

Ordinance No.: 17-39  
Zoning Text Amendment No.: 13-06  
Concerning: Fenton Village Overlay –  
Building Height  
Draft No. & Date: 1 – 6/04/13  
Introduced: June 11, 2013  
Public Hearing: July 16, 2013  
Adopted: September 24, 2013  
Effective: October 14, 2013

**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: Councilmember Elrich

---

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

- generally amend the provision for building heights in the Fenton Village Overlay zone

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

Division 59-C-18.  
Section 59-C-18.19.

“Overlay Zones.”  
“Fenton Village Overlay 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 (ZTA) 13-06, sponsored by Councilmember Elrich, was introduced on June 11, 2013.

Currently, the Fenton Village Overlay zone generally allows a 60-foot building height limit along the west side of Fenton Street, but a substantially residential building may be taller. ZTA 13-06 would require that any building taller than 60 feet must step back from Fenton Street. Starting with buildings 60 feet tall along Fenton Street, every additional one foot in height would require a setback of one foot from Fenton Street.

The Sector Plan language recommends that building heights taper down from Georgia Avenue to Fenton Street in order to ensure compatibility with residential neighborhoods to the east of Fenton Street. The Plan does not provide guidance on how the taper should be implemented in terms of dimensions or height setbacks from Fenton Street.

The Planning Board recommended approval of ZTA 13-06 with a grandfather provision for approved project plans and preliminary plans. (Planning Staff recommended approval with only plain English changes. One representative supports a grandfather provision.)

The Council held a public hearing on July 16, 2013. The Planning Board representative, two representatives of landowners in the Fenton Village area, and one citizens' association representative spoke. One representative supported the ZTA with a grandfather provision. The attorney for a client with a relatively recent project plan approval spoke in favor of a grandfather provision. The attorney for a client that may submit a project plan spoke against the ZTA. The opponent suggested that the rigid standard is unnecessary to assure compatibility.

On September 9, 2013 the Planning, Housing, and Economic Development Committee recommended approval of ZTA 13-06 with an amendment to grandfather approved project plans. In the opinion of the Committee, the ZTA would appropriately clarify the setback provision in the Fenton Village Overlay Zone.

The District Council reviewed Zoning Text Amendment No. 13-06 at a worksession held on September 24, 2013, 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. 13-06 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-C-18 is amended as follows:**

2    DIVISION 59-C-18. OVERLAY ZONES.

3    \*   \*   \*

4    **Sec. 59-C-18.19. Fenton Village Overlay Zone.**

5    \*   \*   \*

6    **59-C-18.192. Regulations.**

7    \*   \*   \*

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

10       (1)   Building height in the Overlay Zone:

11           (A)   along a major highway must not exceed 90 feet;

12           (B)   along any street confronting any block that includes property  
13                   zoned in a one-family residential classification, must not exceed  
14                   60 feet and, when a building is allowed to be higher than 60  
15                   feet behind the Fenton Street frontage of the building, each  
16                   additional foot in building height above 60 feet requires at least  
17                   an additional one foot setback from the front of the building  
18                   along Fenton Street;

19           (C)   within the area between a major highway and a street that  
20                   confronts a block that includes property zoned in any one-  
21                   family residential classification, must not exceed 60 feet but  
22                   may increase up to 90 feet the maximum height allowed if at  
23                   least 33% of a project's floor area is residential; however, if  
24                   additional building height is necessary [to allow] to  
25                   accommodate workforce housing units and at least 33% of the  
26                   project's floor area is residential, up to 110 feet [[and where]] is  
27                   allowed if the additional height is placed near a major highway

28 and decreases in the direction of the closest property zoned in  
29 any one-family residential classification;

30 \* \* \*

31 (G) Any project plan approved before ~~[[August 18, 2008]]~~  
32 September 24, 2013 may be constructed under the conditions of  
33 its approval and any preliminary plan or site plan thereafter that  
34 implements the previously approved project plan. Any site plan  
35 approved before ~~[[August 18, 2008]]~~ September 24, 2013 may  
36 be constructed under the conditions of its approval. Any  
37 building constructed under this subsection is conforming and  
38 may be maintained and reconstructed under the conditions of  
39 their approval.

40

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

43

44 This is a correct copy of Council action.

45

46 *Linda M. Lauer*

47 Linda M. Lauer, Clerk of the Council