

Ordinance No: 15-41
Zoning Text Amendment No: 04-22
Concerning: Building height – South Silver
Spring Overlay Zone
Draft No. & Date: 1 – 10/13/04
Introduced: October 19, 2004
Public Hearing: 11/23/04; 1:30 p.m.
Adopted: December 14, 2004
Effective: January 3, 2005

**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: Councilmembers Perez and Silverman

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

- allowing an increase in building height in the Ripley/South Silver Spring Overlay zone, under certain circumstances.

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

DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.20	“Ripley/South Silver Spring Overlay Zone”
Section 59-C-18.202	“Regulations”

*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. 04-22 was introduced on October 19, 2004, to allow the building height limit of an optional method CBD-1 project within the Ripley/South Silver Spring Overlay zone to be increased from 90 to 125 feet. In cases where a commitment by a private developer to provide a public parking structure and the underground conditions prevent all parking from being provided below grade, additional building height may be increased under the ZTA to achieve the density permitted under the CBD-1 optional method process for the residential portion of the project.

The overlay zone now restricts the maximum building height in the Ripley Street/South Silver Spring area along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia to 45 feet. However, the maximum building height is 90 feet if the building is set back at least 60 feet from the street. ZTA 04-22 would add an additional exception for residential development that includes a public parking garage constructed under an agreement with Montgomery County.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be denied. The Board is concerned with the process taken for attaining the additional height in the overlay zone. Its opposition to the ZTA is not necessarily based on the merits of the project that could benefit from the proposal.

The County Council held a public hearing on November 23, 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. The Committee majority recommended that ZTA 04-22 be denied. The Committee majority supported a comprehensive look at the building height issue through a sector plan amendment process rather than establishing a new building height limit by zoning text amendment. While not necessarily opposed to the height subject of ZTA 04-22, the Silver Spring CBD Sector Plan has several very detailed height objectives for this particular area which the Committee majority believes should be examined through a sector plan amendment process. Councilmember Silverman supported approval of the ZTA on the grounds that development circumstances have changed in the Ripley/South Silver Spring area since the sector plan and overlay zone were approved. Buildings taller than 45 feet exist in the wedge area. When the sector plan and overlay zone were approved, it was believed that such buildings were obsolete and could not be reused economically. Several of these buildings have since been successfully renovated. The ZTA would modify the building envelope permitted under the Overlay Zone for to reflect building height that already exists in the area

The District Council reviewed Zoning Text Amendment No. 04-22 at a worksession held on December 14, 2004. The Council did not agree with the recommendations of the Committee majority. The Council believes that the additional building height is a needed measure to incorporate public parking into proposed development projects, particularly where County parking lots or under utilized assets can be leveraged through joint public/private partnerships.

The ZTA would create the opportunity through the additional height to allow proposed projects to provide public parking, maintain open space, and meet housing needs of the area. The Council agreed with the recommendation of Councilmember Silverman that development circumstances have changed in the Ripley/South Silver Spring area since the sector plan and overlay zone were approved and that ZTA 04-22 reflects building heights that already exist in the area.

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. 04-22 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-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONES.

* * *

59-C-18.20. Ripley/South Silver Spring Overlay Zone.

* * *

59-C-18.202. Regulations.

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(b) Development standards. The development standards are the same as those in the underlying zones, except:

- (1) Building height in the Overlay Zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, [T]this building height may be increased to: (i) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street, or as allowed in 59-C-18.204(b), Transfer of Development Credits; or (ii) a maximum of 125 feet for residential development that is set back at least ~~[[60]] 100~~ feet from Eastern Avenue and Newell Street, and that includes a public parking garage constructed under a General Development Agreement with Montgomery County, Maryland.

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Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC
Clerk of the Council