

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

**MCPB**  
**Item # 5**  
**03/11/04**

**DATE:** March 5, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To permit additional height in the CBD-2 zone under the optional method of development for residential and commercial mixed-use projects located in revitalization areas, as designated in the relevant sector plan, and located within 800 feet of the entrance of a metro station.

**TEXT AMENDMENT:** No. 04-01  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** District Council at the request of the Planning Board  
**INTRODUCED DATE:** February 10, 2004  
**PLANNING BOARD REVIEW:** March 11, 2004  
**PUBLIC HEARING:** March 16, 2004; 1:30 p.m.

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**STAFF RECOMMENDATION:** APPROVAL

**PURPOSE OF THE TEXT AMENDMENT**

To permit additional height in the CBD-2 zone under the optional method of development for residential and commercial mixed-use projects located in revitalization areas, as designated in the relevant sector plan, and located within 800 feet of the entrance of a metro station.

**BACKGROUND**

The proposed zoning text amendment was initiated by staff to address the need for additional height at the Silver Spring Transit Center (zoned CBD-2 and located in the southwest quadrant of the intersection of Georgia Avenue and Wayne Avenue) without the need for an amendment to the CBD Sector Plan. The text amendment will enable

the mixed-use air rights development at the future inter-modal transit station. Potentially, more than 143 feet is needed for the proposed towers. The Zoning Ordinance currently permits a maximum height in the CBD-2 Zone of 143 feet for a normal optional method of development. However, height may be increased to 200 feet at the time of site plan (or combined urban renewal) approval if the additional height is specifically recommended in the applicable sector or urban renewal plan and the Planning Board determines that surrounding properties will not be adversely affected. A number of additional criteria must also be met. The Silver Spring CBD Sector Plan does not specifically address additional height in this location.

On December 18, 2003, the Planning Board unanimously recommended that the proposed text amendment be transmitted to the County Council for introduction. The subject proposal reflects the Planning Board's recommended language as introduced by Council with minor editorial revisions.

## ANALYSIS

The proposed text amendment proposes to amend footnote 11 associated with height limitations for the optional method of development in the CBD-2 Zone. The proposed language is as follows:

- 11 *Under the optional method of development process, the Planning Board may approve height over 143 feet, but not more than 200 feet. In order to approve height over 143 feet, the Planning Board must find that:*
  - (1) *The additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan; or the property is within a revitalization area designated in the applicable sector plan and is located fully or partially within 800 feet of an entrance to a metro station.*
  - (2) *The additional height is consistent with the criteria and guidelines for the property as contained in the applicable sector plan or an urban renewal plan approved by the County Council under Chapter 56, or in the case of a site outside an urban renewal area, accomplishing the objectives of incorporating residential development with [limited] commercial development in a mixed use project in close proximity to of a metro station otherwise unobtainable due to site conditions, proximity of adjacent non-residential buildings, or other physical constraints which prevent the achievement of sector plan objectives;*
  - (3) *The proposed development is compatible with the surrounding development, considering but not limited to the relationship of the building or buildings to the surrounding uses, the need to preserve light and air for the residents of the development and residents of*

*surrounding properties, and any other factors relevant to the height of the building; and*

- (4) *The proposed development will provide additional public facilities and amenities beyond what could otherwise have been provided if the excess height were not approved. Such facilities must be accessible to and usable by the public in accordance with the applicable sector or master plan or urban renewal plan.*

The proposed ZTA would permit building height over the normal maximum for optional method projects in the CBD-2 Zone in revitalization areas without the requirement that the additional height be recommended for a property in the relevant master plan. Additionally, only CBD-2 properties located within 800' of a Metro station entrance would be eligible for the additional height. The Planning Board would still need to make specific compatibility findings in order to approve height in excess of the normal 143' height limit for optional method projects in the CBD-2 Zone.

### **Policy Basis**

The Zoning Text Amendment seeks to encourage Transit Oriented Development (TOD) in revitalizing Central Business Districts (CBDs). It ensures compatibility with surrounding uses by requiring that the Planning Board make certain findings before approving for more than the normal building height.

### **Master Plan Guidance**

The *February 2000 Approved and Adopted Silver Spring CBD Sector Plan* specifically calls for a transit oriented downtown that focuses the highest densities around the Metro station. The projects that benefit from the proposed ZTA will provide the mixed-use development envisioned by the Sector Plan in the CBD core and the adjoining Ripley District.

### **CBD Zone**

The Zoning Ordinance separates the CBD zone into six categories with the intent of each zones described as follows:

- (a) *CBD-0.5 is intended to provide for a decrease in the density of development at the perimeter of the Central Business District.*
- (b) *CBD-R1 is intended for use in Central Business District where predominantly residential development is appropriate and compatible with adjacent existing and planned uses.*
- (c) *CBD-R2 is intended for use in areas of a central business district designated to accommodate high density residential development.*
- (d) *CBD-1 is intended for use in areas where higher densities are not appropriate.*

- (e) **CBD-2** is intended for land lying generally between the core area and the areas of the lowest density within the central business district.
- (f) **CBD-3** is intended for the core areas of central business districts.
- (g) In addition, **CBD-1** and **CBD-2** are intended to be used as the zone of highest density in those central business districts where higher densities are not appropriate.

In accordance with Section 59-C-6.213, additional intent of certain zones include the following:

- (a) In the **CBD-0.5**, **CBD-R1**, and **CBD-1** zones it is further the intent:
  - (1) To foster and promote the orderly development of the fringes of the Central Business Districts of the county so that these areas will provide land uses at a density and intensity which will encourage small business enterprises and diverse living accommodations, while complementing the uses in the interior portions of these districts; and
  - (2) To provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts.
- (b) In the **CBD-R1**, **CBD-R2**, **CBD-2** and **CBD-3** zones it is further the intent to foster and promote the orderly development of the Central Business Districts of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment.
- (c) In the **CBD-2** zone it is further the purpose:
  - (1) To provide a density and intensity of development which will permit an appropriate transition from the cores of central business districts to the less dense peripheral areas within and adjacent to the districts; and
  - (2) To provide an incentive for the development of residential uses to meet the needs of those employed within the central business districts and those who will be able to use the district transit facilities to travel to and from places of employment.

Staff believes that the proposed changes to the **CBD-2** zone are consistent with the aforementioned intent of these areas. The proposed language would allow for the orderly development of revitalization areas in the Central Business Districts of the County so that these areas can enhance the economic status of the County as well as provide an expanding source of employment and living opportunities for its citizens in a desirable urban environment.

## Impacts of the Proposed ZTA

### a. Silver Spring CBD

At this time, only the Silver Spring CBD has designated revitalization areas. The Core and Ripley both include properties within 800' of the metro.

#### 1. Core

The proposed ZTA will enable the mixed-use project over the future Transit Center to proceed through the approval process. The Sector Plan approved in 2000 did not recommend additional height for the Transit Center site because WMATA had no plans for a joint development.

#### 2. Ripley District

The Sector Plan restricts building heights along Ripley Street and Dixon Avenue in the Ripley District in order to ensure attractive streets with adequate natural light and air. Although the proposed ZTA would allow taller buildings than those envisioned in the Sector Plan, the intent of the Sector Plan can still be accomplished and the additional building height can allow the future buildings to be compressed and set back further from the street so that Ripley Street and Dixon Avenue are not perceived as dark canyons.

### b. Wheaton

The Wheaton CBD has a large portion of its area within the CBD-2 Zone. A majority of the CBD-2 property is also in a retail overlay zone that does not allow optional method development, and the proposed ZTA would not apply to this area. The area outside the overlay zone does not have any projects proposed or anticipated that would exceed six or seven stories. Even the projects that are currently under construction did not avail themselves of the Optional Method of Development. In conclusion, the proposed ZTA is likely to have no practical impact on Wheaton in the foreseeable future.

### c. Bethesda and Friendship Heights CBDs

The proposed text amendment would not apply to the Friendship Heights and Bethesda CBDs. The Friendship Heights CBD does not include any vacant sites in the CBD-2 Zone. The Sector Plan for the Bethesda CBD includes specific guidelines for building height that would not allow the application of this text amendment.

## **RECOMMENDATION**

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The staff recommends approval of the proposed text amendment to permit additional height in the CBD-2 zone under the optional method of development for residential and commercial mixed-use projects within revitalization areas and located within 800 feet of the entrance of a metro station.

Attachment 1 depicts the proposed text amendment as submitted.

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### **Attachments**

1. Proposed Text Amendment 04-01
2. Planning Board letter transmitting the proposed text amendment to County Council for introduction.

ATTACHMENT 1

~~Zoning Text Amendment No: 04-01~~  
Concerning: Additional Height in CBD-2  
Zone  
Draft No. & Date: 1 – 02/03/04  
Introduced: February 10, 2004  
Public Hearing: March 16, 2004  
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: District Council at the request of the Planning Board

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

- permitting additional height in the CBD-2 zone under the optional method of development for residential and commercial mixed use projects in revitalization areas as designated in the relevant sector plan and located within 800 feet of the entrance of a metro station.

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

DIVISION 59-C-6  
Section 59-C-6.23

“CENTRAL BUSINESS DISTRICT ZONES”  
“Development standards”

*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.*

*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-6 is amended as follows:**

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

\* \* \*

**59-C-6.23. Development standards.**

The development standards applicable to the standard and optional methods of development, indicated by the letters "S" and "O" in each of the zones are set forth in this section.<sup>8</sup>

	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>59-C-6.235. Maximum Building Heights (in feet).</b>												
* * *												P
(b) Optional method of development.												
-Normally:		60		60		60		143		143		143
-If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased to:		60 <sup>12</sup>		143		90 <sup>1</sup>		200 <sup>11</sup>		200		200

<sup>8</sup> All provisions of Section 59-C-18.10, entitled the Wheaton Retail Preservation Overlay Zone, shall continue in effect and remain unaltered, except that additional FAR for residential density may be included in a standard method project, provided the restrictions on the utilization of street

1 level space for multi-story buildings constructed or reconstructed after July  
2 16, 1990 are followed.

3 11 Under the optional method of development process, the Planning Board may  
4 approve height over 143 feet, but not more than 200 feet. In order to approve  
5 height over 143 feet, the Planning Board must find that:

6 (1) The additional height is specifically recommended for the property in  
7 the applicable sector plan or urban renewal plan or the property is  
8 within a revitalization area designated in the applicable sector plan  
9 and is located fully or partially within 800 feet of an entrance to a  
10 metro station;

11 (2) The additional height is consistent with the criteria and guidelines for  
12 the property as contained in the applicable sector plan or an urban  
13 renewal plan approved by the County Council under Chapter 56, or in  
14 the case of a site outside an urban renewal area, accomplishing the  
15 objectives of incorporating residential development with [limited]  
16 commercial development in a mixed use project in close proximity to  
17 a metro station otherwise unobtainable due to site conditions,  
18 proximity of adjacent non-residential buildings, or other physical  
19 constraints which prevent the achievement of sector plan objectives;

20 (3) The proposed development is compatible with the surrounding  
21 development, considering but not limited to the relationship of the  
22 building or buildings to the surrounding uses, the need to preserve  
23 light and air for the residents of the development and residents of  
24 surrounding properties, and any other factors relevant to the height of  
25 the building; and  
26

1 (4) The proposed development will provide additional ~~public facilities and~~  
2 amenities beyond what could otherwise have been provided if the excess  
3 height were not approved. Such facilities must be accessible to and  
4 usable by the public in accordance with the applicable sector or master  
5 plan or urban renewal plan.

6  
7 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
8 date of Council adoption.

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10 This is a correct copy of Council action.

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14 \_\_\_\_\_  
15 Mary A. Edgar, CMC  
16 Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board

December 23, 2003

The Honorable Steven A. Silverman, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

Re: Planning Board Recommendation on Transmittal of County Council for Introduction of Zoning Text Amendment to permit addition height in the CBD-2 zone, under the optional method of development, for mixed-use projects which are located (1) in a designated revitalization area and (2) within 800 feet of the entrance of a metro station.

Dear Mr. <sup>Steve</sup> Silverman and Councilmembers:

On December 18, 2003, by a vote of 5-0 the Board recommended that the attached zoning text amendment ("ZTA") be transmitted to the County Council for introduction. The proposed ZTA permits additional height in the CBD-2 zone for a residential or commercial mixed-use project using the optional method of development when the project is located (1) in a revitalization area (as designated in the relevant sector plan) and (2) within 800 feet of the entrance of a metro station.

## Background

### Current Law

The current Zoning Ordinance sets the maximum height of optional method projects in the CBD-2 Zone at 143 feet, but also provides that height may be increased to 200 feet at the time of site plan approval (or combined urban renewal approval) if the additional height is specifically recommended in the applicable sector or urban renewal plan. To exceed 143 feet the Planning Board also must determine that surrounding properties will not be adversely affected.

### Proposed Zoning Change

The proposed ZTA would expand the current availability of a 200-foot height limit to properties which are located (1) in a revitalization area (as designated in the relevant sector plan) and (2) within 800 feet of the entrance of a metro station. The

Planning Board would still need to make specific compatibility finding that surrounding properties will not be adversely affected. However, unlike current law, there would be no requirement that the sector or urban renewal plan specifically recommend the height increase.

Reason for Proposed Zoning Text Change

The proposed ZTA is needed to allow additional height at the Silver Spring Transit Center, located in the southwest quadrant of the intersection of Georgia Avenue and Wayne Avenue. The Transit Center property, zoned CBD-2, is being developed as a mixed-use air rights development at the future inter-modal transit station. The project is a mixed-use development consisting of residential, hotel and retail components, to be built atop an enhanced transit center serving WMATA, Ride-On, and MARC. The project is being designed by a private developer in cooperation with the State of Maryland, Montgomery County and WMATA. More than 143 feet is needed for the proposed towers. However, the Silver Spring CBD Sector Plan approved in 2000 did not specifically recommend additional height in this location. Passage of this ZTA will allow the project to move forward without having to reopen the Silver Spring CBD Sector Plan or the Urban Renewal Plan.

The Board believes it is sound land use policy to permit additional height in revitalization areas that are physically close to a Metro station. Projects of this type serve the County's goals for smart growth, transit-oriented development and revitalization. Such properties should be utilized to realize their full potential. As noted, the Planning Board still would have to make a finding that any height above 143 feet is compatible with surrounding properties.

At the scheduled worksessions, staff will be able to discuss other properties that might make use of the amendment. However, at present the only sector plan-designated revitalization areas in the County are located in the Silver Spring CBD. Accordingly, this ZTA would not have any immediate impact outside the Silver Spring CBD.

We encourage your introduction of the text amendment and will be happy to provide any further information you may require.

Sincerely,



Derick P. Berlage  
Chairman

DB:gr  
Attachments

cc: Planning Board  
Charles Loehr