

Action

MEMORANDUM

March 12, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney *JZ*

SUBJECT: **Action** - Zoning Text Amendment 09-13,  
Transit Mixed-Use (TMX) Zone – Prior Approvals

**PHED Recommendation:** On January 21, 2010 the Committee (3-0) recommended approval of ZTA 09-13 with amendments. The Committee was convinced that it was appropriate to allow the reconstruction of grandfathered structures and to limit the grandfathering to the lesser of 10,000 square feet or 10 percent of the approved floor area.

**Background**

Zoning Text Amendment (ZTA) 09-13, sponsored by the Planning, Housing, and Economic Development Committee to implement the Germantown Sector Plan, was introduced on December 1, 2009. Currently, the TMX zone has a limited provision to grandfather prior approvals. ZTA 09-13 would expand the scope of the grandfathering provision to include approvals under Town Sector zoning and other zones.

The Council held a public hearing on ZTA 09-13 on January 19, 2009. The Planning Board and Planning Staff recommended that the text amendment be approved with a revision to limit grandfathering to the lesser of 10 percent of the gross floor area or 7,500 square feet. Planning Staff also recommended deleting the phrase “of a new building”. The Bellemead Development Corporation and Artery Group, LLC recommended an amendment to allow reconstruction for grandfathered buildings. The Planning Board agreed with this recommendation.

**Why change the grandfathering provision of the TMX zone?**

Currently, the TMX zone only grandfathers development plan approvals from the TS-R and the TS-M zones. The newly adopted Germantown Plan recommends applying the TMX zone to land previously zoned TS. ZTA 09-13 would allow development approved under TS and any other zone to be grandfathered at the option of the applicant.

**Should the amendments suggested by Planning Staff and property owners be approved?**

The Committee recommends approving the suggested amendments.

**Does this amendment have any effect on allowing a combined retail use in the TMX zone?**

ZTA 09-13 only concerns the grandfathering provisions in the TMX zone. It does not allow or prohibit any land use not currently existing or approved. The TMX zone does not list a combined retail use in the table of allowable land use uses; it is, therefore, a prohibited use in the zone.

<u>This Packet Contains</u>	<u>© number</u>
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Zoning Text Amendment No: 09-13  
Concerning: Transit Mixed-Use (TMX) Zone -  
Prior Approvals  
Draft No. & Date: 2 - 1/19/10  
Introduced: December 1, 2009  
Public Hearing: January 19, 2010  
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: The Planning, Housing, and Economic Development Committee

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

- allow any approved development plan, supplementary plan, or site plan to construct subject to the applicable approval;
- allow amendments to preliminary plans and site plans approved under any prior zone under certain circumstances; and
- generally amend the provisions related to regulatory approval before the application of a TMX zone.

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

DIVISION 59-C-14 "TRANSIT MIXED-USE (TMX) ZONE"  
Section 59-C-14.2 "Transit Mixed-Use (TMX) 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.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

## OPINION

Zoning Text Amendment No. 09-13, sponsored by the Planning, Housing, and Economic Development Committee, was introduced on December 1, 2009.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved with a revision to limit grandfathering to the lesser of 10 percent of the gross floor area or 7,500 square feet. Planning Staff also recommended approval with the proposed revision.

The County Council held a public hearing on January 19, 2010 to receive testimony concerning the proposed text amendment. Testimony favored allowing grandfathered structures to be reconstructed. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on January 21, 2010 to review the amendment. The Committee recommended approval of ZTA 09-13 as amended. ZTA 09-13, in the opinion of the Committee, would more broadly allow the use of the TMX zone by grandfathering prior approvals.

The District Council reviewed Zoning Text Amendment No. 09-13 at a worksession held on March 16, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-13 will be approved as amended.

## 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-14 is amended as follows:**

**Sec. 59-C-14.2. Transit Mixed-Use (TMX) Zone**

\* \* \*

**59-C-14.26. Existing buildings [and], uses and approvals.**

(a) Any lawful structure, building, or established use that existed before the applicable Sectional Map Amendment adoption date is a conforming structure or use, and may be continued, structurally altered, reconstructed, repaired, renovated, or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of [the] a building that is more than 10 percent of the gross floor area or 7,500 square feet of construction [[of a new building]] must comply with the standards of the TMX Zone.

(b) [In the TS-R and TS-M zones, development under a] A development plan or a supplementary plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals under the standards of the previous zone. Any increase in density above the approved development plan or supplementary plan limit must be subject to the standards of the TMX zone.

(c) Development under a preliminary plan or site plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals under the standards of the previous zone. A preliminary plan or site plan approved before adoption of the applicable Sectional Map Amendment may, at the option of the applicant, be amended after the adoption of the applicable Sectional Map Amendment under the standards of the previous zone or under the TMX zone standards. However, any enlargement of a proposed building that is more than 10 percent of the approved gross floor area or 7,500 square feet of construction [[of a new building]] , whichever is less, must comply with the standards of the TMX Zone.

\* \* \*

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

31 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

January 14, 2010

**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. 09-13

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-13 at its regular meeting on January 14, 2010. By a vote of 4:0, the Board recommends approval of the text amendment with modifications to clarify the intent of the legislation.

ZTA 09-13 proposes to amend the Zoning Ordinance to clarify the grandfather provisions for sites recommended for reclassification to the TMX zone by the Germantown Employment Area Sector Plan. The ZTA proposes changes to the existing grandfather provisions for the TMX zone. Some revisions were needed to clarify that development approved under a pre approved development plan may proceed under the standards of the site's previous zone. For sites reclassified to the TMX zone that require a preliminary plan or a site plan, the ZTA would allow proposed buildings to be enlarged by 10 percent or 7,500 square feet. The Board proposes the inclusion of the phrase, "whichever is less", to this provision as a reasonable limit on expansion opportunities. This additional phrase is also consistent with current grandfather language in the TMX zone for existing buildings and uses.

The Planning Board also received comments prior to its hearing requesting further amendment of the ZTA by adding language that would allow reconstruction of a building destroyed in a catastrophic event. The Board believes that clarifying the grandfathering provisions to include this request would be in the spirit of the PHED

Committee's intent to allow current, lawful Town Sector (TS) zoned buildings to be rebuilt to their current standards in the event of a casualty loss.

### 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 14, 2010.

A handwritten signature in black ink, appearing to read "Royce Hanson". The signature is fluid and cursive, with a large initial "R".

Royce Hanson  
Chairman

RH: GR



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

**MCPB**  
**Item #6**  
**1/14/10**

**DATE:** January 6, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
 Ralph Wilson, Zoning Supervisor, Development Review *RDK*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To expand grandfather provisions for sites reclassified to the TMX zone.

**TEXT AMENDMENT:** No. 09-13  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Planning, Housing and Economic Development Committee  
**INTRODUCED DATE:** December 1, 2009  
**PLANNING BOARD REVIEW:** January 14, 2010  
**PUBLIC HEARING:** January 19, 2010; 1:30 PM

**STAFF RECOMMENDATION:** Approve. Staff supports the ZTA 09-13 grandfathering revisions to: (1) clarify that any development shown on a development plan or supplementary plan for a site approved before reclassification of the site to the TMX zone may be built out under the standards of the previous zone, and (2) clarify that any development under a preliminary plan or site plan may be built out under the standards of the previous zone or the TMX zone and that enlargement may occur up to a certain level.

**BACKGROUND/ANALYSIS**

ZTA 09-13 was sponsored by the PHED Committee to clarify the grandfather provisions for sites recommended for reclassification to the TMX zone by the Germantown Employment Area Sector Plan. The ZTA proposes changes to the existing grandfather provisions for the TMX zone. Some revisions were needed to clarify that development approved under a pre approved development plan may proceed under the standards of the site's previous zone. For sites reclassified to the TMX zone that did not require a development plan, the ZTA would allow proposed buildings to be enlarged by 10 percent or 7,500 square feet. Staff is proposing including the phrase, "whichever is less", to this provision as a reasonable limit on expansion opportunities. Building and uses existing before reclassification to the TMX zone are currently grandfathered and allowed to

enlarge up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less.

The proposed ZTA as modified by staff is depicted below.

**Sec. 59-C-14.2. Transit Mixed-use (TMX) Zone**

\* \* \*

**59-C-14.26. Existing buildings [and], uses and approvals.**

- (a) Any lawful structure, building, or established use that existed before the applicable Sectional Map Amendment adoption date is a conforming structure or use, and may be continued, structurally altered, repaired, renovated, or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of [the] a building that is more than 10 percent of the gross floor area or 7,500 square feet [[of construction of a new building]] must comply with the standards of the TMX Zone.
- (b) [In the TS-R and TS-M zones, development under a] A development plan or a supplementary plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals under the standards of the previous zone. Any increase in density above the approved development plan or supplementary plan limit must be subject to the standards of the TMX zone.
- (c) Development under a preliminary plan or site plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals under the standards of the previous zone. A preliminary plan or site plan approved before adoption of the applicable Sectional Map Amendment may, at the option of the applicant, be amended after the adoption of the applicable Sectional Map Amendment under the standards of the previous zone or under the TMX zone standards. However, any enlargement of a proposed building that is more than 10 percent of the approved gross floor area or 7,500 square feet, whichever is less, [[of construction of a new building]] must comply with the standards of the TMX Zone.

Attachment 1 depicts the proposed text amendment as modified by staff.

GR

Attachments

1. Proposed Text Amendment 09-13