

Ordinance No: 15-44  
Zoning Text Amendment No: 04-20  
Concerning: Building Height Standards  
Draft No. & Date: 1 – 9/21/04  
Introduced: September 28, 2004  
Public Hearing: 11/9/04; 1:30 p.m.  
Adopted: December 14, 2004  
Effective: December 14, 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**

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By: Councilmember Denis

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

- allowing a hotel by right in the C-2 zone as part of a regional shopping center with gross leaseable area in excess of 1,200,000 square feet, under certain circumstances; and
- allowing an increase in building height to accommodate development of a theater complex and a hotel at a regional shopping center with a gross leaseable area in excess of 1,200,000 square feet.

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

|                    |                                              |
|--------------------|----------------------------------------------|
| DIVISION 59-C-4    | “COMMERCIAL ZONES”                           |
| Section 59-C-4.2   | “Land uses”                                  |
| Section 59-C-4.35  | “C-2 zone—Purpose and development standards” |
| Section 59-C-4.351 | “Building height”                            |

**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

Zoning Text Amendment No. 04-20 was introduced on September 28, 2004, to allow a hotel by right in the C-2 zone as part of a regional shopping center with gross leaseable area in excess of 1,200,000 square feet, under certain circumstances; and to allow an increase in building height to accommodate development of a theater complex and hotel at a regional shopping center with a gross leaseable area in excess of 1,200,000 square feet.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with revisions.

The County Council held a public hearing on November 9, 2004, to receive testimony concerning the proposed text amendment. 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 December 6, 2004 to review the amendment. After careful review of the ZTA with the Montgomery County Planning Board, and other interested parties, the Committee recommended that ZTA 04-20 be approved with the following revisions: (1) require 3 feet of set back from the nearest residential zone for every 1 foot of building height, (2) clarify that building height may be increased up to 90 feet for any building that includes a theater complex, and (3) make the ZTA effective immediately upon Council adoption, rather than the usual 20 day effective period. The increased set back was intended to minimize potential impacts on adjoining residential development. It was clarified that the more typical situation would be for a theater complex to be part of a 90-foot multi-use building. At the request of the applicant, the Committee agreed to recommend that the ZTA go into effect immediately upon Council adoption.

The District Council reviewed Zoning Text Amendment No. 04-20 at a worksession held on December 14, 2004, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, with a revision recommended by Council staff. Council staff recommended an additional revision to clarify that the ZTA applies to any regional shopping center that now has or will have after expansion a gross leasable area in excess of 1,200,000 square feet. Staff was concerned that the language of the ZTA was somewhat ambiguous in that it could be read to require a regional shopping center to have in excess of 1.2 million gross square feet before any site plan for the increased building height could be approved by the Planning Board. The Council agreed that this clarification was needed.

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. 04-20 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-4 is amended as follows:**

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

\* \* \*

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

|                         | C-T | O-M | C-O | C-P | C-1 | C-2            | C-3 | C-4 | C-5 | C-6 | H-M | Country Inn |
|-------------------------|-----|-----|-----|-----|-----|----------------|-----|-----|-----|-----|-----|-------------|
| <b>(a) Residential:</b> |     |     |     |     |     |                |     |     |     |     |     |             |
| * * *                   |     |     |     |     |     |                |     |     |     |     |     |             |
| Hotel or motel.         |     |     |     |     |     | P <sup>3</sup> |     |     |     |     |     |             |

3 A hotel or motel is a permitted use in the C-2 zone (i) if located in a central business district, or (ii) if located as part of a regional shopping center with gross leaseable area in excess of 1,200,000 square feet. Additionally, any hotel or motel lawfully existing in the C-2 zone on October 24, 1972, or reclassified to the C-2 zone on (effective date of Takoma Park SMA) is a conforming use and may continue to exist in accordance with the provisions of this chapter in effect prior to October 24, 1972. Any hotel or motel lawfully existing in the C-2 zone on October 24, 1972 may be converted in whole or in part to multi-family residential use provided that: (i) at least 25% of the units are restricted in sales price or rental price to amounts that comply with Montgomery County's Moderately Priced Dwelling Unit ("MPDU") regulations. In the event of conversion in whole or in part to multi-family residential use, the residential use will not be regarded as a nonconforming use and may continue to exist in accordance with the development standards of this Chapter in effect prior to October 24, 1972, which were applicable to hotel or motel uses.

**59-C-4.35. C-2 zone—Purpose and development standards.**

\* \* \*

**59-C-4.351. Building height.**

The maximum building height at any point measured from the finished grade is 3 stories or 42 feet, except that the height may be increased as follows:

(a) To 5 stories or 60 feet if the building satisfies all of the following criteria:

1. The building is an expansion of a use that either:

(i) Existed on November 23, 1976; or

(ii) Received site plan approval in accordance with Division 59-D-3 between November 23, 1976, and March 26, 1985, for the purpose of attaining the increased height allowed by this section.

2. The roof elevation of the expansion does not exceed the roof elevation of the existing or approved use as specified by paragraph (a) above. Elevation is measured from sea level.

3. The expansion receives site plan approval in accordance with Division 59-D-3; or

(b) To 75 feet to accommodate mixed commercial and residential development, provided:

1. The residential component consists of a minimum of 60% of the overall FAR, and

2. The development is at least 300 feet from any one-family residential use [.] or

(c) To accommodate development at a regional shopping center with a gross leaseable area [[in excess of]] that exceeds or will exceed subject to site plan approval 1,200,000 square feet, building height may be increased to: (1) 90 feet for a building that includes a theater complex, and (2) 130 feet for a hotel. Any increase in building height under this provision must receive site plan approval in accordance with Division 59-D-3 and be set back from the nearest residential zone at least 3 feet for each 1 foot of building height.

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53       **Sec. 2. Effective date.** This ordinance becomes effective immediately upon  
54 Council adoption.

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56 This is a correct copy of Council action.

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61 Mary A. Edgar, CMC

62 Clerk of the Council