

Introduction

MEMORANDUM

June 20, 2007

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Introduction – Zoning Text Amendment 08-15,
Arts or Entertainment Use - CBD Zones

Zoning Text Amendment (ZTA) 08-15 is being sponsored by the District Council at the request of the Executive (© 10-11). ZTA 08-15 proposes to allow land or building space provided for an arts or entertainment use to satisfy the public use space and public amenity requirements for an optional method of development project in CBD zones. Any such land or building space would need to be located in an arts and entertainment district. The ZTA would establish criteria for the Executive to accept any such arts or entertainment use space. The calculation of the floor area allowed by the zone would exclude the arts or entertainment use space. Under certain circumstances, a project that satisfies the special arts or entertainment use standards would not be required to provide a sector plan-recommended pedestrian path on private property.

The ZTA 08-15 and SRA 08-03, as a package, would allow the effective approval period of a project plan, preliminary plan, and site plan to be extended to a maximum of 15 years under certain circumstances. The concept is to allow land or building space to be transferred to the County in advance of development. The extended time allows the project to “bank” its public use space/public amenity for its future development.

Currently the Planning Board has discretion to accept or reject proposed public use space and to judge whether the amenities proposed would be sufficient to offset the density of the project. ZTA 08-15 would remove that discretion from the Planning Board when the Executive accepts arts or entertainment land or building space. ZTA 08-15 would also limit the Planning Board’s discretion on the phasing of streetscaping requirements.

A public hearing on ZTA 08-15 will be scheduled for July 29, 2008, if the attached resolution is approved (© 12).

REVISED for introduction
(Lines 23,24, 69 -73)
Zoning Text Amendment No: 08-15
Concerning: Arts or Entertainment Use –
CBD Zones
Draft No. & Date: 2– 6/24/08
Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

**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: District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish a definition for an arts or entertainment use;
- expand the means to satisfy the public use space and public facility and amenity requirements of the optional method of development in the CBD Zones under certain circumstances;
- amend the findings required for approval of a project plan;
- amend certain development standards for a project that includes an arts or entertainment use; and
- allow for the establishment of a different project plan and site plan validity period for an arts or entertainment use.

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

DIVISION 59-A-2 "DEFINITIONS AND INTERPRETATION"
Section 59-A-2.1 "Definitions"

DIVISION 59-C-6 "CENTRAL BUSINESS DISTRICT ZONES"
Section 59-C-6.23 "Development Standards"
Section 59-C-6.233 "Minimum Public Use Space (percent of net lot area)"
Section 59-C-6.234 "Maximum Density of Development"

DIVISION 59-D-2 "PROJECT PLAN FOR OPTIONAL METHOD OF
DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 50-D-2.4 "Action by planning board"

- Section 59-D-2.42 “Findings required for approval”
Section 59-D-2.7 “Duration of validity period and actions required to validate the plan”
- DIVISION 59-D-3 “SITE PLAN”
Section 59-D-3.8 “Validity”

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

Section 59-C-6.2356 "Special regulation for optional method development projects that include an arts or entertainment use"

*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-A-2 is amended as follows:**

2 **DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

3 **59-A-2.1 Definitions**

4 * * *

5 **Arts or Entertainment Use.** An activity that is dedicated to the visual or
 6 performing arts and is readily accessible to the public, including:

7 (a) live performance of music, theater, or dance;

8 (b) the production of art, fine crafts, digital imagery, or film;

9 (c) radio production; or

10 (d) a museum.

11 * * *

12 **Sec. 2. DIVISION 59-C-6 is amended as follows:**

13 **DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.**

14 * * *

15 **59-C-6.23. Development Standards.**

16 * * *

	CBD-1		CBD-2		CBD-3	
	S ⁹	O	S ⁹	O	S ⁹	O
59-C-6.233. Minimum Public Use Space (percent of net lot area)¹⁵	10	20 ^{20*} _—	10	20* _—	10	20* _—
* * *						

	CBD-1		CBD-2		CBD-3	
	S ⁹	O	S ⁹	O	S ⁹	O
59-C-6.234. Maximum Density of Development						
* * *						
(b) Optional Method of development (see section 59-C-6.215(b)):						
* * *						
(2) Nonresidential, including transient lodging (FAR):		2 ^{19,**}		4 ^{**}		6 ^{**}
(3) Mixed residential and nonresidential						
-- Nonresidential, including transient lodging (FAR):		2 ^{5,**}		3 ^{5,**}		5 ^{5,**}
-- Total FAR ^{13, 15}		3 ^{**}		5 ^{**}		8 ^{**}

* The optional method public use space requirement is satisfied if: (1) the applicant has provided to the County, by conveyance or dedication, land or building space to accommodate an arts or entertainment use under Section 59-C-6.2356; and (2) the gross floor area of the space available for the arts or entertainment use equals at least 20% of the net lot area.

** The gross floor area of the arts or entertainment use that satisfies the public use space and the public facility and amenity requirements for the optional method of development under Section 59-C-6.2356 must not be counted in the gross floor area of the optional method project.

* * *

17 **59-C-6.2356 Special standards for optional method of development projects**
 18 **that include an arts or entertainment use.**

19 (a) In the CBD-1, CBD-2, and CBD-3 zones, the land or building space
 20 for an arts or entertainment use satisfies the public use space
 21 requirements under Sections 59-C-6.233 and 59-C-6.234 and the
 22 public facility and amenity requirement for the Optional Method of

23 Development required under Section 59-C-6.215(b) if at the time the
24 applicant files the original application for an optional method project:

- 25 (1) the arts or entertainment use is located in an area
26 designated as an Arts and Entertainment District under
27 State law; and
- 28 (2) the Executive agreed in writing to accept a conveyance or
29 dedication of land or a building space to accommodate an
30 arts or entertainment use, after the Executive determined
31 in an Executive Order that the arts or entertainment use
32 will provide:

- 33 (A) a positive economic impact by generating activity
34 and by complementing area businesses in the Arts
35 and Entertainment District;
- 36 (B) for public use of a facility that accommodates an
37 arts or entertainment use; and
- 38 (C) cultural opportunities for the public that do not
39 otherwise exist in the Arts and Entertainment
40 District.

41 (b) After land or building space for an arts or entertainment use is
42 transferred to the County:

- 43 (1) the public use space and public amenity space
44 requirement is satisfied for any amendment to the
45 original project plan; and
- 46 (2) the Executive may transfer or lease the land or building
47 space without any effect on the approval of the project
48 plan or site plan.

49 (c) Standard streetscaping improvements along the frontage of the phase
50 of the project that is intended to accommodate an arts or entertainment
51 use must be required during the phase of the project that contains the
52 arts or entertainment use. Standard streetscaping improvements,
53 beyond the improvements required for the frontage of the phase of the
54 project associated with the arts or entertainment use, must be required
55 with the phase of the project associated with the standard
56 streetscaping improvements being required.

57 * * *

58 **Sec. 3. DIVISION 59-D-2 is amended as follows:**

59 **DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD**
60 **OF DEVELOPMENT, CBD ZONES, AND RMX ZONES.**

61 * * *

62 **Sec. 59-D-2.4. Action by planning board.**

63 * * *

64 **59-D-2.42. Findings required for approval.**

65 * * *

66 (b) It would conform to the applicable sector plan or urban renewal plan.

67 An optional method of development project need not conform to the
68 applicable sector plan's or urban renewal plan's recommendation to
69 provide a pedestrian path on private property if, the County Police
70 Department found, in a Crime Prevention Through Environmental
71 Design Review or equivalent review, before the filing of the initial

72 project plan application, that the recommended path would create an
73 unsafe pedestrian environment.

74 * * *

75 **59-D-2.7. Duration of validity period and actions required to validate the**
76 **plan.**

77 * * *

78 (b) Validity Period.

79 (1) An approved project plan will remain valid for up to 24 months
80 from the initiation date, provided applicant has filed a complete
81 site plan application, as determined by the Planning Board staff
82 within 18 months of the initiation date; and, in the absence of
83 governmental delay, received site plan approval within 6
84 months of the assigned complete application date. The timely
85 approval of a site plan validates a project plan.

86 (2) The validity period for a project plan that contains land or
87 building space for an arts or entertainment use approved under
88 Section 59-C-6.2356 is governed by Section 50-34(h).

89 * * *

90 **Sec. 4. DIVISION 59-D-3 is amended as follows:**

91 **DIVISION 59-D-3. SITE PLAN**

92 * * *

93 **59-D-3.8. Validity.**

94 * * *

95 (b) The effective period of a certified site plan depends on the expiration
96 date of the underlying approved preliminary plan. The site plan takes

97 effect when the final record plat is recorded for all of the property
98 covered by the approved preliminary plan. Where phasing of
99 development is required, each phase takes effect as provided in the
100 preliminary plan. The effective period for a site plan that includes
101 land or building space for an arts or entertainment use approved under
102 Section 59-C-6.2356 is governed by Section 50-20(c)(3)D. After the
103 record plat is recorded, the certified site plan does not expire or
104 require amendment before a building permit is issued unless:

105 * * *

106 **Sec. 5. Effective date.** This ordinance takes effect 20 days after the date of
107 Council adoption.

108

109 This is a correct copy of Council action.

110

111

112 _____
Linda M. Lauer, Clerk of the Council