



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

January 17, 2003

**MEMORANDUM**

**TO:** The Montgomery County Planning Board

**VIA:** John A. Carter, Chief *JAC*  
Community-Based Planning Division

Glenn Kreger, Team Leader, Silver Spring/Takoma Park *GK*  
Community-Based Planning Division

**FROM:** Sandra Youla, Zoning Analyst, Resource Team  
Community-Based Planning Division

Greg Russ, Zoning Coordinator *GR*  
Development Review Division

**SUBJECT:** Proposed Zoning Text Amendments: Implementation Strategies for Arts  
and Entertainment Districts – Part 2

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**RECOMMENDATION:** Transmit zoning text amendments, as described in the staff report and shown in the Appendix, to the County Council for introduction, in order to help implement arts and entertainment districts in Montgomery County. Revisions include:

- Adding a definition of artistic work.
- Revising the definition of artist.
- Deleting the definition of artisan.
- Revising the definition of artist studio.
- Adding ancillary regulations for artist studio in Sec. 59-A-6 (Uses Allowed in More than One Zone).
- Revising the definition for artist live/work space.
- Revising a footnote regarding the allowable locations of artist live/work space in the Central Business District (CBD) zones.
- Adding a footnote regarding parking requirements for artist live/work space in the CBD zones.

## **DISCUSSION**

At its regular meeting on December 19, 2002, the Planning Board considered implementation strategies for arts and entertainment districts, as described in a staff report dated December 12, 2002, and a staff presentation to the Planning Board. The current staff report is written in response to Planning Board and public comment on staff proposals, and recommends that the Planning Board transmit *revised* zoning text amendments to the County Council for introduction.

### **Background**

In its prior staff report and presentation to the Planning Board, staff explained that a new State law allows the Maryland Secretary of Business and Economic Development to designate arts and entertainment districts in various locales throughout the State, as long as such districts meet specified criteria and first are nominated locally. Montgomery County already has received two designations – one for an area within Silver Spring's Central Business District and another for an area within Bethesda's Central Business District. Staff noted that public interest has been expressed in nominating other areas within Montgomery County for designation, and more designations may be forthcoming. The designations confer certain tax and financial benefits on qualified artists, arts organizations, and property owners within the districts. The law was a smart growth initiative and its purpose was to promote the arts, foster economic development, and revitalize neighborhoods.

In order to foster arts and entertainment land uses generally and help implement the two current designations, staff proposed certain zoning text amendments. Staff also indicated that their efforts to implement arts and entertainment districts would be ongoing as more districts were proposed, nominated, and designated.

### **Previously Proposed Zoning Text Amendments**

The zoning text amendments proposed in the December 12, 2002 staff report were as follows:

- Add definitions for artist and artisan
- Create three new land use categories:
  - Artist and artisan studio – high intensity
  - Artist and artisan studio – low intensity
  - Artist and artisan live/work space
- Add definitions for the new land uses
- Specify where the new land uses may go
- Expand opportunities for the three categories of home occupations by specifying that they may exist in certain zones where they are not now permitted by right or allowed by special exception
- Amend footnote for home occupations regarding parking

The actual zoning text amendments as proposed in the December 12, 2002 staff report, including definitions, are attached in the Appendix.

The following table summarizes the land use provisions of the zoning text amendments proposed in the December 12, 2002 staff report.

**SUMMARY OF PROPOSED LAND USE PROVISIONS IN THE ARTS AND ENTERTAINMENT DISTRICTS PER THE DECEMBER 12, 2002 STAFF REPORT**

Affected Geography and Zones	Non-Residential Use	Combinations of Residential and Non-Residential Uses	
	Artist Studios (High and Low Intensity)	Home Occupations (No Impact; Registered; Major)	Live/Work Space
CBDs • CBD Zones	Low Intensity	* No Impact and Registered;  Major, by Special Exception only	Permit by right in 100% commercial buildings and on all ground floors
	High and Low Intensity	No Impact and Registered; Major by Special Exception only	Permit by right
• I-1 and I-4 Zones			
Outside CBDs • I-1 and I-4 Zones	High and Low Intensity	N/A	N/A

\* Parking must be provided in connection with no impact and registered home occupations in addition to parking that serves dwelling units.

Note: **Bold** items are new categories to be added to the Zoning Ordinance

**Public Comment at the Planning Board Meeting of December 19, 2002**

Public comment was taken following the staff presentation to the Planning Board on December 19, 2002, and a number of modifications were suggested. A summary of public comment is attached in the Appendix.

**Planning Board Comment at the Planning Board Meeting of December 19, 2002**

The Planning Board had a number of questions, comments, and directions in response to staff presentation and public comment.

**Rationale and Problem Statement:** The Planning Board sought a better understanding of the rationale for making arts and entertainment land uses specific land use categories in the Zoning Ordinance – what problems were staff trying to address

and how would staff avoid the problem of making pre-existing uses non-conforming. For example, many artists were having trouble getting their use and occupancy permits for artist studios within the CBD zones, and artist live/work space was not allowed under the current zoning. In response, staff briefly noted that their goal was to remove ambiguity and make clear that certain uses were permitted. A subsequent section of this report goes into more detail about the rationale for the zoning text amendments proposed in the December 12, 2002 staff report.

**Difference Between Home Occupation and Artist and Artisan Live/Work Space:** The Planning Board sought clarification of the difference between a home occupancy (for an artist studio) and an artist and artisan live/work space. Staff explained that home occupancies are principally a residential use, and the work space was limited to 33% of the gross floor area. Artist and artisan live/work space allows more than 33% work space, and generally the work uses may be more intense.

**Artist and Artisan Studio – High Intensity and Low Intensity:** The Planning Board had a number of questions regarding artist and artisan studio – high intensity and low intensity. They queried a) what distinguished the high and low intensity categories from one another – what was the underlying principle, b) why staff recommended that artist studio – high intensity be precluded from the CBD zones, c) were the definitions derived from and congruent with the State law, and d) whether the building codes, OSHA regulations, and the noise ordinance could be used to address some of the life safety (e.g. hazardous and toxic materials) and land use compatibility issues that staff tried to address through the creation of high and low intensity definitions and the restriction of high intensity uses to industrial zones. Staff's rationale for its proposals in the December 12, 2002 staff report are described subsequently in this report.

**Planning Board Decision and Instructions to Staff:** The Planning Board unanimously agreed to go forward with the portion of the zoning text amendment that dealt with home occupations, agreeing that there was no reason not to allow home occupations in CBD zones, which are mixed-use by design. They instructed staff to forward the home occupation zoning text amendment to the County Council for introduction. (Per Chairman Berlage's subsequent request, the transmittal letter to the County Council asked that the Council hold off introducing the home occupation zoning text amendment until the Council receives the zoning text amendment dealing with the remaining arts and entertainment definitions and land uses, since they form one comprehensive package for implementing arts and entertainment districts.)

The Planning Board instructed staff to respond to the Planning Board's concerns and to return to the Planning Board on January 23, 2003. The Planning Board also specifically requested that staff a) work with the Department of Permitting Services (DPS) and others to address the overlay of the Building Code and other regulations, and b) to identify the issues artists and arts organizations currently face in Montgomery County in meeting their space needs, in order to provide a clearer rationale for the proposed zoning text amendments.

## ANALYSIS

### Rationale for Proposed Zoning Text Amendments in the December 12, 2002 Staff Report

The Planning Board asked for a better rationale for certain zoning text amendments proposed in the December 12, 2002 staff report. Staff's overarching concern for all the zoning text amendments was to help implement arts and entertainment districts, in support of the State's initiative. To that end, staff had both general and specific goals. General goals are listed in the Appendix. Specific goals and reasons are listed below for the specific parts of the zoning text amendment that the Planning Board and public questioned.

- a) Staff proposed a **definition for "artist"** because the term is already used in the Zoning Ordinance and is not defined and because confusion could arise as to who qualified as an artist for the purpose of occupying an artist and artisan (non-residential) studio and an artist and artisan live/work space. Staff proposed a **definition for "artisan,"** because the State law considers crafts to be a form of artistic work.

In order to make the definitions more congruent with the State law allowing arts and entertainment districts, as requested by Theresa Cameron of the Arts and Humanities Council, staff proposes revised definitions for artist, adds a definition for artistic work that comes directly from the state law, and eliminates the definition for artisan by revising the definition of artist to encompass artisans. These revisions are described later in this report.

- b) Staff **created a new land use category – artist and artisan (non-residential) studio -- high and low intensity** because:
  - o the Arts and Humanities Council has evidence that Montgomery County artists have a hard time finding suitable studio space in the County and many must lease space in Washington, D.C. and Prince George's County,
  - o there is no such land use category anywhere in the Zoning Ordinance,
  - o any arts and entertainment district – whatever zones it may encompass – will need such a use,
  - o there may be no other land use category in the zones of a future arts and entertainment district that would encompass such a use,
  - o making it an explicit category in the land use tables makes landlords aware that they can market their properties for that use,
  - o without an explicit land use category in the Zoning Ordinance, there is no way to write zoning regulations for the use if the need for such regulation should become apparent over time.

The Planning Board was concerned that creation of a new land use category for artist studios might render non-conforming the pre-existing studios that had been allowed under some broader land use category. However, this issue can be addressed by stating in the Zoning Ordinance that these pre-existing uses are conforming, and we propose to do this in the revised zoning text amendment.

- c) Staff **made a distinction between low and high intensity artist and artisan studios** because we felt that artist studios create major land use compatibility issues, and not all types of artist studios would be appropriate for all zones. By creating a low and high intensity distinction, we were hoping to create flexibility – a future arts and entertainment district might have zones where high intensity uses were clearly not appropriate, and without a distinction, we would have had to forbid all of them.

Building codes address life safety issues but do not explicitly address land use compatibility issues – even if life/safety issues can be addressed through building improvements, there may still be land use compatibility issues, e.g. should general office users be subjected to the inevitable noise and traffic that a light industrial use might entail.

However, as the Planning Board suggested, we are working with the DPS to devise definitions in the Zoning Ordinance that make reference to hazards and Building Code occupancy groups, a strategy we hope will provide more flexibility and be less restrictive by taking more of a performance standard approach. We are also working with DEP to address noise issues, and Fire and Rescue Services to address fire code issues. Pending final comments from DPS, DEP, and Fire and Rescue Services, we make tentative proposals, as described later in this staff report.

- d) Staff recommended that **artist and artisan studio – high intensity be permitted only in the I-1 and I-4 industrial zones, but that low intensity artist and artisan studios be permitted in both CBD zones and I-1 and I-4 zones** because of compatibility concerns, as noted above. We recommend that high and low intensity studios be allowed in I-1 and I-4 zones anywhere in the County, not just within the central business districts, because we felt they were an appropriate use for these zones anywhere.
- e) Staff **created a new land use category -- artist and artisan live/work space** to:
- expand locational opportunities for artists, who cannot generally afford two rents,
  - create a way for artists to get more working space than they could in a home occupation,
  - allow artists to do more intense uses than they could in a major home occupation,

- allow an opportunity for zoning regulations to be written in the future if necessary,
  - allow the Building Code to develop regulations and policies in response to this emerging new land use, unit type, and building occupancy,
  - help notify property owners that the properties can be marketed for the use, and, most importantly,
  - help remove the considerable ambiguity that exists about how and when living and working can be combined in various zones. In the CBD zones, although both living and working are permitted by right, it was unclear whether combining living and working in one unit immediately triggered home occupation rules, thus limiting the work space to only 33% of the unit. In the industrial zones, residential uses are greatly discouraged, and dwelling units are only permitted by special exception, and thus it was uncertain that living could be combined with working at all or that the zone intended such. In all zones, it was uncertain that living could be viewed under the Zoning Ordinance as an accessory use to an artist (non-residential) studio, because accessory uses must be “customarily incidental and subordinate” to the main use, per the Zoning Ordinance, and living is not necessarily “customarily incidental” to an artist studio – artist studios can stand alone. Further, artist live/work space as proposed does not necessarily make the living space subordinate to the work space, it only requires that the work space be more than 33% of the unit. (Thus, there may be circumstances where the work space is more than 33% but less than 50%, thus making the work space the subordinate use.) In the Building Code, accessory uses face one more hurdle: they can only occupy 10% of the gross floor area, and that is usually too little space for a living unit in an artist live/work space.
- f) **Staff recommended that artist and artisan live/work spaces be permitted by right in CBD zones anywhere within 100% commercial buildings and on the ground floors of any buildings (including residential),** because we felt that live/work spaces were intense uses that should not be allowed indiscriminately in all residential settings. After all, we are recommending that major home occupations for artists be allowed in residential units, but only by special exception, and these uses are generally less intense than artist live/work spaces.

However, in response to public comment that we expand opportunities for artist live/work space in residential settings in the CBD zones, we are working with DPS to see if we can use Building Code occupancy terminology as a means in the Zoning Ordinance to expand locational opportunities for artist live/work space within residential settings in CBD zones (e.g. by specifying that floors that contain certain types of building occupancies may or may not have artist live/work space). These issues were not resolved as of the time this staff report was drafted, but tentative proposals are made. We also proposed parking requirements for artist live/work spaces in the CBD zones in the revised zoning text amendment.

- g) Staff recommended that artist and artisan live/work spaces be permitted by right in I-1 and I-4 zones because we believed the intense work uses of such space were compatible with industrial uses, but because this live/work space is a new use, we limited them to the I-1 and I-4 zones within CBD's, of which there is relatively little.
- h) Staff proposed definitions for the two new land uses -- artist and artisan studio – high and low intensity and artist live/work space, because terms should not be used in the Zoning Ordinance without definition. As noted, we are working with DPS to revise the definitions for artist studio, and we have revised the definition of artist and artisan live/work space to be more complete but not substantially different than previously proposed.

## REVISED ZONING TEXT AMENDMENTS

In response to Planning Board and public comment and subsequent research and consultations, staff proposes the following revised zoning text amendments. Italics indicates zoning text, non-italics indicates staff comment, underlining indicates additions, [brackets] indicate deletions. If not shown below as either added or deleted, staff proposes no revisions to the language of the zoning text amendment in the staff report dated December 12, 2002. The complete revised version of the zoning text amendment, including unchanged language, is shown in the Appendix.

**Sec. 59-A-2.1 Artist.** *One who makes artistic work, as defined by this ordinance. [An individual who practices one of the fine arts, who works in one of the performing arts, or whose trade or professions requires a knowledge of design, drawing, or painting.]*

-- new definition proposed and old one deleted to ensure more congruence with State law.

**[Sec. 59-A-2.1 Artisan.** *A craftsman skilled in an applied art.]*

-- deleted entirely because the new definition of artist includes persons who do crafts.

**Sec. 59-1-2.1 Artistic Work.** *An original and creative work, whether written, composed, or executed, that falls within one of nine categories:*

1. A book or other writing;
2. A play or performance of a play;
3. A musical composition or the performance of a musical composition;
4. A painting or other picture;
5. A sculpture;
6. Photography;
7. Traditional or fine crafts;
8. The creation of a film or the acting within a film;
9. The creation of a dance or the performance of a dance.



Artistic work includes any product generated as a result of any of the above nine categories.

-- definition added for congruence with state law.

**Sec. 59-A-2.1 Artist Studio.** Use of premises to make artistic work, as defined by this ordinance, subject to the regulations found in Sec. 59-A-6.17. When used in this ordinance without the modifiers below, artist studio includes both low and high intensity artist studios as defined below:

**Artist Studio – Low Intensity:** an artist studio as defined by this ordinance that does not utilize hazardous materials or processes.

[**Artist Studio – Low Intensity.** The use of premises for the production for dance, live music, creative writing, painting, drawings, pottery or sculpture, silk screening, video, moving or still photography, none of which involves amplified sound or one or more of the materials or processes specified under Artist Studio – High Intensity.]

**Artist Studio – High Intensity:** an artist studio as defined by this ordinance that does utilize hazardous materials or processes.

[**Artist Studio – High Intensity.** The use of premises for the production of the following:

- a) dance or live music involving electronically amplified sound;
- b) moving or still photography (excluding video) involving on-site film processing; and
- c) paintings, drawings, pottery, or sculpture involving the use of fiberglass, epoxy, and other toxic or hazardous materials, or one or more of the following processes: welding, woodworking, spray painting, stone carving, or fired ceramics.]

-- new definition for artist studio (including high and low intensity) added to address public and Planning Board concerns that the definitions as currently worded were too restrictive. Also, new definition as added is more congruent with state regulation and refers to additional clarifying regulations, as shown below.

### **Sec. 59-A-6.17 Artist Studio**

In any zone where an artist studio is allowed, the artist studio must comply with the provisions of 59-A-2.1 and the following regulations:

- a) Whenever an artist studio is combined with residential use, the artist studio is either a home occupation (for artists) as defined by this ordinance or an artist live/work space as defined by this ordinance.

- b) Artist studio allows performance of artistic work only for the purpose of creating, rehearsing, or teaching the artistic work, not for the purpose of entertaining general audiences. If the space is to be used for performance of an artistic work to entertain general audiences, then the space must be categorized as another land use category within this ordinance (e.g. legitimate theatre, indoor theatre, outdoor theatre, or auditorium, stadium, or convention hall).
- c) Office uses and retail sales are permitted in artist studios as accessory uses, as defined in this ordinance. Other uses, e.g. teaching or display space, may be permitted as accessory uses depending on their nature and the nature of the artist studio.

Artist studios in the CBD, I-1, and I-4 zones that legally existed prior to [effective date of this zoning text amendment] are conforming uses and may continue to exist under the provisions in place at the time their use and occupancy permit was granted.

**Sec. 59-A-2.1 Artist Live/Work Space.** An integrated dwelling unit and working space that:

- a) is occupied and utilized by a single housekeeping unit in a building that has been modified or designed to accommodate joint residential occupancy and work activity.
- b) includes the following:
  - 1) complete kitchen space and sanitary facilities in conformance with applicable building standards; and
  - 2) working space reserved for and regularly used by an artist, as defined by this ordinance, who is a residential occupant of the live/work space and who uses the working space to make an artistic work as defined by this ordinance.
- c) devotes more than 33% of the total gross floor area to working space.

[Artist and Artisan Live/Work Space. An integrated dwelling unit and working space, occupied and utilized by a single housekeeping unit in a building that has been structurally modified or designed to accommodate joint residential occupancy and work activity and which includes the following:

- a) complete kitchen space and sanitary facilities in conformance with applicable building standards, and
- b) working space reserved for and regularly used by one or more occupants of the unit.]

-- original definition modified slightly to ensure congruence with State law, address DPS concerns, and add the provision that more than 33% of the total gross floor area must be devoted to working space in order to distinguish live/work space from a home occupation.

**59-C-6.22. Land uses.** (in the CBD zones)

No use is allowed except as indicated in the following table:

**Permitted Uses.** The letter "P" in the appropriate column indicates the zones in which each use is permitted, subject to all applicable regulations under the standard or the optional method of development, indicated by the letters "S" and "O," respectively.

**Special Exception Uses.** The letters "SE" in the appropriate column indicate the zones in which each use may be authorized as a special exception, in accordance with Article 59-G, under the standard or the optional method of development respectively. Special exception uses in a development under the optional method are subject to approval by both the Planning Board and the Board of Appeals.

	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
* * *												
<b>(f) Cultural, entertainment and recreational.</b>												
<u>Artist live/work space.</u> <sup>25, 26</sup>	P	P	P	P	P	P	P	P	P	P	P	P
<u>Artist studio-low intensity.</u>	P	P	P	P	P	P	P	P	P	P	P	P
<u>Artist studio-high intensity.</u>												
* * *												

25 In buildings that are classified as residential occupancy according to the Building Code or on individual floors that are classified as residential occupancy according to the Building Code, the only type of artist live/work space permitted is that which is both a) predominantly residential in floor area (i.e. more than 50% of the floor area is residential and b) utilizes no hazardous materials or processes.

26 When located in a building that contains residential occupancies according to the Building Code, an artist live/work space must provide one parking space for each nonresident employee or associate plus one parking space for every client or customer that will visit in any one-hour period. This parking must be in addition to the number of spaces provided for the residential use of the building.

-- footnote 25 revised to expand opportunities for artist live/work space in CBD zones by allowing it not only on the ground floors of residential buildings but also on residential floors, subject to certain conditions.

-- footnote 26 is added to address the parking issue, to ensure that parking allocated for residents is not used by employees and visitors of the artist live/work space.

## **CONCLUSION**

Staff believes the proposed revised zoning text amendments address public and Planning Board concerns as expressed at the Planning Board's regular meeting on December 19, 2002. Therefore, staff recommends that the Planning Board transmit the proposed revised zoning text amendments to the County Council for introduction in order to help implement arts and entertainment districts in Montgomery County.

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### **Attachments**

1. Appendix – Revised Zoning Text Amendments per Staff Report Dated January 17, 2002, Regarding Implementation Strategies for Arts and Entertainment Districts
2. Appendix – Summary of Public Comment at the Planning Board Meeting of December 19, 2002, Regarding Implementation Strategies for Arts and Entertainment Districts
3. Appendix - General Goals for Previously and Currently Proposed Zoning Text Amendments

**ATTACHMENT 1**

**APPENDIX: REVISED ZONING TEXT AMENDMENTS PER STAFF REPORT DATED JANUARY 17, 2003 REGARDING IMPLEMENTATION STRATEGIES FOR ARTS AND ENTERTAINMENT DISTRICTS**

Zoning Text Amendment No:  
Concerning: Arts & Entertainment  
Districts  
Draft No. & Date: 2 – 01/16/03  
Introduced: N/A  
Public Hearing: N/A  
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:

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

- providing definitions for artist, artist studio-low intensity, artist studio-high intensity and artist live/work space ;
- allowing artist studio-low intensity as a permitted use in all CBD Zones and in the I-1 and I-4 Zones;
- allowing artist studio-high intensity as a permitted use in the I-1 and I-4 Zones; and
- allowing artist live/work space as a permitted use in all CBD Zones under certain conditions, and in the I-1 and I-4 Zones within Central Business Districts.

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-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE*”
Section 59-A-6.17	“Artist studio” (New Section)
DIVISION 59-C-5	“INDUSTRIAL ZONES”
Section 59-C-5.21	“Land Uses”
DIVISION 59-C-6	“CENTRAL BUSINESS DISTRICT ZONES”
Section 59-C-6.22	“Land uses”

**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.

### **RDINANCE**

*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-A-2 is amended as follows:**

**DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

**59-A-2.1. Definitions.**

\* \* \*

**Artist.** One who makes an artistic work, as defined by this ordinance.

**Artistic work.** An original and creative work, whether written, composed or executed, that falls within one of nine categories:

1. A book or other writing;
2. A play or performance of a play;
3. A musical composition or the performance of a musical composition;
4. A painting or other picture;
5. A sculpture;
6. Photography;
7. Traditional or fine crafts;
8. The creation of a film or the acting within a film;
9. The creation of a dance or the performance of a dance

**Artistic work includes any product generated as a result of any of the above nine categories.**

**Artist live/work space.** An integrated dwelling unit and working space that:

- a) is occupied and utilized by a single housekeeping unit in a building that has been modified or designed to accommodate joint residential occupancy and work activity,

b) includes the following:

- 1) complete kitchen space and sanitary facilities in conformance with applicable building standards; and
- 2) working space reserved for and regularly used by an artist, as defined by this Ordinance, who is a residential occupant of the live/work space and who uses the working space to make an artistic work as defined by this Ordinance.

c) devotes more than 33% of the total gross floor area to working space.

Artist Studio: Use of premises to make artistic work, as defined by this Ordinance, subject to the regulations found in Sec. 59-A-6.17. When used in this Ordinance without the modifiers below, artist studio includes both low and high intensity artist studios as defined below:

Artist Studio – Low Intensity: an artist studio as defined by this Ordinance that does not utilize hazardous processes or materials.

Artist Studio – High Intensity: an artist studio as defined by this Ordinance that does utilize hazardous processes or materials.

\* \* \*



**Sec. 2. Division 59-A-6 is amended as follows:**

**DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE\***

**Sec. 59-A-6.17. Artist studio.**

In any zone where an artist studio is allowed, the artist studio must comply with the provisions of 59-A-2.1 and the following regulations:

- d) Whenever an artist studio is combined with residential use, the artist studio is either a home occupation (for artists) as defined by this Ordinance or an artist live/work space as defined by this Ordinance.
- e) Artist studio allows performance of artistic work only for the purpose of creating, rehearsing, or teaching the artistic work, not for the purpose of entertaining general audiences. If the space is to be used for performance of an artistic work to entertain general audiences, then the space must be categorized as another land use category within this Ordinance. (e.g. legitimate theatre, indoor theatre, outdoor theatre, or auditorium, stadium, or convention hall).
- f) Office uses and retail sales are permitted in artist studios as accessory uses, as defined in this Ordinance. Other uses, e.g. teaching or display space, may be permitted as accessory uses depending on their nature and the nature of the artist studio.

Artist studios in the CBD, I-1, and I-4 zones that existed prior to [effective date of this zoning text amendment] are conforming uses and may continue to exist under the provisions in place at the time their use and occupancy permit was granted.

**Sec. 3. DIVISION 59-C-5 is amended as follows:**

**DIVISION 59-C-5. INDUSTRIAL ZONES.**

\* \* \*

**59-C-5.2. Land uses.**

\* \* \*

**59-C-5.21. Allowable uses**

No use is allowed except as indicated in the following table:

**Permitted Uses.** Uses designated by the letter "P" and uses of a similar character, are permitted on any lot in the zones indicated, subject to all applicable regulations.

**Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions, in accordance with the provisions of Article 59-G.

	I-1	I-2	I-3	I-4	R&D	LSC
* * *						
<b>(f) Cultural, entertainment and recreational.</b>						
* * *						
<u>Artist live/work space</u>	<u>P</u> <sup>34</sup>			<u>P</u> <sup>34</sup>		
<u>Artist studio-high intensity</u>	<u>P</u>			<u>P</u>		
<u>Artist studio-low intensity</u>	<u>P</u>			<u>P</u>		
* * *						

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34 Only if located within a central business district.

**Sec. 3. DIVISION 59-C-6 is amended as follows:**

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

\* \* \*

**59-C-6.22. Land uses.**

No use is allowed except as indicated in the following table:

**Permitted Uses.** The letter "P" in the appropriate column indicates the zones in which each use is permitted, subject to all applicable regulations under the standard or the optional method of development, indicated by the letters "S" and "O," respectively.

**Special Exception Uses.** The letters "SE" in the appropriate column indicate the zones in which each use may be authorized as a special exception, in accordance with Article 59-G, under the standard or the optional method of development respectively. Special exception uses in a development under the optional method are subject to approval by both the Planning Board and the Board of Appeals.

	<u>CBD-0.5</u>		<u>CBD-R1</u>		<u>CBD-1</u>		<u>CBD-2</u>		<u>CBD-3</u>		<u>CBD-R2</u>	
	<u>S</u>	<u>O</u>	<u>S</u>	<u>O</u>	<u>S</u>	<u>O</u>	<u>S</u>	<u>O</u>	<u>S</u>	<u>O</u>	<u>S</u>	<u>O</u>
* * *												
<b>(f) Cultural, entertainment and recreational.</b>												
<u>Artist live/work space.</u> <sup>25, 26</sup>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Artist studio-low intensity.</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Artist studio-high intensity.</u>												
* * *												

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25 In buildings that are classified as residential occupancy according to the Building Code or on individual floors that are

classified as residential occupancy according to the Building Code, the only type of artist live/work space permitted is that which is both a) predominantly residential in floor area (i.e. more than 50% of the floor area is residential and b) utilizes no hazardous materials or processes.

26 When located in a building that contains residential occupancies according to the Building Code, an artist live/work space must provide one parking space for each nonresident employee or associate plus one parking space for every client or customer that will visit in any one-hour period. This parking must be in addition to the number of spaces provided for the residential use of the building.

**Sec. 4. Effective date.** This Ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Mary A. Edgar, CMC  
Clerk of the Council

## ATTACHMENT 2

### APPENDIX: SUMMARY OF PUBLIC COMMENT AT THE PLANNING BOARD MEETING OF DECEMBER 19, 2002 REGARDING IMPLEMENTATION STRATEGIES FOR ARTS AND ENTERTAINMENT DISTRICTS

Following staff presentation to the Planning Board on December 19, 2002 regarding implementation strategies for arts and entertainment districts (per a staff report dated December 12, 2002), there were several speakers.

Elyse Harrison, a working artist who has the only existing artist studio storefront in downtown Bethesda, indicated support for the zoning text amendments, which would increase opportunities for artists to live and work in Bethesda. She particularly supported zoning text amendments that would allow the development of affordable artist live/work space. Stephanie Coppola of the Bethesda Urban Partnership, which applied for designation of the Bethesda Arts and Entertainment District and currently manages the district, also indicated support, particularly for artist live/work spaces.

Theresa Cameron, Executive Director of the Arts and Humanities Council of Montgomery County, gave background on the law and requested that Park and Planning, the Arts and Humanities Council, and the Montgomery County Department of Park and Planning work together to give artists coordinated and consistent advice and information. She also agreed to provide information on OSHA regulations as they relate to artists in order to help refine proposed definitions for artist and artisan studios. She noted her attorneys would look over the proposed zoning text amendments. She suggested that the proposed definition for artist show more congruence with the State law.

Todd Brown, an attorney with Linowes and Blocher, representing Discovery Communications, noted that the zoning text amendments as proposed would not impede Discovery's ongoing renovation and use of the ground floor of the Discovery Creative and Technical Building on Kennett Street (the former Caldor's in Silver Spring) for a video and audio production studio. He suggested that the standing problem of new zoning text amendments inadvertently making existing uses non-conforming might be addressed by limiting the zoning text amendments to arts and entertainment districts. He supported the idea that building codes might better address some of the compatibility and safety issues that the proposed definitions of artist and artisan studio – high and low intensity – tried to address and that some of the high intensity uses should be allowed in the CBD zones. In response to the Chairman's suggestion, he stated that he would be happy to review the zoning text amendments and provide comment.

Gary Stith, the Director of the Silver Spring Regional Center, which applied for the designation of the Silver Spring Arts and Entertainment District and currently manages the district, expressed concern that staff's interpretation was that the Zoning Ordinance needed to be amended to accommodate arts and entertainment land uses in the CBD zones. He felt that artist live/work space was critical to making arts and entertainment districts successful. Thus, he wanted to ensure that artist live/work space be allowed within residential buildings, and not limited to 100% commercial buildings, since he felt

the live/work spaces would be more economical, affordable, and feasible if located in residential settings. He noted that if artist live/work space were added to a 100% commercial building, the building might not be considered 100% commercial anymore, thus precluding anymore artist live/work spaces. He too suggested exploring whether building codes might better address some of the land use compatibility and safety issues that the proposed definitions of artist and artisan studio – high and low intensity – tried to address and that some of the high intensity uses should be allowed in the CBD zones.

### ATTACHMENT 3

#### APPENDIX: GENERAL GOALS FOR PREVIOUSLY AND CURRENTLY PROPOSED ZONING TEXT AMENDMENTS

Generally, staff felt that any proposed strategies, regulations, and zoning text amendments to help implement arts and entertainment districts should be “smart,” i.e. they must be:

- a) **supportive** of the goals of smart growth, the arts and entertainment legislation, and other relevant plans (general plans, sector plans, County cultural plans, housing policies, etc.);
- b) **comprehensive** – building, zoning, land use, fire code, and affordable housing issues all come into play;
- c) **coordinated, streamlined, and non-costly** – applicants cannot be faced with conflicting requirements or those that are too time consuming or expensive;
- d) **explicit and unambiguous**, so that all applicants can understand ahead of time what is required;
- e) **self-implementing** as far as possible, i.e. they must minimize the need for negotiations between applicant and authorities;
- f) **in accord with “best practices,”** both in terms of content and regulatory drafting techniques;
- g) **easily adapted to new districts** as these districts become designated;
- h) **easily adapted to simple or complex pre-existing regulatory environments.** Cultural districts can be found in cities and towns of all sizes, and the larger and older the city, the more likely that the pre-existing regulatory environment is complex;
- i) **flexible** to allow for unanticipated land uses; and
- j) **as permissive as possible**, so that the locational opportunities for arts and entertainment land uses can be expanded.