

Ordinance No: 15-33
Zoning Text Amendment No: 04-04
Concerning: Special Exception for
Combination Retail Establishments
Draft No. & Date: 1 – 2/17/04
Introduced: February 24, 2004
Public Hearing: April 13, 2004; 1:30 PM
Adopted: November 9, 2004
Effective: November 29, 2004

**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: Council President at the request of the County Executive

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

- defining the term “combination retail store”;
- requiring any combination retail store established after a certain date to obtain special exception approval; and
- allowing any combination retail store established before a certain date to continue as a conforming use.

By amending the following section 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-4 “COMMERCIAL ZONES”
Section 59-C-4.2 “Land uses”
DIVISION 59-G-2 “SPECIAL EXCEPTIONS—STANDARDS AND
REQUIREMENTS”

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.

OPINION

ZTA 04-04 was introduced by the Council President at the request of the County Executive. Under the ZTA, any retail store in a C-2 or C-3 zone over 120,000 square feet that devotes 10 percent or more of its gross floor area to food, beverage, drug or grocery sales would be required to obtain a special exception. A club or membership store that charges a membership or access fee and sells primarily bulk merchandise would be unaffected. Information submitted by the Executive suggested that a direct correlation exists between combination retail store and increased traffic, which is not the case for stores that primarily sell bulk merchandise.

The Montgomery County Planning Board in its report to the Council recommended establishment of a working group to ensure that appropriate measures are being taken before any regulations affecting large retail stores are put in place.

The County Council held a public hearing on April 13, 2004 to receive testimony concerning ZTA 04-04. The proposed Zoning Text Amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

Committee worksessions were held on June 14 and July 26. . It was the position of the Committee majority that a broader substitute ZTA should be introduced that regulates all retail uses over a certain size that more closely corresponds to the first two ITE trip generation categories: “Free-Standing Discount Superstore” and “Free-Standing Discount Store”.

The District Council reviewed Zoning Text Amendment No. 04-04 at a meeting held on November 9, 2004. The District Council did not agree with the conclusions of the Committee. The District Council believes that retail stores whose gross floor area exceeds 120,000 square feet and that include a pharmacy and full line grocery store have unique traffic, environmental, land use and community impacts and that a rational basis standard exists for increased controls. The Council in taking this action took notice of the considered legislative judgment of local governments around the country that large, retail establishments, known as “super stores,” “free-standing discount stores,” or “big box stores,” create unique land use burdens. Local governments in Prince George’s County, Maryland, City of Rockville, Maryland, Charles County, Maryland, Clark County, Nevada, Contra Costa, California, Oakland, California, among others, have either proposed or promulgated laws that regulate these stores. These local governments have amassed data and testimony that convincingly show that the large retail stores generate excessive pedestrian and vehicular traffic, contribute to suburban sprawl, and are otherwise incompatible with neighboring properties.

These legislative conclusions are borne out by traffic data and analyses compiled by the Institute of Traffic Engineers. This information confirms the direct correlation between large retail stores and increased traffic. This information also confirms that home improvement stores and club or membership stores that sell primarily bulk merchandise do not generate the same traffic impacts as the large, combination retail stores.

For these reasons and because approving 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 04-04 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:

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 **Combination retail store:** A department or retail store that exceeds 120,000
 6 square feet and that [[devotes 10 percent or more of its gross floor area or
 7 combination of its gross floor area to a food and beverage store, a drug store, or a
 8 grocery store]] includes a pharmacy and a full line grocery store. A club or
 9 membership store that charges a membership or access fee and sells primarily bulk
 10 merchandise is not a combination retail store.

11 * * *

12 **Sec. 2. Division 59-C-4 is amended as follows:**

13 **DIVISION 59-C-4. COMMERCIAL ZONES.**

14 * * *

15 **59-C-4.2. Land uses.**

16 * * *

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
(d) Commercial:												
* * *												
<u>Combination retail store.*</u>						<u>SE</u>	<u>SE</u>					

17 * * *

18 *Any combination retail store in existence before November 29, 2004 is a
 19 conforming use and may continue in accordance with the standards in effect before
 20 November 29, 2004. Any reconstruction or enlargement of a combination retail

21 store in existence before November 29, 2004 must comply with the standards in
22 effect after November 29, 2004.

23 **Sec. 2. DIVISION 59-G-2 is amended as follows:**

24 **DIVISION 59-G-2. SPECIAL EXEPTIONS – STANDARDS AND**
25 **REQUIREMENTS.**

26 * * *

<u>USE</u>	<u>SECTION</u>
Clinic.....	G-2.14
<u>Combination retail store.....</u>	<u>G-2.15</u>
Conference center with lodging.....	G-2.15.1

31 * * *

32 **59-G-2.15. [Reserved] Combination Retail Store.**

33 A special exception for a combination retail store may be granted, subject to the
34 following requirements:

35 [(a) The use must not constitute a nuisance because of noise, illumination,
36 fumes, odors or physical activity at the proposed site.

37 (b) The site must have direct vehicular access to an existing arterial or
38 major highway.

39 (c) The use must not create a traffic hazard.

40 (d) The streets and roads adjoining the site must be adequate to
41 accommodate the increased traffic generated.

42 (e) The use must be screened from any abutting residentially zoned
43 property by the natural terrain or by a solid wall or fence, not less than
44 five feet in height, together with a three-foot wide planting strip on the
45 outside of the wall or fence, planted in shrubs and evergreens three
46 feet high at the time of the original planting.

47 (f) Parking must be provided as required by Article 59-E.

- 48 (g) Product displays, parked vehicles and other obstructions that reduce
49 visibility at intersections or at entrances and exits to and from the site
50 are not permitted.
- 51 (h) Lighting must not reflect, or cause glare, on any property located in a
52 residential zone.]]
- 53 (a) The building must be designed in a way that reduces the buildings
54 massive scale and contributes to its visual interest. Long building
55 walls should be broken-up with projections or recessions or other
56 effective treatments that improve building design.
- 57 (b) Parking areas must provide safe, convenient, and efficient access, and
58 landscaped to define vehicular drives and pedestrian areas.
- 59 (c) The site must have direct vehicular access to an existing arterial or
60 major highway and the streets and roads adjoining the site must be
61 adequate to accommodate the increased traffic generated. The
62 applicant must provide a traffic impact study to demonstrate that
63 acceptable peak hour levels of service will result after taking into
64 account existing and programmed roads, and any improvements to be
65 provided by the applicant.
- 66 (d) The site must be screened from any abutting residentially zoned
67 property by the natural terrain or by a solid wall or fence, not less than
68 five feet in height, together with a three-foot wide planting strip on the
69 outside of the wall or fence, planted in shrubs and evergreens three
70 feet high at the time of the original planting.
- 71 (e) Product displays, parked vehicles and other obstructions that reduce
72 visibility at intersections or at entrances and exits to and from the site
73 are not permitted.

74 (f) Lighting must not reflect, or cause glare, on any property located in a
75 residential zone.

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

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80 This is a correct copy of Council action.

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85 Mary A. Edgar, CMC

86 Clerk of the Council