

AGENDA ITEM #9  
June 13, 2006

**Public Hearing**

**MEMORANDUM**

June 7, 2006

TO: County Council

FROM: Jeff Zyontz, <sup>JZ</sup> Council Analyst

SUBJECT: Public Hearing – ZTA 06-11, Amendment to the Wheaton Overlay Zone

ZTA 06-11, is sponsored by Councilmembers Perez and Praisner. The ZTA proposes new development policies and standards for revitalization of the Wheaton Central Business District. The revised development standards are intended to encourage higher-density, mixed-use, transit oriented development near the Wheaton Metro Station.

ZTA 06-11 is recommended by the Wheaton Redevelopment Office in response to current market condition and an assessment of the effects of the Metro accessibility. The ZTA eliminates restrictive elements of the current Overlay zone believed to prevent business expansion and new development opportunities.

Zoning Text Amendment No: 06-11  
Concerning: Amendment to the Wheaton  
Retail Preservation Overlay Zone  
Draft No. & Date: 2 – 03/29/06  
Introduced: April 4, 2006  
Public Hearing: June 13, 2006; 1:30 p.m.  
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 Perez and Praisner

---

**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- promoting higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development;
- revitalizing and retaining the existing street level retail area in the Wheaton Central Business District as a major marketplace;
- amending the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and
- generally amending the Wheaton Retail Preservation Overlay zone.

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

DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.10	“Retail Preservation Overlay Zone for the Wheaton Central Business District”
Section 59-C-18.101	“Purpose”
Section 59-C-18.102	“Regulations”
Section 59-C-18.103	“Procedures for application and approval”
Section 59-C-18.104	“Site plan contents and exemptions”
Section 59-C-18.105	“Planning Board approval”

①

**EXPLANATION:** **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws by the original text amendment.  
**[Single boldface brackets]** indicate text that is deleted from existing law by the 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:*

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

2           **DIVISION 59-C-18. OVERLAY ZONE**

3           \* \* \*

4           **59-C-18.10. Retail preservation overlay zone for the Wheaton Central**  
5           **Business District.**

6           **59-C-18.101. Purpose.**

7           It is the purpose of this overlay zone to:

- 8           (a) Retain a [the existing scale of development and] mix of retail and service  
9           uses within the Wheaton Central Business District.
- 10          (b) [Regulate development to preserve] Provide opportunities to retain a variety  
11          of small businesses, retail uses and services in the Wheaton Central  
12          Business District and to encourage new businesses to meet the needs of  
13          workers, shoppers, visitors and residents.
- 14          (c) Encourage building designs [to make new buildings] compatible with the  
15          existing [buildings] character of street level uses found within and adjacent  
16          to the overlay zone.
- 17          (d) Provide flexible standards to implement public objectives such as retention  
18          of the small business character that exists in downtown Wheaton.
- 19          (e) Encourage higher-density, mixed-use, transit oriented development located  
20          in close proximity to the Wheaton Transit Station, with an emphasis on  
21          housing, office uses, commercial services, and arts and entertainment  
22          establishments.

23 (f) Encourage both standard method of development and optional method of  
24 development projects to include small, street level businesses to help retain  
25 a small business identity.

26 **59-C-18.102. Regulations.**

27 (a) **[Restriction on use of o] Optional method of development.** [In the  
28 Wheaton Retail Preservation Overlay Zone, the optional method of  
29 development is prohibited.] The optional method of development  
30 procedure may be used if authorized in the underlying zone. Use of the  
31 optional method of development procedure is intended to promote higher  
32 density mixed-use development in close proximity to the Wheaton Metro  
33 Station and to revitalize and retain the existing retail area in Wheaton as a  
34 major marketplace.

35 **(1) Optional Method of Development Standards.**

36 (A) The maximum height for any CBD-2 or CBD-3 zoned optional  
37 method of development project located south of Ennals  
38 Avenue, south of Price Avenue and west of Fern Street is 125  
39 feet. The maximum building height for any CBD-2 or CBD-3  
40 zoned optional method of development project located north of  
41 Ennals Avenue, north of Price Avenue and east of Fern Street is  
42 100 feet.

43 (B) Any optional method of development project must provide at  
44 least 45 percent of the street level retail space for use by small  
45 businesses with less than 3,000 gross square feet of floor space  
46 and restaurants with less than 5,000 square feet of gross floor  
47 space. The space must be restricted to such small business use

48 for a period of ten years after the issuance of the initial use and  
49 occupancy permit. The ten year time period is binding upon  
50 future owners and successors in title and must be stated as a  
51 condition of any site plan approved by the Planning Board.

52 (C) The maximum FAR allowed in the underlying zone may be  
53 increased by an amount equal to 15 percent of the street level  
54 space if a total of 60 percent of the street level space is devoted  
55 to small business use as described in subsection (B) above.

56 (D) At least one-half of the public use space required under 59-C-  
57 6.233 must be green area and include landscape features that  
58 will serve to enhance the amenity of the development.

59 (E) The Planning Board may allow any public use space  
60 requirement under Sec. 59-C-6.233 that is less than 1,800  
61 square feet to be provided off-site within the Wheaton CBD as  
62 either public use space or streetscape on a one-for-one square  
63 foot basis.

64 (b) **Standard Method of Development**

65 (1) For any standard method of development project that provides at least  
66 30 percent of the street level retail floor space for use by businesses  
67 with less than 3,000 gross square feet of floor space and restaurants  
68 with less than 5,000 square feet of gross floor space, 30 percent of the  
69 street level floor space must not be included in the maximum FAR  
70 calculation allowed under the base zone. Space provided for small  
71 business use must be maintained for small business use for a period of  
72 ten years after the issuance of the initial use and occupancy permit.

73 The ten year time period is binding upon future owners and successors  
74 in title and must be stated as a condition in any site plan approved by  
75 the Planning Board.

76 (2) The maximum building coverage under Section 59-C-6.232, may be  
77 increased from 75 percent to 85 percent for any standard method of  
78 development project that provides street level retail space for use by  
79 businesses with less than 3,000 gross square feet of floor space and  
80 restaurants with less than 5,000 square feet of gross floor space, in the  
81 amounts required in subsection (1) above.

82 (3) As part of the approval of a site plan for a standard method of  
83 development project, the Planning Board may allow any public use  
84 space requirement under Sec. 59-C-6.233 that is less than 1,800 square  
85 feet to be provided off-site within the Wheaton Central Business  
86 District as either public use space or streetscape on a one-for-one  
87 square foot basis.

88 [(b)](c) **Land uses.** All permitted [or] and special exception uses allowed under the  
89 standard method of development and the optional method of development  
90 [in] of the underlying CBD Zone, are allowed in the Wheaton CBD overlay  
91 zone, except that:

92 (1) [In new buildings over one story in height built after July 16, 1990,  
93 the street level leasable space must be used for:] In any building  
94 constructed after July 16, 1990, the street level leasable space must be  
95 used only for the following purposes:

96 (A) hotel



117 [billiard parlors;  
118 bowling alleys;  
119 commercial recreational or entertainment establishments;  
120 indoor theater;  
121 libraries and museums.]

122 (2) In any new buildings [built] constructed after July 16, 1990, all street  
123 level [retail] uses must be directly accessible from a sidewalk, plaza, or  
124 other public space.

125 [(3) Windows and apertures cover occupy at least 50 percent of the street-  
126 level exterior wall area that fronts on sidewalks, plazas, or other public  
127 open spaces.]

128 **59-C-18.103. Procedure for application and approval.**

129 (a) Standard Method of Development: If required, [A] a site plan for [any]  
130 development in the Wheaton Retail Preservation Overlay Zone must be  
131 approved under [the provisions of] Division 59-D-3. Development subject  
132 to site plan approval [includes] is limited to the following:

133 [(a)] (1) construction of new buildings that include more than 20,000 square feet  
134 of floor area or exceed 42 feet in height; and

135 [(b)] (2) additions and other exterior improvements to existing buildings that  
136 cumulatively increase the total amount of [development] floor area on a  
137 site to more than 20,000 square feet or increase the building height to  
138 more than 42 feet[;]. [and]

139 [(c) addition of off-street parking spaces or revisions to parking facilities  
140 that require the approval of a new parking facilities plan under Section  
141 59-E-4.1.]

142 (b) **Optional Method of Development:**

143 (1) For projects that are subject to subdivision or resubdivision under  
144 Chapter 50, a Division 59-D-2 Project Plan is not required. In order  
145 to approve the preliminary plan of subdivision, the Planning Board  
146 must find that the proposed subdivision will include public facilities,  
147 amenities and design features that will create an environment capable  
148 of supporting the greater densities and intensities permitted by the  
149 limited optional method of development allowed in this Overlay Zone.

150 (2) For projects that are not subject to subdivision or resubdivision, under  
151 the provisions of Chapter 50, a project plan must be submitted and  
152 approved in accordance with the procedures of Division 59-D-2.

153 For any optional method of development proposal in the Wheaton Retail  
154 Preservation Overlay Zone, a Division 59-D-3 Site Plan must be submitted and  
155 approved by the Planning Board, in accordance with the provisions of Division 59-  
156 D-3.

157 **59-C-18.104. Site plan contents and exemptions.**

158 (a) Sections 59-D-3.22 and 59-D-3.23 do not apply in the Wheaton CBD  
159 overlay zone for standard method of development projects that require site  
160 plan approval.

161 (b) A site plan for a standard method of development project in the Wheaton  
162 CBD overlay zone must include:

- 163 (1) the location, height, ground coverage, and use of all structures;
- 164 (2) for each residential building, the number and type of dwelling units,  
165 classified by the number of bedrooms, and the total floor area, if any,  
166 to be used for commercial purposes;
- 167 (3) the floor areas of all nonresidential buildings and the proposed use of  
168 each;
- 169 (4) the location of recreational and green areas and other open spaces;
- 170 (5) calculations of building coverage, density, green area, number of  
171 parking spaces, and areas of land use;
- 172 (6) the location and dimensions of all roads, streets and driveways,  
173 parking facilities, loading areas, points of access to surrounding streets,  
174 and pedestrian walks;
- 175 (7) a landscaping plan (or final forest conservation plan, if required under  
176 Chapter 22A), showing all man-made features and the location, height  
177 or caliper, and species of all plant materials;
- 178 (8) an exterior lighting plan, including all parking areas, driveways and  
179 pedestrian ways, alleys, building security lights, and the height,  
180 number, and type of fixtures with a diagram showing their light  
181 distribution characteristics; and
- 182 (9) a development program with the sequence in which all structures, open  
183 spaces, vehicular and pedestrian circulation systems, landscaping, and  
184 recreational facilities are to be developed. The applicant must  
185 designate the point in the development program sequence when the

186 applicant will ask the Planning Board to inspect[ion] for compliance  
187 with the approved site plan.

188 (10) a streetscape plan prepared in accordance with the Wheaton Central  
189 Business District Streetscape Standards adopted by Executive  
190 Regulation. The required streetscape must be provided before the  
191 issuance of the final use and occupancy permit by the Department of  
192 Permitting Services.

193 **59-C-18.105. [Planning Board] [a]Approval Requirements for All**  
194 **Projects In the Wheaton Retail Preservation Overlay Zone.**

195 [(a)] [The Board must find that] [a]At least 50 percent of the street level  
196 exterior wall area, fronting on sidewalks, plazas, or other public open  
197 spaces, [has] must contain windows and apertures [before approving a  
198 site plan for the Wheaton CBD overlay zone].

199 [(b)] The procedures for Planning Board approval under Section 59-D-3.4  
200 are modified for this overlay zone to require the following findings:

- 201 (1) the site plan does not conflict with the recommendations in the  
202 Wheaton CBD Sector Plan;
- 203 (2) the site plan meets all of the requirements of this overlay zone as  
204 well as the applicable requirements of the underlying zone; and
- 205 (3) each structure and use is compatible with other uses and other  
206 site plans and with existing and proposed adjacent  
207 development.]

208           **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
209 date of Council adoption.

210

211 This is a correct copy of Council action.

212

213

214

215

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