



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #7
06/09/11

DATE: May 30, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1 *RK*
FROM: Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the definitions of "Public facilities and amenities" and "Public use space"; amend the development standards for an optional method project to allow the provision of a building or land for a publicly owned and operated government facility to meet the public facility and amenity requirements and to satisfy the public use space requirement; and to exclude the floor area of the publicly owned and operated government facility in the calculation of gross floor area.

TEXT AMENDMENT: No. 11-04
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Council President at the Request of the County Executive
INTRODUCED DATE: May 10, 2011
PLANNING BOARD REVIEW: June 9, 2011
PUBLIC HEARING: June 14, 2011; 1:30 p.m.,

STAFF RECOMMENDATION: **APPROVAL with modifications** to allow a publicly owned and operated government facility to satisfy the public use space requirement and public facility and amenity requirement for an optional method project in a CBD zone and to exclude the floor area in the calculation of the gross floor area of the project. Staff's modifications include:

- Clarification that a "a publicly owned or operated government facility" refers to a facility that supports State and County programs or services, consistent with the intent of public facilities and amenities
- Clarification in the definition of public facilities and amenities that public facilities and amenities do not include road improvements or other capital projects that are required to *satisfy the requirements of the Adequate Public Facilities Ordinance (APFO) to serve the property*. The existing language uses the phrase "*required to provide adequate facilities to serve the property*"; and

- Include an additional provision in the ZTA in the section beginning on line 51 concerning Section 59-C-6.2357 to ensure that the value of an amenity stays within the CBD where it was initially required (should the County no longer need the facility/property and decide to sell it)

In staff's view, with these modifications, ZTA 11-04 provides an additional planning tool that can be used by the Planning Board to help bring about more comprehensive service delivery in Central Business Districts.

BACKGROUND/ANALYSIS

The County Executive requested the introduction of ZTA 11-04 to allow developers to offer to provide governmental facilities in satisfaction of requirements for amenities and public use space in CBD projects using the optional method of development. The County Executive believes that the proposed text amendment is consistent with the approach taken by Council in adopting the CR zones in which public facilities are considered a public benefit.

Traditionally in the CBD zones, developers have provided more typical amenities and public use space such as parks, open space, public art, etc. to address public use space and public amenities and facilities requirements. Alternatively, in more recent years, the Amenity Fund concept was established to allow a developer to make payment to the Planning Board to address off-site improvements in the same CBD area of the proposed development. ZTA 11-04 allows the Planning Board to consider government facilities (such as police stations, fire stations and libraries), traditionally provided as capital projects paid for by public funds, as public benefits funded by private developers as part of an optional method of development project.

ZTA Modifications

Definition of Public facilities and amenities

The ZTA as proposed modifies the definition of public facilities and amenities by expanding their scope to include publicly owned or operated government facilities that support government programs or services. Staff believes that such an expansion of the definition could be appropriate but recommends modification of the language to clarify that government facilities should only include those uses that support state or local programs or services (*lines 9-10*).

Staff further recommends a clarification to make it clear that public facilities and amenities may not include road improvements or other capital projects that are required to *satisfy the requirements of the Adequate Public Facilities Ordinance (APFO)*. We believe that this change more clearly expresses the intent of the proposed ZTA (*lines 26-28*).

Definition of Public use space (*lines 30-42*)

ZTA 11-04 proposes expansion of the definition of public use space to include land or space within a building for a publicly owned or operated government facility. As with the definition of public facilities and amenities, staff recommends modification of the language to clarify that government facilities are limited to those that support State or County programs or services (*lines 34-36*)

Footnotes to the Development Standards Table of the CBD Zones

ZTA 11-04 proposes two new footnotes to the development standards table of the CBD zones. The first footnote pertains to the public use space requirement under the optional method of development in the CBD 1, 2 and 3 zones. Specifically, the text allows the public use space requirement to be satisfied if the applicant conveys, to the County or other governmental body, land or building space within the same central business district for a publicly owned or operated government facility under Section 59-C-6.2357. The second footnote establishes that the gross floor area of such a publicly owned or operated government facility provided in satisfaction of the public facility and amenity requirements for the optional method of development under Section 59-C-6.2357 shall not be counted in the gross floor area of the optional method project. No changes are proposed to this section.

New Section 59-C-6.2357 Special standards for optional method of development projects that include a building or land for a publicly owned or operated government facility. (*lines 51-86*)

This section provides the specific elements proposed to implement the intent of the ZTA. They include:

- *A finding by the Planning Board at the time of project plan review deeming it appropriate to allow a governmental facility to be offered in satisfaction of requirements for public facilities and amenities and public use space*
- *A conveyance by the applicant to the County or other governmental body and acceptance by the County of land or building space for a publicly owned or operated government facility within the same central business district*
- *Once conveyance has occurred, the public facility and amenity requirement and public use space requirement remain satisfied in the event of an amendment to the original optional method of development project plan that does not increase the floor area of the project*
- *Any transfer or lease of the building or land by the County will not affect the approval of the optional method of development project plan or the site plan*

- *Streetscaping improvements will be required along the frontage of that phase of the project that is intended to accommodate the publicly owned or operated government facility*

Overall, staff believes that this section provides assurances, through the Planning Board's regulatory process, that each request to allow a publicly owned and operated government facility to satisfy the public use space requirement and public facility and amenity requirements for an optional method project will be judged on its own merits. As with all project and site plans, the Board would be able to analyze the overall development with respect to good design and applicable sector plan consistency with timely input from area residents.

Staff does have a concern pertaining to any potential loss of a government facility at some point in the future, should the County decide it no longer needs a government facility that had been accepted to satisfy the public facility and amenity or public use space requirement. Staff recommends including an additional standard that ensures that the value of an amenity stays within the CBD where it was initially required. The language that addresses this concern is included in the ZTA (Attachment 1) and as follows:

Should the County no longer want or need a government facility and/or needs to dispose of, transfer, swap or sell a property that has been accepted to satisfy the CBD Zones Optional Method of Development requirement for Public Use Space or Public Facilities and Amenities, the land value or proceeds of a sale are to be deposited into the Amenity Fund for the same CBD. Any land swap must result in the replacement of the amenity within the same CBD or equivalent value deposited in the Amenity Fund for the same CBD.

Attachments:

1. Zoning Text Amendment 11-04 (as modified by staff)

ATTACHMENT 1

Zoning Text Amendment No: 11-04
Concerning: Central Business District
(CBD) Zones – Public
Facilities
Draft No. & Date: 1 - 5/4/11
Introduced: May 10, 2011
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**

By: Council President at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the definitions of “Public facilities and amenities” and “Public use space”;
- amend the development standards for an optional method project to allow the provision of a building or land for a publicly owned and operated government facility to meet the public facility and amenity requirements;
- amend the development standards for an optional method project to allow the publicly owned and operated government facility to satisfy the public use space requirement for the optional method project and exclude the floor area in the calculation of gross floor area; and
- generally amend the development standards for optional method projects in the CBD zones.

By amending the following sections 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-6.233 “Minimum Public Use Space”
Section 59-C-6.234 “Maximum Density of Development”

And by adding the following section to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Section 59-C-6.2357 “Special standards for optional method development projects that include a building or land for a publicly owned or operated government facility”

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.*

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:

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**Sec. 1. DIVISION 59-A-2 is amended as follows:
DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

59-A-2.1. Definitions

* * *

Public facilities and amenities: Those facilities and amenities of a type and scale necessary to provide an appropriate environment to satisfy public needs resulting from, or related to, the development of a particular project or to support County or State government programs or services. Facilities and amenities may include, but are not limited to:

- (a) green area or open space which exceeds the minimum required, with appropriate landscaping and pedestrian circulation;
- (b) streetscaping that includes elements such as plantings, special pavers, bus shelters, benches, and decorative lighting;
- (c) public space designed for performances, events, vending, or recreation;

- 17 (d) new or improved pedestrian walkways, tunnels, or bridges;
- 18 (e) features that improve pedestrian access to transit stations;
- 19 (f) dedicated spaces open to the public such as museums, art galleries, cultural
- 20 arts centers, community rooms, recreation areas;
- 21 (g) day care for children or senior adults and persons with disabilities; [and]
- 22 (h) public art[.]; and
- 23 (i) a publicly owned or operated government facility.

24 Public facilities and amenities may be recommended or identified in an approved
25 and adopted master or sector plan. Public amenities do not include road
26 improvements or other capital projects that are required to [[provide adequate
27 facilities to serve the property]] satisfy the requirements of the Adequate Public
28 Facilities Ordinance (APFO) to serve the property.

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30 **Public use space:** Space devoted to public enjoyment, such as, but not limited to,
31 green areas, gardens, plazas, walks, pathways, promenades, arcades, urban parks,
32 town squares, public plazas with elements such as water features, and passive and
33 active recreational areas including outdoor recreation areas for a child day care
34 facility. Public use space may include land or building space for a publicly owned
35 or operated government facility that supports County or State government
36 programs or services. Public use space may also consist of space and/or amenities
37 recommended by an approved urban renewal plan. Public use space must not
38 include parking or maneuvering areas for vehicles. Except for an outdoor
39 recreation area for a child day care facility or a publicly owned or operated
40 government facility, public use space must be easily and readily accessible to the
41 public and be identified by a sign placed in public view. If public pedestrian
42 walkways are recommended in an approved and adopted master plan or sector
43 plan, it may be counted as public use space.

44 * * *

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

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

47 * * *

48 **59-C-6.23. Development Standards.**

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	* *	CBD-1		CBD-2		CBD-3		* * *
	*	S	O	S	O	S	O	
59-C-6.233. Minimum Public Use Space (percent of net lot area):		10	20 ^{20, 22,*}	10	20 ^{22,*}	10	20 ^{22,*}	
* * *								
59-C-6.234. Maximum Density of [Development] Development.								
* * *								
(b) [Option] <u>Optional</u> Method of development (see section 59-C-6.215(b)):								
* * *								
(ii)(A) Non-residential, including transient lodging[.]; however, the maximum excludes a site that satisfies subsection (ii)(B) (FAR):			2.0 ^{19, 23,**}		4.0 ^{23,**}		6.0 ^{23,**}	
* * *								
(iii) Mixed-use (non-residential and residential uses).								
(A) Maximum permitted non-residential, including transient lodging; however, the maximum excludes a site that satisfies subsection (iii)(B)[.] (FAR) limited to:			2.0 ^{4, 23,**}		3.0 ^{5, 23,**}		5.0 ^{6, 23,**}	
* * *								
-- Total FAR ^{13, 15}			3.0 ^{23,**}		5.0 ^{23,**}		8.0 ^{23,**}	

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²² The entire optional method public use space requirement is satisfied if the applicant has provided to the County, by conveyance or dedication, land or building space to accommodate an arts or entertainment use under Section 59-C-6.2356.

²³ The gross floor area of the arts or entertainment use that satisfies the public use space and the public facility and amenity requirements for the optional method of development under Section 59-C-6.2356 must not be counted in the gross floor area of the optional method project.

* The entire optional method public use space requirement is satisfied if the applicant conveys, to the County or other governmental body, land or building space within the same central business district for a publicly owned or operated government facility under Section 59-C-6.2357.

** The gross floor area of the publicly owned or operated government facility that is provided in satisfaction of the public facility and amenity requirements for the optional method of development under Section 59-C-6.2357 must not be counted in the gross floor area of the optional method project.

* * *

51 **59-C-6.2357 Special standards for optional method of development projects**
52 **that include a building or land for a publicly owned or operated government**
53 **facility.**

54 (a) The public facility and amenity requirement is satisfied when:

55 1) the Planning Board finds that the project plan application warrants
56 approval with a publicly owned or operated facility satisfying the
57 amenity and the public use space requirements; and

58 2) the applicant conveys in fee simple, to the County or other
59 government body, the identified land or building space, and the
60 County accepts the land or building space for a publicly owned or
61 operated government facility within the same central business district.

- 62 (b) Once the County or other government body has accepted the fee simple
63 conveyance of the land or building space for the publicly owned or operated
64 government facility:
- 65 (1) the public facility and amenity requirement also is satisfied for any
66 amendment to the original optional method of development project
67 plan that does not increase the floor area of the project;
- 68 (2) the land area that is conveyed to the County for the publicly owned or
69 operated government facility also is treated as public use space for
70 any amendment to the original project plan that does not increase
71 floor area; and
- 72 (3) any transfer or lease of the building, or land, or any portion thereof, by
73 the County will not affect the approval of the optional method of
74 development project plan or the site plan.
- 75 (c) Standard streetscaping improvements along the frontage of the phase of the
76 project that is intended to accommodate the publicly owned or operated
77 government facility use must be provided during the phase of the project that
78 contains the facility.
- 79 (d) Should the County no longer want or need a government facility and/or
80 needs to dispose of, transfer, swap or sell a property that has been accepted
81 to satisfy the CBD Zones Optional Method of Development requirement for
82 Public Use Space or Public Facilities and Amenities, the land value or
83 proceeds of a sale are to be deposited into the Amenity Fund for the same
84 CBD. Any land swap must result in the replacement of the amenity within
85 the same CBD or equivalent value deposited in the Amenity Fund for the
86 same CBD.

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88 * * *

89 **Sec. 3. Effective date.** This ordinance takes effect immediately upon
90 Council adoption.

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92 This is a correct copy of Council action.

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95 Linda M. Lauer, Clerk of the Council