

Zoning Text Amendment No: 07-10  
Concerning: CBD Zone Revisions  
Draft No. & Date: 3 - 7/24/2007  
Introduced: July 31, 2007  
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**

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By: District Council at the request of the Planning Board and Councilmember Floreen

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

- define the term “Arts or entertainment entity”;
- revise definitions for the terms “Public use space” and “Public facilities and amenities”;
- provide flexibility for certain CBD zoned projects to satisfy a public use space, public facility, or amenity requirement;
- revise provisions for a transfer of public use space in certain overlay zones;
- establish standards and procedures for an optional method project to make a payment instead of providing any public use space, public facility, or amenity on-site;
- revise requirements and standards for approval of a project plan; and
- generally amend the CBD zones.

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-6    | “CENTRAL BUSINESS DISTRICT ZONES”   |
| Section 59-C-6.215 | “Methods of development and approval procedures”                              |
| 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-C-18   | “OVERLAY ZONES”   |
| Section 59-C-18.19 | “Fenton Village Overlay Zone”   |
| Section 59-18.20   | “Ripley/South Silver Spring Overlay Zone”                                     |
| DIVISION 59-D-2    | “PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT,<br>CBD ZONES AND RMX ZONES” |
| Section 59-D-2.11  | “Project plan required”   |
| Section 59-D-2.12  | “Contents of Project Plan”  |

Add the following new section:

Section 59-D-2.3.1    “Procedure – Payment instead of providing public use space, public facilities, or amenities on-site”

Section 59-D-2.42    “Findings required for approval”

Section 59-D-2.43    “Basis for consideration”

*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 entity.** A publicly or privately owned and operated entity  
6           located in a state approved Arts and Entertainment District under Article 83A,  
7           Section 4-701 of the Annotated Code of Maryland, and dedicated to one of the  
8           following visual or performing arts:

9           (1)   Live performance of music, theater, or dance; or

10          (2)   The production of art, fine crafts, digital imagery, or film.

11          \* \* \*

12          **Public facilities and amenities:** Those facilities and amenities of a type and scale  
13          necessary to provide an appropriate environment or to satisfy public needs  
14          resulting from the development of a particular project. Facilities and amenities may  
15          include, but are not limited [to,] to:

16          (a)   green area or open space which exceeds the minimum required, with  
17               appropriate landscaping and pedestrian circulation;

18          (b)   streetscaping that includes elements such as [street] plantings, special  
19               pavers, [furniture,] bus shelters, benches, and decorative lighting;

20          (c)   [Provision of] public space [with commitment] designed for [public]  
21               performances, [and] events, vending, [and] or recreation; [and finally,]

22          (d)   new or improved pedestrian walkways, tunnels or bridges;

23          (e)   features that improve pedestrian access to transit stations; and

24          (f)   dedicated [uses] spaces open to the public such as museums, art galleries,  
25               cultural arts centers, community rooms, and recreation areas.

26          [Facilities] Public facilities and amenities may be recommended or identified [on]  
27          in an approved and adopted master or sector plan. Public amenities do not include

28 road improvements or other capital projects that are required to provide adequate  
29 facilities to serve the property.

30 **Public use space:** Space [required by the sector plan and other space such] devoted  
31 to [such uses as space for] public enjoyment, [consisting of] such [things] as, but  
32 not limited to green areas, gardens, [malls,] plazas, walks, pathways, promenades,  
33 arcades, urban parks, town squares, public plazas with elements such as water  
34 features, and [; lawns, fountains, decorative plantings,] passive [or] and active  
35 recreational areas. [Such] Public use space may also consist of space and/or  
36 amenities recommended by an approved urban renewal plan. [Such] Public use  
37 space [shall] must not include parking or maneuvering areas for vehicles. [Area  
38 devoted to this purpose shall] Public use space must be easily and readily  
39 accessible to the public [without restrictions to particular segments of the public]  
40 and be identified by a sign placed in public view. [In areas where] If public  
41 pedestrian walkways are [shown on] recommended in an approved and adopted  
42 master plan or sector plan, [such area within the percentage] they may be counted  
43 as [required for] public use space [as is necessary shall be devoted to the provision  
44 of pedestrian walkways or paths for general public use].

45

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

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

48 \* \* \*

49 **59-C-6.215. Methods of development and approval procedures.** Two methods  
50 of development are possible in each of these zones.

51 \* \* \*

52 **(b) Optional method.** Under the optional method, greater densities may be  
53 permitted and there are fewer specific standards, but [certain public facilities  
54 and amenities must be provided by the developer] the developer must

55 provide certain public facilities and amenities. The presence of these  
56 facilities and amenities is intended to make possible the creation of an  
57 environment capable of supporting the greater densities and intensities of  
58 development permitted. The Planning Board may, under Division 59-D-2:  
59 (1) authorize a payment instead of all or some of the required public  
60 facilities or amenities, or any required public use space, or (2) permit any  
61 required public use space to be provided off-site on private or public  
62 property in the same CBD.

63 If residential uses are included in a development, Moderately Priced  
64 Dwelling Units must be provided in accordance with Chapter 25A and Work  
65 Force Housing Units must be provided as required by Section 59-A-6.18 and  
66 Chapter 25B. The maximum dwelling unit density or residential FAR may  
67 be increased in proportion to any MPDU density bonus provided on-site.  
68 The procedure for approval of an optional method project is specified in  
69 Division 59-D-2, and the procedure for approval of a site plan is specified in  
70 Division 59-D-3.

71 \* \* \*

72 **59-C-6.23. Development Standards.**

73 \* \* \*

|   | CBD-0.5          |    | CBD-R1 <sup>2</sup> |                  | CBD-1            |                  | CBD-2            |                  | CBD-3            |    | CBD-R2 |    |
|---|------------------|----|---------------------|------------------|------------------|------------------|------------------|------------------|------------------|----|--------|----|
|   | S <sup>[9]</sup> | 0  | S                   | 0                | S <sup>[9]</sup> | 0                | S <sup>[9]</sup> | 0                | S <sup>[9]</sup> | 0  | S      | 0  |
| * * *<br><b>59-C-6.233.</b><br><b>Minimum Public Use Space (percent of net lot area):</b> <sup>[15]</sup>   | 10               | 20 | 10                  | 20 <sup>16</sup> | 10               | 20 <sup>20</sup> | 10               | 20* <sub>-</sub> | 10               | 20 | 10     | 20 |
| <b>(a) Standard Method</b> - The [required standard method] public use space requirement may be reduced to accommodate the construction of MPDUs, including any bonus density units, provided on-site to:   | 5                |    | 5                   |                  | 5                |                  | 5                |                  | 5                |    | 5      |    |
| <b>(b) Optional Method</b> – The [required optional method] public use space <u>requirement</u> may be [reduced or eliminated to accommodate the construction of MPDUs, including any bonus density units provided on-site, if an equivalent amount of public use space is provided off-site in the same CBD within a reasonable time] <u>provided in part or entirely off-site in the same CBD if approved under Division 59-D-2.</u><br><br><u>A payment instead of all or some of the required public use space may be made if approved under Division 59-D-2.</u> |                  |    |                     |                  |                  |                  |                  |                  |                  |    |        |    |

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|  | CBD-0.5                  |   | CBD-R1 |   | CBD-1             |   | CBD-2             |   | CBD-3             |   | CBD-R2            |   |
|--|--------------------------|---|--------|---|-------------------|---|-------------------|---|-------------------|---|-------------------|---|
|  | S <sup>[9]</sup>         | O | S      | O | S <sup>[9]</sup>  | O | S <sup>[9]</sup>  | O | S <sup>[9]</sup>  | O | S                 | O |
| <b>59-C-6.234.<br/>Maximum<br/>Density of<br/>Development.</b>   |                          |   |        |   |                   |   |                   |   |                   |   |                   |   |
| <b>(a) Standard<br/>method of<br/>development (see<br/>section 59-C-6.21(a))</b>   |                          |   |        |   |                   |   |                   |   |                   |   |                   |   |
| (i) For projects that<br>are 100 percent<br>residential (dwelling<br>units per acre)<br><b>(FAR)</b>   | 35                       |   | 43     |   | 43                |   | 80                |   | 120               |   | 120               |   |
| (ii) For<br>[commercial] <u>non-<br/>residential</u> or mixed-<br>use projects:<br>Maximum permitted<br>non-residential,<br>including transient<br>lodging (FAR)<br><u>limited to:</u>   | 0.5 <sup>10,</sup><br>14 |   | 1.0    |   | 1.0 <sup>10</sup> |   | 2.0 <sup>10</sup> |   | 3.0 <sup>10</sup> |   | 1.0 <sup>18</sup> |   |
| <b>Total (FAR)<sup>15</sup></b>  | 1.0 <sup>9</sup>         |   | 1.0    |   | 2.0 <sup>9</sup>  |   | 3.0 <sup>9</sup>  |   | 4.0 <sup>9</sup>  |   | [1]<br>2.0        |   |
| (b) Optional<br>method of<br>development (see<br>section 59-C-<br>6.215(b): The<br>[Planning Board<br>may permit not<br>more than the<br>following densities,<br>but in no case more<br>than] <u>density<br/>allowed must not<br/>exceed either the<br/>following densities<br/>or the density<br/>recommended by the<br/>applicable master<br/>plan or sector plan.</u> |                          |   |        |   |                   |   |                   |   |                   |   |                   |   |

|  | CBD-0.5          |                  | CBD-R1 |                                  | CBD-1            |                   | CBD-2            |                  | CBD-3            |                  | CBD-R2 |                                   |
|--|------------------|------------------|--------|----------------------------------|------------------|-------------------|------------------|------------------|------------------|------------------|--------|-----------------------------------|
|  | S <sup>[9]</sup> | O                | S      | O                                | S <sup>[9]</sup> | O                 | S <sup>[9]</sup> | O                | S <sup>[9]</sup> | O                | S      | O                                 |
| [(1)] (i) For projects that are 100 percent [R]residential (dwelling units per acre):  |                  | 100              |        | 125                              |                  | 125               |                  | 200              |                  | 200              |        | 200                               |
| [(2)] (ii) Nonresidential, including transient lodging (FAR):  |                  | 1.0              |        |                                  |                  | 2.0 <sup>19</sup> |                  | 4.0              |                  | 6.0              |        |                                   |
| [(3)] (iii) Mixed-use [residential and nonresidential.]<br><br>- [ Nonresidential, including transient lodging limited to (FAR)] <u>Maximum permitted non-residential, including transient lodging (FAR) limited to:</u> |                  | 1.0 <sup>4</sup> |        | 0.6 <sup>7</sup> / <sub>17</sub> |                  | 2.0 <sup>4</sup>  |                  | 3.0 <sup>5</sup> |                  | 5.0 <sup>6</sup> |        | 1.0 <sup>3,1</sup> / <sub>8</sub> |
|  |                  | 1.5              |        | 3.0                              |                  | 3.0               |                  | 5.0              |                  | 8.0              |        | 5.0 <sup>3</sup>                  |
| -Total FAR <sup>13, 15</sup>   |                  |                  |        |                                  |                  |                   |                  |                  |                  |                  |        |                                   |
| * * *  |                  |                  |        |                                  |                  |                   |                  |                  |                  |                  |        |                                   |

78

79 \* \* \*

80 9. Additional density for housing purposes may be permitted so long as the degree of  
 81 nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public  
 82 open space (59-C-6.233) requirements are not increased. The maximum density [cannot]  
 83 must not exceed the density provisions for mixed-use projects in section (59-C-  
 84 6.234)(a)(ii).

85 \* \* \*

86 15. The total FAR for mixed-use development may [may] be exceeded under the special  
 87 regulations of Sec. 59-C-6.2354.

88 \* \* \*

89 \* The optional method public use space requirement is satisfied if the applicant conveys to  
 90 the County an appropriate amount of land or building space for use by an arts or

91 entertainment entity that contributes to the revitalization of a Central Business District.  
92 The gross floor area provided for the arts or entertainment entity may be excluded from  
93 the gross floor area of the optional method project for the purpose of calculating density.

94 \* \* \*

95 **Sec. 3. Division 59-C-18 is amended as follows:**

96 **DIVISION 59-C-18. OVERLAY ZONES.**

97 \* \* \*

98 **59-C18.19. Fenton Village Overlay Zone.**

99 \* \* \*

100 **59-C-18.192. Regulations.**

101 \* \* \*

102 [(3) Allow the transfer of public use space to other properties within this  
103 overlay zone. The transfer of public use space must be shown on an  
104 approved project plan or site plan for both the property transferring the  
105 public use space and the property receiving the public use space in  
106 accordance with Division 59-D-2 and 59-D-3. The public use space may be  
107 transferred in accordance with an agreement as approved by the  
108 Montgomery County Planning Board.]

109 [(4)] (3) \* \* \*

110 [(5)] (4) \* \* \*

111 \* \* \*

112 **59-C18.20. Ripley/South Silver Spring Overlay Zone.**

113 \* \* \*

114 **59-C-18.202. Regulations.**

115 \* \* \*

116 [(3) The transfer of public use space to other properties within the overlay  
117 zone is allowed and must be shown on an approved project plan or site plan  
118 for both the property transferring the public use space and the property  
119 receiving the public use space in accordance with Division 59-D-2 and 59-

120 D-3. The public use space may be transferred in accordance with an  
121 agreement as approved by the Montgomery County Planning Board.]

122 [(4)] (3)\* \* \*

123 [(5)] (4)\* \* \*

124 **Sec. 5. Division 59-D-2 is amended as follows:**

125 **Division 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF**  
126 **DEVELOPMENT IN [,] CBD [ZONES], TOMX, AND RMX**  
127 **ZONES.**

128 \* \* \*

129 **59-D-2.11. Project plan required.**

130 [In order to] To ensure that the development will include the public facilities,  
131 amenities and other design features[, ] that will create an environment capable of  
132 supporting the greater densities and intensities permitted by the optional method of  
133 development [,]; the developer [is required to] must submit a project plan as a part  
134 of the application for the use of the optional method. [; and] In addition the  
135 Planning Board must approve, a site plan [must be approved in accordance with  
136 the requirements of division] under Division 59-D-3 [prior to] before [the issuance  
137 of] any building permit is issued. The project plan must clearly indicate how it  
138 will satisfy [shall be such as would result in] the [stated] purposes and standards of  
139 the zone [applied for] . [, and the] The fact that a project complies with all of the  
140 stated general regulations, development standards or other specific requirements of  
141 the zone is [shall] not [, by itself, be deemed to] sufficient to create a presumption  
142 that the proposed development would be desirable, and is [shall] not [be] sufficient  
143 to require the approval of the project plan or [the granting of the] application.

144 **59-D-2.12. Contents of project plan.** The project plan must clearly indicate how  
145 the proposed development meets the standards and purposes of the applicable

146 zone. It must include the following, in addition to any other information [which]  
147 the applicant considers necessary to support the application:

148 \* \* \*

149 (e) A detailed statement describing [the manner in which] how the development  
150 would conform to the [approved and adopted] master plan or sector plan and  
151 the purposes of the applicable zone.

152 (f) A statement and analysis demonstrating [the manner in which] how the  
153 development would result in a more efficient and desirable development  
154 than could be accomplished [by the use of] under the standard method of  
155 development.

156 (g) A development program [stating] specifying the sequence in which all  
157 structures, public open spaces and amenity spaces, vehicular and pedestrian  
158 circulation systems, and community recreational facilities [are to] may be  
159 developed, and where they must be located.

160 \* \* \*

161 (j) A detailed statement describing the intended use of any payment proposed to  
162 be made instead of providing any public use space, public facility, or  
163 amenity on-site. The statement must describe how the payment is consistent  
164 with the objectives of the applicable master plan or sector plan and why the  
165 proposed payment is more efficient and desirable than providing the public  
166 use space, public facility, or amenity on-site.

167 (k) Any proposal to locate public use space off-site must identify the proposed  
168 off-site location and phasing. The off-site location of the public use space  
169 must be approved under an agreement approved by the Planning Board. A  
170 phasing plan for implementation of the off-site public use space must be  
171 submitted and approved by the Planning Board.

172 \* \* \*

173 **59-D-2.3. Same—Procedure.**

174 \* \* \*

175 **59- D- 2.3.1 Procedure – Payment instead of providing public use space, or**  
176 **public facilities and amenities on-site.**

177 The Planning Board may approve a payment instead of any required public use  
178 space, public facilities, or amenities on-site if the payment complies with the  
179 following conditions:

180 (a) Any payment accepted for public use space must be sufficient to secure an  
181 equivalent amount of improved public use space off-site. The amount of any  
182 payment accepted for public facilities and amenities must be not less than  
183 the cost of constructing an equal amount of the public facilities and  
184 amenities on-site. The Planning Board must issue regulations to implement  
185 this section.

186 (b) Any payment must be submitted to the Planning Board within 30 days after  
187 any building permit for the applicable development is issued.

188 (c) Any funds received instead of on-site public use space must be used to  
189 implement:

190 (1) any public use space and improvement to that space identified in the  
191 applicable master plan or sector plan, or if such public use spaces are  
192 fully funded or not identified then;

193 (2) other space and improvements to that space that the Planning Board  
194 finds to be consistent with to the goals of the applicable master plan or  
195 sector plan.

196 (d) Any funds received instead of on-site facilities and amenities must be used  
197 to implement:

198           (1) any public facilities and amenities identified in the applicable master  
199                   plan or sector plan, or if such facilities are fully funded or not  
200                   identified then;

201           (2) other space or improvement that the Planning Board finds consistent  
202                   with the goals of the applicable master plan or sector plan.

203  
204 (e) Any funds received under this Section may be used by the Planning Board  
205           to:

206           (1) repay the Advanced Land Acquisition Fund for buying land used for a  
207                   park;

208           (2) fund a new capital improvement project; or

209           (3) fund an expansion or completion of an existing capital improvement  
210                   project.

211  
212 (f) If a specific improvement is funded by a payment under this Section, but is  
213           not fully funded by the initial payment, any future payments made by any  
214           development in the same master or sector plan area must be allocated to fund  
215           that improvement until the improvement is fully funded.

216 \* \* \*

217 **59-D-2.42. Findings required for approval.**

218 [The fact that] Although an application [complies] may comply with all of the  
219 specific requirements and intent of the applicable zone does not create a  
220 presumption that the application must be approved. The Planning Board [can] may  
221 approve, or approve subject to modifications, an application only if it finds that  
222 [the proposed development meets all of the following requirements]:

223 \* \* \*

224 (b) [It] The application would [conform to] be consistent with the applicable  
225 sector plan or urban renewal plan.

226 \* \* \*

227 (c) Because of its location, size, intensity, design, operational characteristics and  
228 staging, [it] the application would be compatible with, and not detrimental  
229 to\_ existing or potential development in the general neighborhood.

230 (d) [It] The application would not overburden existing public services nor those  
231 programmed for availability concurrently with each stage of construction  
232 and, if located [within] in a transportation management district designated  
233 under [chapter] Chapter 42A[, article II], is subject to a traffic mitigation  
234 agreement that meets all the applicable requirements [of that article].

235 (e) [It] The application would be more efficient and desirable than could be  
236 accomplished by the use of the standard method of development.

237 (f) [It] The application would include moderately priced dwelling units in  
238 accordance with [chapter] Chapter 25A [of this Code], if the requirements of  
239 that chapter apply.

240 (g) When a project plan includes more than one lot under common ownership,  
241 or is a single lot containing two or more CBD zones, and [is shown to]  
242 would transfer public open space or development density from one lot to  
243 another, or transfer densities within a lot with two or more CBD zones,  
244 [pursuant] under [to the special standards of either section] Section 59-C-  
245 6.2351 or 59-C-6.2352 [(whichever is applicable),] the Planning Board may  
246 approve the project plan [may be approved by the planning board based on  
247 the following findings] only if :

248 \* \* \*

249 (3) The project will result in an overall land use configuration that is  
250 significantly superior in meeting the goals of the applicable sector

251 plan and the zone, than what [to that which] could [otherwise] be  
252 achieved without the proposed transfers.

253 \* \* \*

254 (j) When the Planning Board allows any public use space, or public facilities  
255 and amenities to be provided off-site, the Planning Board must find that the  
256 space or improvement :

257 (1) is consistent with the goals of the applicable master or sector plan; and

258 (2) serves the public interest better than providing the public use space or  
259 public facilities and amenities on-site.

260 **59-D-2.43 Basis for consideration.**

261 In reaching its determination on an application for the optional method of  
262 development [an] and in making the required findings, the [planning board]  
263 Planning Board must consider [the following]:

264 \* \* \*

265 (b) Whether the open spaces proposed, including developed open space, are  
266 sized and located to provide [of such size and location as to serve as]  
267 convenient areas for recreation, relaxation and social activities for the  
268 residents and patrons of the development. Open spaces should be [and are  
269 so] planned, designed, and situated [as] to [function as necessary] provide  
270 sufficient physical and aesthetic open areas among and between individual  
271 structures and groups of structures [, and whether]. The proposed [the]  
272 setbacks, yards, and related walkways must be wide enough and [are so]  
273 located [and of sufficient dimensions] to provide [for] adequate light, air,  
274 pedestrian circulation and necessary vehicular access.

275 (c) Whether the vehicular circulation system, including access and off-street  
276 parking and loading, is [so] designed to provide an efficient, safe and  
277 convenient transportation system.

278 (d) Whether the proposed development contributes to the overall pedestrian  
279 circulation system. Pedestrian walkways must :

280 (1) be [is so] located, designed and sized [of sufficient size as] to  
281 conveniently handle pedestrian traffic efficiently and without  
282 congestion;

283 (2) [the extent to which the pedestrian circulation system is] be separated  
284 from vehicular roadways and designed to be [so as to be] safe,  
285 pleasing, and efficient for movement of pedestrians; and

286 (3) contribute to a network of [whether the pedestrian circulation system  
287 provides] efficient, convenient, and adequate pedestrian linkages in  
288 the area of the development, including linkages among residential  
289 areas, open spaces, recreational areas, commercial and employment  
290 areas, and public facilities.

291 \* \* \*

292 (j) Payment of a fee acceptable to the Planning Board may satisfy all or  
293 some of the requirements for any public use space, or public facilities and  
294 amenities under the requirements established elsewhere in this Section.

296 **Sec. 4. Effective date.** This ordinance takes effect 20 days after the date of  
297 Council adoption.

299 This is a correct copy of Council action.

302 \_\_\_\_\_  
303 Linda M. Lauer, Clerk of the Council