proposed master plan to trump the current zoning map and text. This "lean-forward" ZTA is a new concept to zoning.¹

ZTA 13-07 allows 15,000 square feet of retail gross floor area in a project where it currently is not allowed. If the Council believes that the public interest is served by this change in advance of reviewing the sector plan, then it should approve the ZTA. Such approval would allow a broader range of land uses, even if the draft Sector Plan is not approved.

The Council could decide that not all retail uses should be allowed.

Should new retail development avoid a requirement for site plan approval?

As introduced, the gross floor area for retail space would be exempt from a site plan approval requirement. **Staff recommends that this apply only to existing commercial space that is converted to retail space.**

This Packet Contains
ZTA 13-07

© number
1 – 5

¹ "The secret of getting ahead is getting started." Mark Twain.

Zoning Text Amendment No.: 13-07
Concerning: US 29 Overlay Zone –
Land Use
Draft No. & Date: 1 – 7/18/13
Introduced: July 30, 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**

By: Councilmembers Ervin and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to revise the provisions of the US 29/Cherry Hill Road Employment Area Overlay Zone to:

- allow retail sales and services under certain circumstances;
- reflect the changes proposed in ZTA 13-05 to allow for a grocery store in the overlay zone under certain circumstances;
- generally amend the text of the zone to make it more concise, precise, and decisive

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

DIVISION 59-C-18. “OVERLAY ZONES.”
Section 59-C-18.13. “US 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan.”

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. DIVISION 59-C-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONES.

* * *

Sec. 59-C-18.13. U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan.

* * *

59-C-18.132. Regulations.

(a) Land uses.

(1) The following uses are permitted in the U.S. 29/Cherry Hill Road Employment Area overlay zone:

(A) All permitted and special exception uses allowed in the underlying zones are allowed in the U.S. 29/Cherry Hill Road Employment Area overlay zone, except as specifically modified in this overlay zone.

(i) The following additional retail commercial uses are permitted:

Beauty supply stores.

Computer and computer supply stores.

Electronics stores.

Express or mailing offices.

Food and beverage stores.

Music stores.

Office supply stores.

Pet supply stores.

Retail trades, businesses, and services of a general commercial nature.

Shoe stores.

Theaters, indoor.

* * *

(b) **Development standards.** Development will proceed under the standards of the underlying zones except as modified by the provisions of this overlay zone.

* * *

(2) **Retail commercial area.**

(A) Where the underlying base zone is other than the C-6 Zone:

- (i) the cumulative square footage of retail commercial uses permitted on land classified in each particular base zone within the boundaries of the overlay zone must [not exceed] be equal to or less than a total of 50,000¹ gross square feet; and
- (ii) development of retail commercial use cannot exceed 15,000¹ square feet on any individual lot; and
- (iii) [no] except for a grocery store, a single tenant free-standing structure that devotes 50 percent or more of its gross floor area to a retail commercial use [may exceed a total of] must be equal to or less than 10,000 gross square feet.

(B) Subsection (A) also applies where the underlying base zone is C-6, and when development occurs [pursuant to] under Section 59-C-18.132(b)(6)(B).

(C) Anywhere in the overlay zone, the limitations in Subsection (A) do not apply to the floor area used for retail trades, businesses, and services of a general commercial nature if the footprint of the use is 15,000 square feet or less.

55 * * *

56 (d) **Site plan.**

57 (1) Any retail commercial development in the U.S. 29/Cherry Hill Road
58 Employment Area overlay zone must be approved under the site plan
59 review provisions of Division 59-D-3, except where:

60 (A) the cumulative redevelopment [does not exceed] is 20 percent
61 or less of the existing gross floor area; or

62 (B) the floor area is used for retail trades, businesses, and services
63 of a general commercial nature up to a footprint of 15,000
64 square feet.

65 (2) For uses other than retail, site plan review is required only where it is
66 required in the [underlying] underlying zone.

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68 **Sec. 2.** Effective date. This ordinance becomes effective 20 days after the date of
69 Council adoption.

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71 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council