



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

**MCPB**  
**Item #7**  
**09/20/07**

**DATE:** September 14, 2007  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review  
John Carter, Chief, Community-Based Planning  
Ralph Wilson, Acting Zoning Supervisor *RDW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
Judy Daniel, Team Leader, Community-Based Planning  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To define the term "Arts or entertainment entity"; to revise definitions for the terms "Public use space" and "Public facilities and amenities"; to provide flexibility for certain CBD zoned projects by allowing payment instead of providing on-site public use space or a public facility or amenity requirement

**TEXT AMENDMENT:** No. 07-10  
**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 and Councilmember Floreen  
**INTRODUCED DATE:** July 31, 2007

**PLANNING BOARD REVIEW:** September 20, 2007  
**PUBLIC HEARING:** September 11, 2007; 1:30 p.m., PHED worksession on September 24, 2007

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**STAFF RECOMMENDATION:** APPROVAL with modifications to allow payment instead of providing on-site public use space or a public facility or amenity requirement for certain CBD zoned projects. The modifications include:

- Technical clarifications;
- Removal of the phrasing requiring full funding of all Sector Plan public use space/ public facility or amenity recommendations before consideration of other projects by the Planning Board;
- Allow the Planning Board discretion on choice of off-site public use spaces; and
- Require the calculation formula for determining payment instead of providing public use space on-site, be established as Guidelines approved by the Planning Board as opposed to Regulations approved by the County Council

## **BACKGROUND**

In May the Planning Board forwarded to the County Council a proposed zoning text amendment pertinent to the CBD Zones, related to:

- The ability to allow the provision of required public use space off-site, and the potential for establishing funds for such purposes.
- The definitions for public use space, and public facilities and amenities

At that meeting the Planning Board also asked for further analysis of the proposed Guidelines for calculating any payment instead of providing public use space.

After review by the Zoning Text Amendment Advisors (previously referred to as the Screening Committee) and some modifications by the County Council staff, the ZTA was introduced at the County Council. A public hearing was held on September 11. Given the date of the introduction, it was not possible to schedule a review at the Planning Board before the public hearing. A recommendation today, however, will provide comments from the Planning Board to the Planning Housing and Economic Development (PHED) Committee in advance of their first worksession discussing the ZTA on September 24.

## **ANALYSIS AND RECOMMENDATIONS**

### **ZTA Modifications**

After a review of the ZTA with the Zoning Text Amendment Advisors, the Council staff made a number of technical changes, one confusing change, and one substantial change to the ZTA, before introduction at the Council. The M-NCPPC staff concurs with the technical changes, which are noted on the attached version of the ZTA, but we do not support the confusing change or the substantial change. The staff recommends several additional technical changes.

In the definition of "Public Use Space" the Council staff deleted the phrase (*line 36-37*) that allows public use space to be recommended in an approved urban renewal plan or "otherwise approved by the Planning Board". This modification is confusing, as the ZTA otherwise authorizes the Planning Board to make such decisions.

The staff also recommends allowing the further differentiation between the "public use space" requirement, and the "public amenities and facilities" requirement. This differentiation has caused confusion, and the ZTA was drafted with the intent to clarify that distinction. In the introductory sentence regarding the procedures for the payment process (*line 182*), the staff recommends stating that "any required public use space, or public facilities or amenities" be used. The existing language does not make that differentiation in language or punctuation.

Finally, in the procedures section of the ZTA, the Planning Board version of the ZTA authorizes the Planning Board to choose off-site amenities or public use spaces from those which might be listed in the applicable sector plan or others not listed that the Board found were supportive of the broader goals of the sector plan. During the Zoning Text Amendment Advisors' discussions, concerns were raised that if specific amenities or spaces were recommended in the sector plan, those should have to be used before others not recommended could be selected. The introduced version (*lines 196 and 203*) requires the fulfillment of sector plan recommendations before other projects may be chosen.

The Staff does not agree with these modifications. We believe that while any projects listed in a Sector Plan should be considered first priority, there may be instances in which new opportunities have arisen since adoption of the Sector Plan, which are of greater interest to the community. The listed projects may have become unnecessary due to intervening events in the Sector Plan area. Therefore, the Planning Board should have the discretion to choose alternate proposals.

Recommendation: The staff recommends that the phrasing requiring full funding of all Sector Plan recommendations before consideration of other projects by the Planning Board be removed, that the technical changes noted be supported, and that the procedures allow the Planning Board discretion on choice of off-site public use spaces.

### **Guidelines vs. Regulations for Providing Public Use Space On-site**

The Zoning Text Amendment Advisors also recommended that the calculation formula for determining payment instead of providing public use space on-site, be established as a Regulation approved by the County Council but governed by the Planning Board, rather than Guidelines approved by the Planning Board (*line 188*). The reasoning for this stemmed from the belief that the subject proposal would be a significant delegation of fiscal authority that should be first discussed and approved by the County Council. The Planning Board Legal Staff recommends that this responsibility be maintained by the Planning Board as Guidelines. Staff believes that it is important that the formula be at the discretion of the Planning Board, as the concept may need to be revised from time to time, and adjustments made to ensure a fair contribution that does provide an incentive to developers.

It was also suggested that the terminology be changed to a "Payment Instead of Providing Public Use Space On-Site" (rather than Payment-in-lieu); as this is a term in more common English usage.

Recommendation: The staff supports the use of guidelines that are at the discretion of the Planning Board, supports the change of terminology to "Payment Instead of Providing Public Use Space On-Site" (rather than Payment-in-lieu) and recommends that the Planning Board forward to the County Council, with the zoning text amendment, the proposed *Regulations for Payment Instead of Providing Public Use Space On-Site* (Attachment 3).

## **Contribution Formula for Providing Public Use Space On-site**

In May the staff presented the proposed formulas for calculating the contribution for off-site public use space, and all required improvements, and required public facilities and amenities. The Board asked for additional examples of how the formula would work, and the staff has prepared samples, using recent projects in the Woodmont Triangle, located at Attachment 4. That formula is based on the following assumptions:

- \* Public Use Space - A contribution instead of providing on-site public use space would be based on the per square foot value of the property (*based on the most recent tax assessment*) multiplied by 20 percent of the net site area (*the public use space requirement for the optional method of development*).

This value is used because it is an easily accessible, standard valuation of property value. It is easier to determine, and less subject to interpretation than the market value of the property. And it is better than the purchase price as an indicator of value, as it will reflect recent valuations if a property owner has owned the land for a long time.

- \* Improvements to Public Use Space, Public Facilities and Amenities – All required Public Use Space is required to be improved with facilities or amenities. To calculate a cost for these improvements – as well as the separate public facilities and amenities requirement, a multiplier based on the amount of total density that will be achieved above the standard method is used, and calculated based on an average cost per square foot of streetscaping for the area.

This calculation is used because the streetscaping costs are fairly well established numbers, and the amount of contribution for the public improvements should be related to the added density bonus gained by the developer.

These two calculations will be totaled to establish the required contribution. Although this may be a substantial cost, the use of a payment instead of providing on-site public use space and required improvements, allows development on a larger portion of the site at ground level, a benefit to the developer. The use of the tax assessed price rather than an estimate of market value is a further advantage for the developer, as that price is likely to be substantially lower than market value.

Recommendation: Pending approval of the ZTA 07-10, the Planning Board should adopt the draft formulas for enacting the ZTA provisions.

## **Use of Funds Contributed Instead of On-Site Provision of Public Use Space**

Concerns were expressed at the County Council's Public Hearing regarding how the contributed funds would be used. The ZTA in the procedures section (beginning on line

179), establishes explicit rules for how these funds may be used, reflecting such concerns. In summary, any payment accepted:

- \* If for public use space, must secure an equivalent amount (in size) of improved public use space (line 184,185) at the off-site location.

- \*If for public amenities and facilities, must be sufficient to construct an equal amount (line 186-188) at the off-site location.

- \* Must be used to repay the Advanced Land Acquisition Fund for land purchased for use for a park (in the applicable Sector Plan area), to fund a new capital improvement project, or to fund expansion or completion of an existing capital improvement project.

The intent of this requirement is to ensure that funds must be directed to a specific project – and cannot be a “blind” contribution, to be determined at a future time. One of the most complex parts of implementing this ZTA will be to find the specific use for any off-site contributions. The language is also intended to clarify that funds cannot be used for “programming” space, or to allow “public” space that is owned or controlled privately. It is envisioned that the funds will be primarily used to acquire and improve parkland or other publicly controlled facilities; and that such spaces or facilities will be fully funded by private funds (lines 216-219).

Since some development will not generate sufficient funds to fully fund projects, it is envisioned that if a larger project or acquisition is begun, the M-NCPPC or the County could use those funds, complete that project; and use future contributions to repay the M-NCPPC or the County for the residual cost of the project.

Recommendation: Support the ZTA language, as introduced, pertaining to how the contributed funds would be used. The existing language allows a flexible approach that requires a fair alternative to on-site public use space, and discretion in the type and size of projects that can be used. It does not allow blind “contributions” without a specific use for the funds.

### **Silver Spring Concerns**

As noted in previous presentations to the Planning Board, some residents of Silver Spring share the desire for mechanisms to obtain more meaningful, larger open space and parks in their urban area. But testimony at the Council’s Public Hearing indicated that they do not believe that the ZTA as crafted will provide sufficient incentive for developers in downtown Silver Spring to consolidate their amenity requirements off-site via the proposed amenity Fund. They suggested that the ZTA grant a density bonus for contributing to the Amenity Fund instead of providing on-site Public Use Space.

Recommendation: The Optional Method of Development and the MPDU density bonus already provide a density bonus. The ability to build on the portion of the property that would otherwise need to be devoted to public use space provides another incentive.

These incentives are sufficient to provide the level of density that will achieve the vision of the Sector Plans, including Silver Spring. It would not be rational to provide even more density without also allowing taller buildings, and that would undermine the overall intent of the Sector Plans.

The Staff believes that the ZTA already provides sufficient incentives in that developers who choose to use the off-site public use space provision will find it easier to maximize their density, since they will not have to reserve 20 percent of their lot area.

## **CONCLUSION**

The staff recommends support of the proposed Zoning Text Amendment with the noted modifications regarding the ability of the Planning Board to choose amenities or public spaces not listed in a Sector Plan, after those are fulfilled. The staff has also recommended a number of clarifying technical modifications. Attachment 1 depicts these changes.

The staff recommends forwarding the proposed formulas for calculating an off-site public use space and public amenities and facilities to the Council. Several members of the Council made it clear that their support of this ZTA is dependent on whether they are comfortable with the proposed formula for calculating the contribution. The staff emphasizes the importance of this formula being at the discretion of the Planning Board, as the concept may need to be revised from time to time, and adjustments made to ensure a fair contribution that does provide an incentive to developers. That will be easier if at the discretion of the Planning Board.

### **Attachments:**

1. Zoning Text Amendment 07-10 (as modified by staff)
2. Staff Report, May 10, 2007
3. Proposed Formulas - Off-Site Public Use Space, Public Amenities and Facilities
4. Alternate Examples – Off-Site Public Use Space Results

## ATTACHMENT 1

Zoning Text Amendment No: 07-10  
Concerning: CBD Zone Revisions  
Draft No. & Date: 3 - 7/24/2007  
Introduced: July 31, 2007  
Public Hearing: 9/11/07; 1:30 p.m.  
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: District Council at the request of the Planning Board and Councilmember Floreen

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

- define the term "Arts or entertainment entity";
- revise definitions for the terms "Public use space" and "Public facilities and amenities";
- provide flexibility for certain CBD zoned projects to satisfy a public use space, public facility, or amenity requirement;
- revise provisions for a transfer of public use space in certain overlay zones;
- establish standards and procedures for an optional method project to make a payment instead of providing any public use space, public facility, or amenity on-site;
- revise requirements and standards for approval of a project plan; and
- generally amend the CBD zones.

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-C-6	"CENTRAL BUSINESS DISTRICT ZONES"
Section 59-C-6.215	"Methods of development and approval procedures"
Section 59-C-6.233	"Minimum Public Use Space (percent of net lot area)"
Section 59-C-6.234	"Maximum Density of Development"
DIVISION 59-C-18	"OVERLAY ZONES"
Section 59-C-18.19	"Fenton Village Overlay Zone"
Section 59-18.20	"Ripley/South Silver Spring Overlay Zone"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 59-D-2.11	"Project plan required"
Section 59-D-2.12	"Contents of Project Plan"

Add the following new section:

<u>Section 59-D-2.3.1</u>	<u>“Procedure – Payment instead of providing public use space, public facilities, or amenities on-site”</u>
Section 59-D-2.42	“Findings required for approval”
Section 59-D-2.43	“Basis for consideration”

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

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

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

\* \* \*

**Arts or entertainment entity.** A publicly or privately owned and operated entity located in a state approved Arts and Entertainment District under Article 83A, Section 4-701 of the Annotated Code of Maryland, and dedicated to one of the following visual or performing arts:

(1) Live performance of music, theater, or dance; or

(2) The production of art, fine crafts, digital imagery, or film.

\* \* \*

**Public facilities and amenities:** Those facilities and amenities of a type and scale necessary to provide an appropriate environment or to satisfy public needs resulting from the development of a particular project. Facilities and amenities may include, but are not limited [to,] 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 [street] plantings, special pavers, [furniture,] bus shelters, benches, and decorative lighting;

(c) [Provision of] public space [with commitment] designed for [public] performances, [and] events, vending, [and] or recreation; [and finally,]

(d) new or improved pedestrian walkways, tunnels or bridges;

(e) features that improve pedestrian access to transit stations; and

(f) dedicated [uses] spaces open to the public such as museums, art galleries, cultural arts centers, community rooms, and recreation areas.

[Facilities] Public facilities and amenities may be recommended or identified [on] in an approved and adopted master or sector plan. Public amenities do not include

road improvements or other capital projects that are required to provide adequate facilities to serve the property.

**Public use space:** Space [required by the sector plan and other space such] devoted to [such uses as space for] public enjoyment, [consisting of] such [things] as, but not limited to green areas, gardens, [malls,] plazas, walks, pathways, promenades, arcades, urban parks, town squares, public plazas with elements such as water features, and [; lawns, fountains, decorative plantings,] passive [or] and active recreational areas. [Such] Public use space may also consist of space with improvements [[and/or amenities]] recommended by an approved urban renewal plan or otherwise approved by the Planning Board. [Such] Public use space [shall] must not include parking or maneuvering areas for vehicles. [Area devoted to this purpose shall] Public use space must be easily and readily accessible to the public [without restrictions to particular segments of the public] and be identified by a sign placed in public view. [In areas where] If public pedestrian walkways are [shown on] recommended in an approved and adopted master plan or sector plan, [such area within the percentage] they may be counted as [required for] public use space [as is necessary shall be devoted to the provision of pedestrian walkways or paths for general public use].

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

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

\* \* \*

**59-C-6.215. Methods of development and approval procedures.** Two methods of development are possible in each of these zones.

\* \* \*

**(b) Optional method.** Under the optional method, greater densities may be permitted and there are fewer specific standards, but [certain public facilities

and amenities must be provided by the developer] the developer must provide [[certain]] public facilities and amenities[[. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of]] necessary to comply with the master plan or sector plan and sufficient to support[[ing]] the greater densities and intensities of development permitted. Where it determines it is in the best interest of the public, [[T]]the Planning Board may, under Division 59-D-2: (1) authorize a payment instead of all or some of the required public facilities or amenities, or any required public use space, or (2) permit any required public use space to be provided off-site on private or public property in the same CBD.

If residential uses are included in a development, Moderately Priced Dwelling Units must be provided in accordance with Chapter 25A and Work Force Housing Units must be provided as required by Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. The procedure for approval of an optional method project is specified in Division 59-D-2, and the procedure for approval of a site plan is specified in Division 59-D-3.

\* \* \*

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

\* \* \*

	CBD-0.5		CBD-R1 <sup>2</sup>		CBD-1		CBD-2		CBD-3		CBD-R2	
	S <sup>[9]</sup>	0	S	0	S <sup>[9]</sup>	0	S <sup>[9]</sup>	0	S <sup>[9]</sup>	0	S	0
* * *												
<b>59-C-6.233.</b> <b>Minimum Public</b> <b>Use Space (percent</b> <b>of net lot area):</b> <sup>[15]</sup>	10	20	10	20 <sup>16</sup>	10	20 <sup>20</sup>	10	20*	10	20	10	20
<b>(a) Standard</b> <b>Method</b> - The [required standard method] public use space requirement may be reduced to accommodate the construction of MPDUs, including any bonus density units, provided on- site to:	5		5		5		5		5		5	
<b>(b) Optional</b> <b>Method</b> – The [required optional method] public use space <u>requirement</u> may be [reduced or eliminated to accommodate the construction of MPDUs, including any bonus density units provided on- site, if an equivalent amount of public use space is provided off-site in the same CBD within a reasonable time] <u>provided in part or</u> <u>entirely off-site in</u> <u>the same CBD if</u> <u>approved under</u> <u>Division 59-D-2.</u>  <u>A payment instead</u> <u>of all or some of the</u> <u>required public use</u> <u>space may be made</u> <u>if approved under</u> <u>Division 59-D-2.</u>												

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	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S <sup>[9]</sup>	O	S	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S	O
<b>59-C-6.234. Maximum Density of Development.</b>												
<b>(a) Standard method of development (see section 59-C-6.21(a))</b>												
(i) For projects that are 100 percent residential (dwelling units per acre) (FAR)	35		43		43		80		120		120	
(ii) For [commercial] <u>non- residential</u> or mixed- use projects: Maximum permitted non-residential, including transient lodging (FAR) <u>limited to:</u>	0.5 <sup>10,</sup> 14		1.0		1.0 <sup>10</sup>		2.0 <sup>10</sup>		3.0 <sup>10</sup>		1.0 <sup>18</sup>	
Total (FAR) <sup>15</sup>	1.0 <sup>9</sup>		1.0		2.0 <sup>9</sup>		3.0 <sup>9</sup>		4.0 <sup>9</sup>		[1] 2.0	
(b) Optional method of development (see section 59-C- 6.215(b): The [Planning Board may permit not more than the following densities, but in no case more than] <u>density allowed must not exceed either the following densities or the density recommended by the applicable master plan or sector plan.</u>												

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	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S <sup>[9]</sup>	O	S	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S	O
[(1)] (i) For projects that are 100 percent [R]residential (dwelling units per acre):		100		125		125		200		200		200
[(2)] (ii) Nonresidential, including transient lodging (FAR):		1.0				2.0 <sup>19</sup>		4.0		6.0		
[(3)] (iii) Mixed-use [residential and nonresidential.]												
- [ Nonresidential, including transient lodging limited to (FAR)] <u>Maximum permitted non-residential, including transient lodging (FAR) limited to:</u>		1.0 <sup>4</sup>		0.6 <sup>7</sup> , 17		2.0 <sup>4</sup>		3.0 <sup>5</sup>		5.0 <sup>6</sup>		1.0 <sup>3,1</sup> 8
-Total FAR <sup>13, 15</sup>		1.5		3.0		3.0		5.0		8.0		5.0 <sup>3</sup>
* * *												

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83 \* \* \*

84 9. Additional density for housing purposes may be permitted so long as the degree of  
85 nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public  
86 open space (59-C-6.233) requirements are not increased. The maximum density [cannot]  
87 must not exceed the density provisions for mixed-use projects in section (59-C-  
88 6.234)(a)(ii).

89 \* \* \*

90 15. The total FAR for mixed-use development may [may] be exceeded under the special  
91 regulations of Sec. 59-C-6.2354.

92 \* \* \*

93 \* The optional method public use space requirement [[is]] may be satisfied if the applicant  
94 conveys to the County an appropriate amount of land or building space for use by an arts

or entertainment entity that contributes to the revitalization of a Central Business District.  
The gross floor area provided for the arts or entertainment entity may be excluded from  
the gross floor area of the optional method project for the purpose of calculating density.

\* \* \*

**Sec. 3. Division 59-C-18 is amended as follows:**

**DIVISION 59-C-18. OVERLAY ZONES.**

\* \* \*

**59-C18.19. Fenton Village Overlay Zone.**

\* \* \*

**59-C-18.192. Regulations.**

\* \* \*

[(3) Allow the transfer of public use space to other properties within this  
overlay zone. The transfer of public use space must be shown on an  
approved project plan or site plan for both the property transferring the  
public use space and the property receiving the public use space in  
accordance with Division 59-D-2 and 59-D-3. The public use space may be  
transferred in accordance with an agreement as approved by the  
Montgomery County Planning Board.]

[(4)] (3) \* \* \*

[(5)] (4) \* \* \*

\* \* \*

**59-C18.20. Ripley/South Silver Spring Overlay Zone.**

\* \* \*

**59-C-18.202. Regulations.**

\* \* \*

[(3) The transfer of public use space to other properties within the overlay  
zone is allowed and must be shown on an approved project plan or site plan  
for both the property transferring the public use space and the property  
receiving the public use space in accordance with Division 59-D-2 and 59-

D-3. The public use space may be transferred in accordance with an agreement as approved by the Montgomery County Planning Board.]

[(4)] (3) \* \* \*

[(5)] (4) \* \* \*

**Sec. 5. Division 59-D-2 is amended as follows:**

**Division 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT IN [,] CBD [ZONES], TOMX, AND RMX ZONES.**

\* \* \*

**59-D-2.11. Project plan required.**

[In order to] To ensure that the development will include the public facilities, amenities and other design features[,], that will create an environment capable of supporting the greater densities and intensities permitted by the optional method of development [,]; the developer [is required to] must submit a project plan as a part of the application for the use of the optional method. [, and] In addition the Planning Board must approve, a site plan [must be approved in accordance with the requirements of division] under Division 59-D-3 [prior to] before [the issuance of] any building permit is issued. The project plan must clearly indicate how it will satisfy [shall be such as would result in] the [stated] purposes and standards of the zone [applied for] . [, and the] The fact that a project complies with all of the stated general regulations, development standards or other specific requirements of the zone [[is]] does [shall] not [, by itself, be deemed to] [[sufficient to]] create a presumption that the proposed development would be desirable, and is [shall] not [be] sufficient to require the approval of the project plan or [the granting of the] application.

**59-D-2.12. Contents of project plan.** The project plan must clearly indicate how the proposed development meets the standards and purposes of the applicable



zone. It must include the following, in addition to any other information [which] the applicant considers necessary to support the application:

\* \* \*

(e) A detailed statement describing [the manner in which] how the development would conform to the [approved and adopted] master plan or sector plan and the purposes of the applicable zone.

(f) A statement and analysis demonstrating [the manner in which] how the development would result in a more efficient and desirable development than could be accomplished [by the use of] under the standard method of development.

(g) A development program [stating] specifying the sequence in which all structures, public open spaces and amenity spaces, vehicular and pedestrian circulation systems, and community recreational facilities [are to] may be developed, and where they must be located.

\* \* \*

(j) A detailed statement describing the intended use of any payment proposed to be made instead of providing any public use space, public facility, or amenity on-site. The statement must describe how the payment is consistent with the objectives of the applicable master plan or sector plan and why the proposed payment [is more efficient and desirable] will be of greater public benefit than providing the public use space, public facility, or amenity on-site.

(k) Any proposal to locate public use space off-site must identify the proposed off-site location and phasing. The off-site location of the public use space must be approved under an agreement approved by the Planning Board. A phasing plan for implementation of the off-site public use space must be submitted and approved by the Planning Board.

\* \* \*

**59-D-2.3. Same—Procedure.**

\* \* \*

**59- D- 2.3.1 Procedure – Payment instead of providing public use space, or public facilities and amenities on-site.**

The Planning Board may approve a payment instead of any required public use space, or public facilities[[,]] or amenities on-site if the payment complies with the following conditions:

(a) Any payment accepted for public use space must be sufficient to secure an equivalent amount of improved public use space off-site. The amount of any payment accepted for public facilities and amenities must be not less than the cost of constructing an equal amount of the public facilities and amenities on-site. The Planning Board must adopt guidelines [[issue regulations]] to implement this section.

(b) [[Any]] The full payment must be submitted to the Planning Board within 30 days after any building permit for the applicable development is issued.

(c) Any funds received instead of on-site public use space must be used to implement:

(1) any public use space and improvement to that space identified in the applicable master plan or sector plan, or if such public use spaces are [[fully funded or]] not identified then;

(2) other space and improvements to that space that the Planning Board finds to be consistent with to the goals of the applicable master plan or sector plan.

(d) Any funds received instead of on-site facilities and amenities must be used to implement:

(1) any public facilities and amenities identified in the applicable master plan or sector plan, or if such facilities are [[fully funded or]] not identified then;

(2) other space or improvement that the Planning Board finds consistent with the goals of the applicable master plan or sector plan.

(e) Any funds received under this Section may be used by the Planning Board to:

(1) repay the Advanced Land Acquisition Fund for buying land used for a park;

(2) fund a new capital improvement project; or

(3) fund an expansion or completion of an existing capital improvement project.

(f) If a specific improvement is funded by a payment under this Section, but is not fully funded by the initial payment, any future payments made by any development in the same master or sector plan area must be allocated to fund that improvement until the improvement is fully funded.

\* \* \*

**59-D-2.42. Findings required for approval.**

[The fact that] [[Although an application [complies] may comply]] Compliance with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board [can] may approve, or approve subject to modifications, an application only if it finds that [the proposed development meets all of the following requirements]:

\* \* \*

(b) [It] The application would [conform to] be consistent with the applicable sector plan or urban renewal plan.

\* \* \*

(c) Because of its location, size, intensity, design, operational characteristics and staging, [it] the application would be compatible with, and not detrimental to, existing or potential development in the general neighborhood.

(d) [It] The application would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located [within] in a transportation management district designated under [chapter] Chapter 42A[, article II], is subject to a traffic mitigation agreement that meets all the applicable requirements [of that article].

(e) [It] The application would be more efficient and desirable than could be accomplished by the use of the standard method of development.

(f) [It] The application would include moderately priced dwelling units in accordance with [chapter] Chapter 25A [of this Code], if the requirements of that chapter apply.

(g) When a project plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and [is shown to] would transfer public open space or development density from one lot to another, or transfer densities within a lot with two or more CBD zones, [pursuant] under [to the special standards of either section] Section 59-C-6.2351 or 59-C-6.2352 [(whichever is applicable),] the Planning Board may approve the project plan [may be approved by the planning board based on the following findings] only if:

\* \* \*

(3) The project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable sector

plan and the zone, than what [to that which] could [otherwise] be achieved without the proposed transfers.

\* \* \*

(j) [[When t]]The Planning Board may allow[[s any]] public use space, or public facilities and amenities to be provided off-site only if it finds[[, the Planning Board must find that the space or]] that the improvement :

(1) is consistent with the goals of the applicable master or sector plan; and

(2) serves the public interest better than providing the public use space or public facilities and amenities on-site.

#### **59-D-2.43 Basis for consideration.**

In reaching its determination on an application for the optional method of development [an] and in making the required findings, the [planning board] Planning Board must consider [the following]:

\* \* \*

(b) Whether the open spaces proposed, including developed open space, are sized and located to provide [of such size and location as to serve as] convenient areas for recreation, relaxation and social activities for the residents and patrons of the development. Open spaces should be [and are so] planned, designed, and situated [as] to [function as necessary] provide sufficient physical and aesthetic open areas among and between individual structures and groups of structures [, and whether]. The proposed [the] setbacks, yards, and related walkways must be wide enough and [are so] located [and of sufficient dimensions] to provide [for] adequate light, air, pedestrian circulation and necessary vehicular access.

(c) Whether the vehicular circulation system, including access and off-street parking and loading, is [so] designed to provide an efficient, safe and convenient transportation system.

(d) Whether the proposed development contributes to the overall pedestrian circulation system. Pedestrian walkways must :

(1) be [is so] located, designed and sized [of sufficient size as] to conveniently handle pedestrian traffic efficiently and without congestion;

(2) [the extent to which the pedestrian circulation system is] be separated from vehicular roadways and designed to be [so as to be] safe, pleasing, and efficient for movement of pedestrians; and

(3) contribute to a network of [whether the pedestrian circulation system provides] efficient, convenient, and adequate pedestrian linkages in the area of the development, including linkages among residential areas, open spaces, recreational areas, commercial and employment areas, and public facilities.

\* \* \*

(j) Payment of a fee acceptable to the Planning Board may satisfy all or some of the requirements for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.

**Sec. 4. Effective date.** This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



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

May 1, 2007

**MCPB**  
**Item 10**  
**05/10/07**

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief, Development Review Division *RK*  
John Carter, Chief, Community-Based Planning Division *JC*

**FROM:** Ralph D. Wilson, Acting Zoning Supervisor *RDW*  
Judy Daniel, Community-Based Planning Division *JD*

**Subject:** Zoning Text Amendment Revising Elements of the CBD Zones

**Staff Recommendation:** Forward Zoning Text Amendment (ZTA) to the County Council for introduction. Proposed revisions include:

1. Definitions – Adds a definition for “Arts or entertainment use” and expands definitions for Public use space, and public facilities and amenities;
2. Public Use Space Options – Provides options to construct public use space off-site on public or private land, allows a payment in-lieu-of providing public use space on-site, and allows dedications of land for an arts and entertainment use to satisfy public use space and amenity requirements; and
3. Retail in the CBD Zones – Eliminates the option of calculating density in units per acre which does not allow retail to be included.  
(A section-by-section summary of each of the proposed revisions is attached).

Staff also recommends guidelines for calculating payments in-lieu-of providing required public use space, and public facilities and amenities on-site. The guidelines will be forwarded to the Council along with the ZTA.

### Discussion

The Central Business Districts (CBDs) are undergoing an important transformation. There has been a dramatic surge in growth and development in the CBDs. Given projected rates of growth and trends toward greater urbanization, it is increasingly important that future growth and development be managed effectively. Although the CBD zones have been important tools in achieving high quality development, for the

CBD zones have been important tools in achieving high quality development, for the CBDs to sustain themselves, more flexible growth management tools are needed (see attached staff report dated January 4, 2007).

At the January 11, 2007 Planning Board meeting, several revisions to the CBD zone regulations were suggested and discussed. The Planning Board directed staff to come back with draft zoning legislation in support of the ideas presented. The required changes led to an extended period for preparation of the zoning legislation.

This zoning legislation represents a comprehensive revision to many sections of the CBD zones and changes to certain project plan requirements. The recommended revisions are mainly directed toward: (1) encouraging the development of performing arts and cultural activities; (2) providing alternatives for optional method projects to satisfy public use space and amenity requirements; and (3) creating incentives for retail development in residential projects. Clarifying and plain language changes are proposed throughout. Guidelines are also proposed for administering the proposed amenity fund.

## **Summary of Revisions**

### **1. Definitions**

*Arts and Entertainment Use.* This is a new definition to conform the Zoning Ordinance to Article 83A, Section 4-701(a) of the Annotated Code of Maryland. Uses that enhance arts and culture in a designated Arts and Entertainment District are identified. This new definition supports development of the arts and entertainment use now underway in the Silver Spring CBD and future arts and entertainment projects where they are needed.

*Public Facilities and Amenities.* Clarifies the existing public facility and amenity definition, and expands public facility and amenity improvements to include pedestrian walkways, tunnels, and bridges, improved pedestrian access to transit stations, and environmental improvements such as green roofs. Under the revised definition, public amenities do not include road improvements or other capital projects required to provide facilities to serve the property.

*Public Use Space.* Public use space awareness is improved by addition of a requirement for a sign placed in public view. The Planning Board under the optional method process would determine the location and size of the sign.

### **2. Public Use Space Options**

The proposed Zoning Text Amendment allows three alternatives to providing public use space, and facilities and amenities on-site:

*Amenity Fund.* The amenity fund would allow a payment in-lieu-of providing any public use space or amenity requirement on-site. Any payment accepted must



be used toward securing an equivalent amount of improved public space or amenity off-site. The funds contributed may be used to repay other funds used to purchase the off-site public use space or amenity; fund a new capital improvement project, or fund completion of an existing capital improvement project. Recommended guidelines for determining fund payments are attached.

*Off-site development.* Under existing regulations public use space is permitted to be provided off-site only to accommodate the construction of MPDUs, including any density bonus. Additional flexibility for locating public use space off-site provides the opportunity for larger and more useful public improvements to be established on existing public land or on a private site. The public use space transfer provisions of the Fenton Village and the Ripley/South Silver Spring Overlay Zones are broadened to permit the off-site transfer of any public use space or amenity space requirement to other properties in the Silver Spring CBD.

*Arts and Entertainment Uses.* Under this option, the optional method public use space requirement may be satisfied by donating land or building space to accommodate an arts and entertainment use that contributes to the revitalization of a Central Business District that is also a designated Arts and Entertainment District under Article 83A of the Annotated Code of Maryland. The gross floor area of the arts and entertainment use may be excluded from the gross floor area of the project.

### 3. Retail in the CBD Zones: Standards for Residential Development

*Residential Density.* The dwelling unit per acre formula for measuring density in residential projects is revised to allow retail in residential projects. For existing projects based on a calculation of units per acre, retail and office space is not permitted. Recent projects with larger residential units calculated in terms of units per acre exceed the density of projects calculated in terms of FAR. Eliminating the possibility of calculating density based on dwelling units per acre creates an incentive for retail to be included as part of a residential project. Staff of the Silver Spring Government Center requested this revision.

#### This packets includes:

#### Page No.

- |   |      |
|---|------|
| 1. Proposed Zoning Text Amendment                                       | © 1  |
| 2. Guidelines for calculating public improvements costs                 | © 17 |
| 3. Summary: Calculation for Public Improvements                         | © 20 |
| 4. Section-by-Section Summary of CBD Zone Revisions; and                | © 21 |
| 5. January 4, 2007 Staff Report: Shaping our Central Business Districts | © 23 |

Zoning Text Amendment No: 07-  
Concerning: CBD Zone Revisions  
Draft No. & Date: 5/1/2007  
Introduced:  
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**

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By: District Council at the request of the Planning Board

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

- add definition for the term "Arts or entertainment use";
- revise definitions for the terms "Public use space" and "Public facilities and amenities";
- provide flexibility for certain CBD zoned projects to satisfy a public use space, public facility, or amenity requirement;
- establish an FAR density standard for residential projects in the CBD zones;
- revise provisions for a transfer of public use space in certain overlay zones;
- establish standards and procedures for an optional method project to make a payment-in-lieu of providing any public use space, public facility, or amenity on-site;
- revise requirements and standards for approval of a project plan; and
- make clarifying and general amendments throughout.

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-C-6	"CENTRAL BUSINESS DISTRICT ZONES"
Section 59-C-6.215	"Methods of development and approval procedures"
Section 59-C-6.233	"Minimum Public Use Space (percent of net lot area)"
Section 59-C-6.234	"Maximum Density of Development"
DIVISION 59-C-18	"OVERLAY ZONES"
Section 59-C-18.19	"Fenton Village Overlay Zone"
Section 59-18.20	"Ripley/South Silver Spring Overlay Zone"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 59-D-2.11	"Project plan required"

Section 59-D-2.12 “Contents of Project Plan”

Add the following new section:

Section 59-D-2.3.1 “Procedure – Payment-in-lieu of providing public use space, public facility, or amenity on-site”

Section 59-D-2.42 “Findings required for approval”

Section 59-D-2.43 “Basis for consideration”

**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-A-2 is amended as follows:

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

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

\* \* \*

**Arts or entertainment use.** A publicly or privately owned and operated Entertainment Enterprise, as defined under Article 83A, Section 4-701(a) of the Annotated Code of Maryland, that is located in a designated Arts and Entertainment District, and that falls into one of the following categories:

- (1) Live performance of a musical work or composition;
- (2) Live performance of a play;
- (3) Live performance of a dance, including ballet;
- (4) Creation of a film or production; or
- (5) Creation of a painting or other picture, or sculpture, photography, or traditional or fine crafts.

\* \* \*

**Public facilities and amenities:** Those facilities and amenities of a type and scale necessary to provide an appropriate environment or to satisfy public needs resulting from the development of a particular project. Facilities and amenities may include, but are not limited [to,] 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 [street] tree plantings, special pavers, [furniture,] bus shelters, benches, and decorative lighting;
- (c) [Provision of] Public space [with commitment] designed for [public] performances, [and] events, vending, [and] or recreation; [and finally,]
- (d) Construction or enhancement of pedestrian walkways, tunnels or bridges;
- (e) Features that improve pedestrian access to transit stations;

(f) Dedicated uses open to the public such as museums, art galleries, cultural arts centers, community rooms, and recreation areas; and

(g) Landscaped areas, including environmental amenities, such as green roofs that provide a more attractive urban vista for residents or employees.

[Facilities] Public facilities and amenities may be recommended or identified [on] in an approved and adopted master or sector plan, or otherwise approved by the Planning Board. Public amenities do not include road improvements or other capital projects that are required to provide adequate facilities basis to serve the property.

**Public use space:** Space [required by the sector plan and other space such] devoted to [such uses as space for] public enjoyment, [consisting of] such [things] as, but not limited to green areas, gardens, [malls,] plazas, walks, pathways, promenades, arcades, urban parks, town squares, public plazas with elements such as water features, and [; lawns, fountains, decorative plantings,] passive [or] and active recreational areas. [Such] Public use space may also consist of space and/or amenities recommended by an approved urban renewal plan, or otherwise approved by the Planning Board. [Such] Public use space [shall] must not include parking or maneuvering areas for vehicles. [Area devoted to this purpose shall] Public use space must be easily and readily accessible to the public [without restrictions to particular segments of the public] and be identified by a sign placed in public view. The Planning Board must determine, under the optional method process, the size, location, and height of the sign. If [In areas where] public pedestrian walkways are [shown on] recommended in an approved and adopted master plan or sector plan, [such area within the percentage] they may be counted as part of the [required for] public use space requirement [as is necessary shall be devoted to the provision of pedestrian walkways or paths for general public use].

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

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

\* \* \*

**59-C-6.215. Methods of development and approval procedures.** Two methods of development are possible in each of these zones.

**(a) Standard method of development.** \* \* \*

\* \* \*

**(b) Optional method.** Under the optional method, greater densities may be permitted and there are fewer specific standards, but [certain public facilities and amenities must be provided by the developer] the developer must provide certain public facilities and amenities. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted. The Planning Board under 59-D-2 may: (1) authorize a payment-in-lieu of all or a portion of any required public facility or amenity, or any required public use space, or (2) permit any required public use space to be provided off-site on private or public property in the same CBD.

If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. The procedure for approval of an optional method project is [specified in] under Division 59-D-2, and the procedure for approval of a site plan is [specified in] under Division 59-D-3.

\* \* \*

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

\* \* \*

	CBD-0.5		CBD-R1 <sup>2</sup>		CBD-1		CBD-2		CBD-3		CBD-R2	
	S <sup>[9]</sup>	0	S	0	S <sup>[9]</sup>	0	S <sup>[9]</sup>	0	S <sup>[9]</sup>	0	S	0
* * *												
<b>59-C-6.233.</b> <b>Minimum Public</b> <b>Use Space (percent</b> <b>of net lot area):</b> <sup>[15]</sup>	10	20	10	20 <sup>16</sup>	10	20 <sup>20</sup>	10	20*	10	20	10	20
<b>(a ) Standard</b> <b>Method</b> - The [required standard method] public use space requirement may be reduced to accommodate the construction of MPDUs, including any bonus density units, provided on- site to:	5		5		5		5		5		5	
<b>(b) Optional</b> <b>Method</b> – The [required optional method] public use space <u>requirement</u> may be [reduced or eliminated to accommodate the construction of MPDUs, including any bonus density units provided on- site, if an equivalent amount of public use space is provided off-site in the same CBD within a reasonable time] <u>provided in part or</u> <u>entirely off-site in</u> <u>the same CBD if</u> <u>approved by the</u> <u>Planning Board</u> <u>under 59-D-2.</u>  <u>A payment in lieu of</u> <u>all or a portion of</u> <u>the required public</u> <u>use space may be</u> <u>made if approved by</u> <u>the Planning Board</u> <u>under 59-D-2.</u>		*		*		*		*		*		*
		*		*		*		*		*		*

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	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S <sup>[9]</sup>	O	S	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S <sup>[9]</sup>	O	S	O
<b>59-C-6.234.</b>												
<b>Maximum Density of Development.</b>												
<b>(a) Standard method of development</b> (see section 59-C-6.21(a))												
(i) For projects that are 100 percent residential [(dwelling units per acre)] (FAR)	[35] <u>0.5</u>		[43] <u>1.0</u>		[43] <u>1.0</u>		[80] <u>2.0</u>		[120] <u>3.0</u>		[120] <u>2.0</u>	
(ii) For [commercial] <u>non-residential</u> or mixed-use projects: Maximum permitted non-residential, including transient lodging (FAR) <u>limited to:</u>	0.5 <sup>10, 14</sup>		<u>1.0</u>		1.0 <sup>10</sup>		2.0 <sup>10</sup>		3.0 <sup>10</sup>		1.0 <sup>18</sup>	
Total (FAR) <sup>15</sup>	<u>1.0</u> <sup>9</sup>		<u>1.0</u>		2.0 <sup>9</sup>		3.0 <sup>9</sup>		4.0 <sup>9</sup>		[1] <u>2.0</u>	
(b) Optional method of development (see section 59-C-6.215(b): The Planning Board may <u>not</u> permit [not] more than the following densities, but in no case more than the density recommended by the sector plan.												
[(1)] (i) For projects that are 100 percent [R]residential [(dwelling units per acre)] (FAR):		[100] <u>1.0</u>	[125] <u>2.0</u>		[125] <u>2.0</u>		[200] <u>4.0</u>		[200] <u>6.0</u>		[200] <u>4.0</u> <sup>3</sup>	
[(2)] (ii)												



Nonresidential, including transient lodging (FAR):		<u>1.0</u>				<u>2.0</u> <sup>19</sup>		<u>4.0</u>		<u>6.0</u>		
[(3)] (iii) Mixed-use [residential and nonresidential.]												
- Nonresidential, including transient lodging <u>limited to</u> (FAR)		<u>1.0</u> <sup>4</sup>		<u>.6</u> <sup>7, 17</sup>		<u>2.0</u> <sup>4</sup>		<u>3.0</u> <sup>5</sup>		<u>5.0</u> <sup>6</sup>		<u>1.0</u> <sup>3,1</sup> <sub>8</sub>
-Total FAR <sup>13, 15</sup>		<u>1.5</u>		<u>3.0</u>		<u>3.0</u>		<u>5.0</u>		<u>8.0</u>		<u>5.0</u> <sup>3</sup>
* * *												

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9. Additional density for housing purposes may be permitted so long as the degree of nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public open space (59-C-6.233) requirements are not increased. The maximum density [cannot] must not exceed the density provisions for mixed-use projects in section (59-C-6.234)(a)(ii).

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15. The total FAR for mixed-use development may [may] be exceeded under the special regulations of Sec. 59-C-6.2354.

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\* \* \*

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- \* The optional method public use space requirement is satisfied by donating an appropriate amount of land or building space to accommodate an arts or entertainment use that contributes to the revitalization of a Central Business District that is also a designated Arts and Entertainment District under Article 83A of the Annotated Code of Maryland. The gross floor area of the arts or entertainment use may be excluded from the gross floor area of the optional method project.

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### Sec. 3. Division 59-C-18 is amended as follows:

102

#### **DIVISION 59-C-18. OVERLAY ZONES.**

103

\* \* \*

104

#### **59-C18.19. Fenton Village Overlay Zone.**

105

\* \* \*

**59-C-18.192. Regulations.**

\* \* \*

[(3) Allow the transfer of public use space to other properties within this overlay zone. The transfer of public use space must be shown on an approved project plan or site plan for both the property transferring the public use space and the property receiving the public use space in accordance with Division 59-D-2 and 59-D-3. The public use space may be transferred in accordance with an agreement as approved by the Montgomery County Planning Board.]

[(4)] (3) \* \* \*

[(5)] (4) \* \* \*

\* \* \*

**59-C18.20. Ripley/South Silver Spring Overlay Zone.**

\* \* \*

**59-C-18.202. Regulations.**

\* \* \*

[(3) The transfer of public use space to other properties within the overlay zone is allowed and must be shown on an approved project plan or site plan for both the property transferring the public use space and the property receiving the public use space in accordance with Division 59-D-2 and 59-D-3. The public use space may be transferred in accordance with an agreement as approved by the Montgomery County Planning Board.]

[(4)] (3) \* \* \*

[(5)] (4) \* \* \*

**Sec. 5. Article 59-D-2 is amended as follows:**

**Division 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES, TOMX, AND RMX ZONES.\***

134 \* \* \*

135 **59-D-2.11. Project plan required.**

136 [In order to] To ensure that the development will include the public facilities,  
 137 amenities and other design features[,] that will create an environment capable of  
 138 supporting the greater densities and intensities permitted by the optional method of  
 139 development [,]; the developer is required to submit a project plan as a part of the  
 140 application for the use of the optional method. [; and] In addition, a site plan must  
 141 be approved in accordance with the requirements of division 59-D-3 [prior to]  
 142 before the issuance of any building permit. The project plan must clearly indicate  
 143 how it will comply with and satisfy [shall be such as would result in] the stated  
 144 purposes of the zone [applied for] . [, and t] The fact that a project complies with  
 145 all of the stated general regulations, development standards or other specific  
 146 requirements of the zone is [shall] not[, by itself, be deemed to] sufficient to create  
 147 a presumption that the proposed development would be desirable; and is [shall] not  
 148 [be] sufficient to require the approval of the project plan or the granting of the  
 149 application.

150 **59-D-2.12. Contents of project plan.** The project plan must clearly indicate how  
 151 the proposed development meets the standards and purposes of the applicable  
 152 zone. It must include the following, in addition to any other information [which]  
 153 the applicant considers necessary to support the application:

154 \* \* \*

- 155 (e) A detailed statement describing [the manner in which] how the development  
 156 would conform to the approved and adopted sector plan and the purposes of  
 157 the applicable zone.
- 158 (f) A statement and analysis demonstrating [the manner in which] how the  
 159 development would result in a more efficient and desirable development  
 160 than could be accomplished [by the use of] under the standard method of  
 161 development.

162 (g) A development program stating the sequence in which all structures, public  
163 open spaces and amenity spaces, vehicular and pedestrian circulation  
164 systems, and community recreational facilities are to be developed, and  
165 where they are to be located.

166 \* \* \*

167 (j) A detailed statement describing the intended use of any payment proposed to  
168 be made in-lieu-of providing any public use space, public facility, or  
169 amenity on-site. The statement must include how the payment is consistent  
170 with, or complementary to, the applicable master plan or sector plan and  
171 how the proposed payment is more efficient and desirable than providing the  
172 public use space, public facility, or amenity on-site. The applicant must also  
173 provide a phasing schedule for completion of the off-site public use space,  
174 facility, or amenity. If an applicant proposes to provide the required public  
175 use space off-site, a phasing plan for implementation of the off-site public  
176 use space must be submitted. The off-site location must satisfy the same  
177 public purpose objectives as if the public use space were provided on-site.

178 (k) Any transfer of public use space must be shown for both the property  
179 transferring the public use space and the property receiving the public use  
180 space . The public use space may be transferred between property owners  
181 only in accordance with an agreement approved by the Planning Board.

182 \* \* \*

183 **59-D-2.3. Same—Procedure.**

184 \* \* \*

185 **59- D- 2.3.1 Procedure – Payment-in-lieu of providing public use space, or**  
186 **public facilities and amenities on-site.**

187 A payment in-lieu-of providing the required public use space on-site, or a public  
188 facility or amenity on-site, may be approved by the Planning Board under the  
189 following procedures:

190 (a) Any funds received must be applied toward the accomplishment of:

191 (1) public facilities and amenities identified in the applicable master plan  
192 or sector plan; or

193 (2) other space or improvement approved by the Planning Board, that the  
194 Planning Board finds complementary to the goals of the applicable  
195 master plan or sector plan.

196 (b) If a specific improvement is approved for an in-lieu-of payment, but not  
197 fully funded by the initial payment, any future development approved for in-  
198 lieu-of payments in the same master or sector plan, must be designated to  
199 fund that improvement until it is fully funded.

200 (c) The amount of any in-lieu-of payment accepted for improved public use  
201 space, or public facilities and amenities must be sufficient to secure an  
202 equivalent amount of improved public use space off-site. The amount of any  
203 in-lieu-of payment accepted must be equivalent to the value of what would  
204 be required if the public use space or facilities and amenities were provided  
205 on-site. The Planning Board must issue guidelines regarding the method for  
206 determining the full amount of the contribution to be made, reflecting that  
207 expectation.

208 (d) Any payment to a Public Use Space Fund, or Public Facilities and Amenities  
209 Fund approved by the Planning Board must be submitted to the Planning  
210 Board within 30 days after issuance of a building permit for the applicable  
211 development.

212 (e) The Planning Board may use the approved funds designated to provide any  
213 off-site public use space or, public facilities and amenities improvement to:

- (1) repay the Advanced Land Acquisition Fund for the purchase of land used for a park;
- (2) fund a new capital improvement project; or
- (3) fund an expansion or completion of an existing capital improvement project.

\* \* \*

**59-D-2.42. Findings required for approval.**

[The fact that] Although an application [complies] may comply with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board can approve, or approve subject to modifications, an application only if it finds [that the proposed development meets all of the following requirements]:

\* \* \*

(b) [It] The application would [conform to] be consistent with the applicable sector plan or urban renewal plan. \* \* \*

\* \* \*

(c) Because of its location, size, intensity, design, operational characteristics and staging, [it] the application would be compatible with, and not detrimental to, existing or potential development in the general neighborhood.

\* \* \*

(e) [It] The application would be more efficient and desirable than could be accomplished by the use of the standard method of development.

\* \* \*

(g) When a project plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another, or transfer densities within a lot with two or more CBD zones, [pursuant]

under [to the special standards of either section] Section 59-C-6.2351 or 59-C-6.2352 [(whichever is applicable),] the project plan may be approved [by the planning board based on the following findings] only if the Planning Board finds that:

\* \* \*

(3) The project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable sector plan and the zone, than what [to that which] could [otherwise] be achieved without the proposed transfers.

\* \* \*

(i) When the Planning Board allows any public use space, or public facilities and amenities to be provided off-site, the Planning Board must find that the space or improvement is:

(1) not inconsistent with any master or sector plan land use or development objective; and

(2) serves the public interest better than providing the public use space, or public facilities and amenities on-site.

#### **59-D-2.43 Basis for consideration.**

In reaching its determination on an application for the optional method of development and in making the required findings, the [planning board] Planning Board must consider the following:

\* \* \*

(b) Whether the open spaces proposed, including developed open space, are sized and located to provide [of such size and location as to serve as] convenient areas for recreation, relaxation and social activities for the residents and patrons of the development. Open spaces should be [and are so] planned, designed, and situated [as] to [function as necessary] provide

sufficient physical and aesthetic open areas among and between individual structures and groups of structures [, and whether]. The proposed [the] setbacks, yards, and related walkways must be wide enough and [are so] located [and of sufficient dimensions] to provide [for] adequate light, air, pedestrian circulation and necessary vehicular access.

(c) Whether the vehicular circulation system, including access and off-street parking and loading, is so designed to provide an efficient, safe and convenient transportation system.

(d) Whether the proposed development contributes to the overall pedestrian circulation system. Pedestrian walkways must meet the following standards:

(1) be [is so] located, designed and sized [of sufficient size as] to conveniently handle pedestrian traffic efficiently and without congestion;

(2) [the extent to which the pedestrian circulation system is] be separated from vehicular roadways and designed to be [so as to be] safe, pleasing, and efficient for movement of pedestrians; and

(3) must contribute to a network of [whether the pedestrian circulation system provides] efficient, convenient, and adequate pedestrian linkages in the area of the development, including linkages among residential areas, open spaces, recreational areas, commercial and employment areas, and public facilities.

\* \* \*

(j) Payment of a fee acceptable to the Planning Board may satisfy all or a portion of the requirement for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.



295                   **Sec. 4. Effective date.** This ordinance takes effect 20 days after the  
296                   date of Council adoption.

297

298   This is a correct copy of Council action.

299

300

301   \_\_\_\_\_

302   Linda M. Lauer, Clerk of the Council

**Recommended Guidelines**  
**Public Use Space and Public Facilities and Amenities**  
(5/1/07)

The following proposed guidelines establish how the Planning Board would implement the recommended changes to the zoning ordinance that allow the public use space requirement, and the public facilities and amenities requirement to be met through contribution to a fund or off-site. The proposed guidelines establish formulas to be used in determining the amount of payment to such a fund, or the amount of, and value of space to be improved off-site. Fund contributions will be used to acquire and improve specific off-site public use spaces, and for providing designated off-site public facilities and amenities.

**Calculating Contributions to Funds for Public Use Space or Public Facilities and Amenities**

The minimum amount to be paid into a Fund will be calculated as follows. Additional contribution will be expected reflecting the amount of additional density achieved over the standard method of development:

1. Public Use Space Fund

Under the optional method of development, the Zoning Ordinance requires a minimum of 20 percent of public use space<sup>1</sup> in the Central Business Districts (CBD) Zones and Transit Oriented Mixed Use (TOMX) Zones.

Under the recommended zoning text amendment, if authorized by the Planning Board a contribution to a Fund may be made as an alternative to providing the required public use space on-site. The contribution will be an amount equivalent to the appraised value of 20 percent of the net lot area of the proposed development (calculated by an independent appraiser), plus the value of improvements to the space. The value of the improvements will equal the value of streetscape improvements the net lot area, times the cost for streetscaping).<sup>2</sup> The formula is:

$$\text{Value of 20 percent of net lot area} + \text{net lot area} \times \text{cost for streetscaping}$$

2. Public Facilities and Amenities Fund

The Zoning Ordinance also requires the provision of certain public facilities and amenities under the optional method of development in the Central Business Districts (CBD) Zones and Transit Oriented Mixed Use (TOMX) Zones. Under the recommended zoning text amendment, the Planning Board may authorize a contribution to a Fund as an alternative to providing the required public facilities or amenities. The minimum contribution to that Fund will be a value equal to the cost of streetscape improvements for the density on the site above the standard method in relation to the size of the property

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<sup>1</sup> Public Use Space is calculated as a minimum of 20 percent of the value of the net lot area of the proposed development, plus improvements on that public use space.

(20 percent of the net lot area in square feet, times the density in FAR above the standard method, times the per square foot cost for streetscaping).<sup>2</sup>

$$\text{Contribution} = \text{net lot area} \times \text{FAR above standard density} \times \text{cost for streetscaping}$$

3. Timeframe for Determining Fund Contribution

The calculation of a contribution to a Public Use Space Fund or a Public Facilities and Amenities Fund will be determined within 30 days before a building permit is requested. The contribution must be made within 30 days after a building permit has been issued for all or the first phase of the development.

**Calculating Off-Site Construction of Public Use Space or Public Facilities and Amenities**

1. Public Use Space

Under the recommended zoning text amendment, the Planning Board may authorize the off-site construction of public use space. The value of any public use space to be constructed off-site will be calculated based on the value of 20 percent of the net lot area (as determined by an independent appraiser), plus the value of improvements to the space. As a minimum standard, the improvements must equal the value of streetscape improvements for the net lot area (net lot area in square feet, times the per square foot cost for streetscaping).

$$\text{Value} = \text{value of net lot area} + \text{net lot area} \times \text{cost for streetscaping}$$

2. Public Amenities and Facilities

The Zoning Ordinance already allows public facilities and amenities to be constructed off-site. These guidelines establish a standard for calculating how they should be valued, based on the amount of density (calculated in FAR) that exceeds the standard method calculated as a percentage of the net lot area. The minimum value for the public facilities and amenities constructed off-site will be a value equal to the cost of streetscape improvements for the density on the site above the standard method in relation to the size of the property (20 percent of the net lot area in square feet, times the density in FAR above the standard method, times the per square foot cost for streetscaping).

$$\text{Value} = \text{net lot area} \times \text{FAR above standard density} \times \text{cost for streetscaping}$$

**Calculating Combined Contribution - Public Use Space and Public Amenities and Facilities**

Under the recommended guidelines, the combined requirement for public use space and public facilities and amenities, will be related to the requested density above the standard method. The requirement for public use space, and public facilities and amenities can be achieved in any combination of on-site or off-site area as approved by the Planning Board.

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<sup>2</sup> Streetscaping is determined on a per square foot basis. The cost of the streetscape improvements will be based on the regularly updated cost of providing and installing streetscape with utilities placed underground, as determined by M-NCPPC staff.

Three examples below based on a standard method 1.0 FAR in the CBD 1.0 Zone illustrate this principle:

1. If the standard method is 1.0 FAR, and the optional method is 2.0 FAR, the amount of density allowed is two times that of the standard method. Thus the full requirement combining public use space (a 20 percent requirement) and public amenities and facilities would be 40 percent of the net lot area ( $20 \text{ percent} \times 2 = 40 \text{ percent}$ ).
2. If the development proposes a 1.5 FAR, the amount of density allowed is  $1\frac{1}{2}$  times the standard method; and the full requirement combining public use space and public amenities and facilities would be 30 percent ( $20 \text{ percent} \times 1.5 = 30 \text{ percent}$ ).
3. If the development proposes a 3.0 FAR, the amount of density allowed is three times the standard method; and the full requirement for public use space and public facilities and amenities would be 60 percent of the net lot area ( $20 \text{ percent} \times 3 = 60 \text{ percent}$ ).

**Summary  
Calculations for Public Improvements**

<b>Calculating Contributions to Fund(s)</b>		
Public Use Space Fund	20% of net lot area + Improvements	Appraised value of net lot area + Cost of streetscape improvements for the net lot area
Public Facility and Amenity Fund	Streetscape for density above standard method	Cost of streetscape improvement for density above standard method (FAR in square feet X the per square foot cost for streetscape)
<b>Calculating Requirement for Construction of Public Improvements Off-Site</b>		
Public Use Space	20% of net lot area + Improvements	20% of value of net lot area + Cost of streetscape improvements for the net lot area
Public Facilities and Amenities	Streetscape for density above standard method	Cost of streetscape improvement for density above standard method (FAR in square feet X the per square foot cost for streetscape)
<b>Calculating Combined Requirement for Construction Public Improvements Off-Site</b>		
Public Use Space	20% of net lot area + Improvements	20% of net lot area in square feet (plus improvements)
		<i>PLUS</i>
Public Facilities and Amenities	Streetscape for density above standard method	Percent of net lot area (in square feet) above standard method

## Section-by-Section Summary of CBD Zone Revisions

Section	Modification	Public Use Space and Public Amenity Fund	Other
<b>DEFINITIONS</b>			
<b>59-A-2.1</b>	<b>Definition of Public Facilities and Amenities</b>	Clarifies and expands the range of allowed public facility and amenity improvements, and allows the Planning Board to define an approved facility or amenity	Clarifies that environmental elements like green roofs can be considered a public amenity
<b>59-A-2.1</b>	<b>Definition of Public Use Space</b>	Allows Planning Board to define a public use space improvement	—
<b>CBD ZONES</b>			
<b>59-C-6.215(b)</b>	<b>Approval Procedures for Optional Method</b>	Authorizes the Planning Board to accept a payment in lieu of any required public use space or public facility or amenity	Allows the Planning Board to accept land or a building space as a means to meet the public use space or public facility/amenity requirement
<b>59-C-6.233(b)</b>	<b>CBD Minimum Public Use Space. Optional Method</b>	Allows Public Use Space to be provided off-site if approved by the Planning Board, and allows a payment in lieu of providing public space on-site	—
<b>59-C-6.234(a)(i)</b>	<b>CBD Maximum Density under the Standard Method</b>	—	Changes Standard Method density calculation from dwelling units per acre to a floor area ratio
<b>59-C-6.234(b)(i)</b>	<b>CBD Maximum Density under the Optional Method</b>	—	Changes Standard Method density calculation from dwelling units per acre to a floor area ratio
<b>59-C-12.238(b)</b>	<b>Special Standards for Optional Method of Development</b>	Allows the Planning Board to authorize transfer of public facilities or amenities off-site.	—

Section	Modification	Public Use Space and Public Amenity Fund ("FUND")
<b>TOMX ZONES</b>		
<b>59-C-13.233</b>	<b>Minimum Public Use Space Requirement for the TOMX Zones</b>	Under provisions in 59-D-2, allows such space to be provided in whole or part off site if approved by the Planning Board.
<b>59-C-13.237(a)</b>	<b>Definition of public use space, amenities, and facilities</b>	Removes much of the definition as it duplicates the language in A-2.1.  Under provisions of 59-D-2, allows a payment in lieu of providing required public use space or public facility/amenity to a "FUND" under optional method when authorized by the Planning Board.
<b>59-C-12.238(b)</b>	<b>Special Standards for Optional Method of Development</b>	Allows the Planning Board to authorize transfer of public facilities or amenities off-site.
<b>PROJECTS PLANS FOR OPTIONAL METHOD OF DEVELOPMENT PROJECTS</b>		
<b>59-D-2.12(g)</b>	<b>Project Plans Content</b>	Adds a requirement that a project plan indicate where proposed public use space or public facilities/ amenities are to be located
<b>59-D-2.12(j)</b>		Adds a requirement for a detailed statement for the intended use of any proposed payment to a "FUND" in lieu of providing public use space, public facility, or amenity.
<b>59-D-2.3.1</b>	<b>Procedures for Providing Payment In Lieu of Public Space On-Site Project Plans to a "FUND"</b>	Adds this section to the Project Plan procedures. Such payment must be authorized by the Planning Board
<b>59-D-2.3.1(a)</b>		"FUND" payments must be applied toward providing items listed in the sector plan or other improvement authorized by the Planning Board
<b>59-D-2.3.1(b)</b>		Establishes rules for use of a payment to a "FUND"
<b>59-D-2.3.1(c)</b>		Establishes rules for determining the amount of payment to a "FUND" required
<b>59-D-2.3.1(d)</b>		Establishes timeframe for submitting an approved payment to a "FUND"
<b>59-D-2.3.1(e)</b>		Establishes limits on the ways a payment to a "FUND" may be used
<b>59-D-2.42(j)</b>	<b>Finding Required for Approval of a Project Plan</b>	Establishes criteria under which the Planning Board can authorize offsite public use space or contribution to a "FUND" in lieu of providing public use space or public facility/amenity.
<b>59-D-2.43(j)</b>	<b>Basis for Consideration of a Project Plan</b>	Allows the Planning Board to allow contribution to a "FUND" in lieu of public use space, public facility or amenity as established in this section.



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
PLANNING AND ZONING COMMISSION

MCPB  
Item #  
1/11/07

January 4, 2007

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**FROM:** John Carter, Chief (301.495.4575) *JC*  
Community-Based Planning Division

Judy Daniel, Team Leader, BCC/North Bethesda (301.495.4559) *JD*  
Community-Based Planning Division

Glenn Kreger, Team Leader, Silver Spring/Takoma Park (301.495.4653) *GK*  
Community-Based Planning Division

**SUBJECT:** Round Table Discussion:  
Shaping Our Central Business Districts  
Potential Changes to the CBD Zones

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**RECOMMENDATION**

The following items have been provided to the Planning Board to foster a round table discussion of improvements to the existing Central Business District Zones and consideration of a response to certain recommendations in the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. For the purpose of discussion, the staff recommends the drafting of Zoning Text Amendments and a revision to the Recreation Guidelines in order to provide new strategies to achieve the following:

1. Exclude performing arts space from density (FAR) calculations under certain circumstances
2. Enable applicants to substitute the use of funds as part of a pool of resources to satisfy all or part of the requirements for public use space and amenities
3. Delete the dwelling unit formula to measure density in the CBD Zones to remove the disincentive for including retail in residential development
4. Require signs identifying the public use spaces and amenities provided by new CBD development to make it clear that these facilities are for general public use
5. Modify the existing Recreation Guidelines to address the needs of the more urban areas in Montgomery County

(23)



## DISCUSSION

The Central Business District (CBD) Zones have been in use for more than 30 years. During this time period, these zones have been instrumental in transforming the central business districts in Montgomery County from service commercial areas to thriving mixed-use central business districts with high quality development. The incentive zoning tool established in the CBD Zones provides an emphasis on the following:

1. Concentrating development with the most density and building height close to the existing Metro stations. Height and density limitations are used to create a compatible, transition to the adjacent residential neighborhoods
2. Encouraging property assemblage and coordinated development
3. Providing street activating uses including retail
4. Providing sufficient flexibility in the allowable mix of uses and the development standards:
  - a. Providing opportunities for a mix of uses including retail, office and housing to respond to the market (i.e. the "lesson" of the 2000 Silver Spring CBD Sector Plan)
  - b. Encouraging adaptive reuse of existing buildings (e.g., Silver Theatre and Shopping Center, Canada Dry Building, Gramax building, Bethesda Cinema and Draft House, and the Bethesda Community Hardware)
5. Establishing a flexible incentive zoning tool to provide needed public amenities and facilities including the following:
  - a. Improving access to the Metro stations including augmented sidewalk paving, street lights, street trees, and street furniture
  - b. Providing public open spaces and small urban spaces
  - c. Providing community facilities for people of all ages including the following:
    - Round House Theater
    - AFI Theater
    - Bethesda Theater Café
  - d. Providing public art as a place making tool

## ISSUES

The CBD Zones have been an important tool in the redevelopment of the central business districts in Montgomery County. After 30 years of public and private development, several improvements have been suggested:

1. Encourage the provision of larger performing arts spaces (such as The Birchmere in Silver Spring)
2. Create incentives for providing larger and more useful public use spaces and amenities by allowing applicants to pool funds for designated uses
3. Increase the opportunities for locating street-activating retail uses in residential projects
4. Improve the public awareness of the required public use space and amenities
5. Create guidelines for urban recreation in central business districts

The following paragraphs provide a more detailed discussion of the above issues.

## PROPOSALS FOR CONSIDERATION

1. Encouraging larger performing arts facilities in the approved Arts and Entertainment Districts
  - a. Proposal: Modify the Zoning Ordinance to allow private performing arts venues (e.g., nightclubs like The Birchmere) to be excluded from allowable FAR up to a maximum of 30,000 square feet or 0.5 FAR, whichever is smaller.
  - b. Discussion: Any modification of the Zoning Ordinance to accommodate large performing arts venues should require:
    - The project must be located within an approved Arts and Entertainment District and make a significant and unique contribution to the District.
    - The proposed project would constitute a regional attraction that would bring customers to the district from outside the planning area.
    - The project must include a public education component and/or space for use by the community, subject to periodic verification.
    - Public ownership of the underlying land should not be sufficient to make the specific use—even a desirable one like The Birchmere—qualify as public use space.
    - This approach should also address the possibility that the venue may someday be converted to a private use.

Note: This item addresses only potential changes to the Zoning Ordinance. The parties seeking to bring The Birchmere to Silver Spring have also proposed a number of other changes that they consider critical to the project. These measures include the provision of longer time periods for vesting (e.g., APFO approval for vesting of an approved project plan.)

2. Create the opportunity for applicants to provide larger and more useful public use spaces and amenities by allowing funds to be pooled.
  - a. Proposal: Establish the opportunity to create an amenity fund in each CBD that would enable developers to pool resources to satisfy the requirements for public use space and amenities under certain circumstances. Participation by developers should be optional. The provision of on-site public use space and public amenities is generally preferable. This concept was included within the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan resolution approved by the County Council.

b. Discussion: The pooled use of funds to satisfy all or part of the requirement for public use space and amenities should include the following:

- Funds must be for a specific, designated facility or land acquisition (e.g., expansion of a park). A list of such facilities was included in the Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD.
- Optional payments in lieu of constructing public use space and public amenities should be based on a set formula that is reviewed periodically.
- The facility or amenity must be within the same CBD as the project(s) generating the requirements. In effect, this would expand the existing provision in the Silver Spring overlay zones which allows the off-site provision of public use space within the same overlay district. (The new MPDU provisions also allow the transfer of public use space within a CBD in order to accommodate MPDUs.)
- Staff should identify properties within each CBD that could be appropriate for off-site public use based on sector plan guidance and demographic trends within each CBD. If specific properties are not targeted, then area requirements should be specified as part of each application.
- Construction of the designated facility or amenity must occur in accordance with an enforceable timetable approved by the Planning Board. A developer should not be able to fulfill this obligation simply by writing a check.
- The County or the M-NCPPC must not be obligated to spend public funds (e.g., for operating costs) without the approval of the County Council.
- Funds that are contributed in lieu of constructing public use space and amenities should not be used to replace normal public funding for public facilities like roads and schools.

A draft Zoning Text Amendment has already been discussed to implement the Council's decision regarding the Woodmont Triangle. If the potential for an amenity fund is created for each CBD, a mechanism must be created to manage and oversee the use of the monies.

3. Increase the opportunities for locating street-activating retail uses in residential projects

- a. Proposal: Modify the Zoning Ordinance to delete the dwelling unit per acre formula for measuring density in residential projects to remove the disincentive for including retail.

- b. Discussion: The Zoning Ordinance presently permits density to be calculated either in terms of floor area ratio (FAR), or in terms of dwelling units per acre. For projects based on a calculation of units per acre, retail and office spaces are not permitted. In addition, recent projects with larger residential units calculated in terms of units per acre exceed the density of projects calculated in terms of FAR. The Silver Spring community is concerned that this provision creates a disincentive to including retail in residential projects. Eliminating the option of calculating density based on dwelling units per acre would increase the opportunity for retail to be included as part of residential projects.

To the extent that residential developers provide larger units, the use of the FAR formula means that fewer dwelling units may be produced. Encouraging new housing—particularly in Metro station areas—is one of the countywide policies so using this approach to encourage more retail may conflict with another important goal.

The proposed change to the methodology for calculating maximum allowable density would not do three things:

- It does not require that new projects include retail (or any other type of commercial). It simply removes the disincentive for including commercial uses in residential projects. The inclusion of non residential uses would be market and location-driven.
- Modifying the density calculation methodology would not affect projects that have already been approved.
- The height limits in the relevant base and overlay zones are not affected; they would continue to limit the overall size of projects.

See attachment for additional discussion.

4. Improve the public awareness of the required public use space and amenities
- a. Proposal: Amend the Zoning Ordinance to require developers to post signs to identify public use space and public amenities and clarify that these facilities are open to all.
- b. Discussion: Some of the required public use spaces and public amenities are not used effectively because they do not appear to be open and available to the general public (e.g., Discovery Garden and the interior Lee Plaza amenity space). The awareness of these spaces by the public would be improved with signage. Maps showing the location of all public spaces within the CBDs might also be helpful.
5. Create guidelines for urban recreation in central business districts
- b. Proposal: Revise the existing Recreation Guidelines to establish standards suitable for recreation in urban areas.

c. Discussion: The existing recreation guidelines used in the review of site plans do not address the unique needs for recreation in urban areas. The revised standards could include the following:

- Provide for urban recreation facilities (e.g., play sculptures, skateboard facilities, and indoor child play areas) and facilities for all age groups.
- Limit the ability of developers to satisfy their requirements by relying on existing recreation facilities that may be located far from their projects.
- Require that developers contribute financially toward the maintenance, operation, renovation or new construction costs associated with off-site recreation facilities being counted toward the proposed project.

JAC:GK:ha: j:\2007 staff report\Shaping Our CBD's

Attachment:

Attachment 1: Analysis of Retail Disincentive

## ATTACHMENT 1: ANALYSIS OF RETAIL DISINCENTIVE

### I. Impact of the Existing CBD Density Formulas:

A. Examples of the theoretical yield under the Optional Method of Development for a one-acre, CBD-2

1. Mixed-use scenario (residential over retail)- 5 FAR permitted  
 $5 \text{ FAR} \times 43,560 \text{ sf} = 217,800 \text{ sf building}$

Ground floor: 8,760 sf of public use space (not counted in FAR)  
14,800 sf of common area (lobby, mail room, community room)

20,000 sf of ground floor retail

Upper floors: 183,000 sf of residential = 120 du @ 1525 sf/du  
(including corridor space), plus MPDUs

Yield: 120 du plus MPDUs and 20,000 sf of retail space

2. Residential-only scenario- 200 du/acre permitted

Yield:  $200 \text{ du} \times 1525 \text{ sf/du} = 305,000 \text{ sf}$  plus MPDUs, but no retail.  
This equates to a 7 FAR project.

B. Since the du/acre formula yields more total density and more units, residential developers have an incentive to build projects that are completely residential. This constitutes a disincentive for ground floor retail.

C. Encouraging housing is a Sector Plan goal and a Countywide policy. However, residents outside the commercial core would like to see more retail development in other parts of the CBD.

### II. Alternatives:

A. Status Quo

B. Continue to allow residential projects to be calculated at the existing du/acre formula, but allow developers to have some additional "free" retail space

Example: Applying the 200 du/acre formula as in I.A.2, above allows 305,000 sf of residential space. Adding a "free" 20,000 sf retail space as a bonus yields a 325,000 sf project that equates to 7.46 FAR

The result is that every project is upsized.

C. Use only the FAR formula for all projects as illustrated in I.A.1. above

The result would be that projects that would have been 100 percent residential are downsized, whether or not they include retail. Fewer dwelling units may result, which may be inconsistent with County housing policy goals.

III. **Staff Recommendation:**

Retail uses do not belong everywhere and vacant retail space serves no one. Retail development should be market-and location-driven. Nevertheless, the methodology for calculating the maximum allowable development should not discourage retail uses where the market and location would otherwise support them.

We believe that Alternatives A and B result in some over-sized projects. Alternative C puts all projects on a level playing field by applying the same formula to each with no disincentive for retail uses. We recommend alternative C even though it may result in less housing production—hopefully some neighborhood oriented retail will replace the lost housing component.

## Recommended Guidelines for Off-Site Public Use Space and Public Facilities and Amenities (September, 2007)

The following guidelines implement the changes to the zoning ordinance that allow the public use space requirement, and the public facilities and amenities requirement to be met off-site or through a contribution to a fund designated for a specific project. The regulations establish formulas to be used in determining the amount of contribution based on a financial assessment of what would be required on-site. Any fund contribution will be used to acquire and improve specific off-site public use spaces, and for providing designated off-site public facilities and amenities.

### Calculating Contributions for Improved Public Use Space

Under the optional method of development, the Zoning Ordinance requires a minimum of 20 percent of public use space<sup>1</sup> in the Central Business Districts (CBD) Zones and Transit Oriented Mixed Use (TOMX) Zones. A contribution to a Fund may be made as an alternative to providing the required public use space on-site, if authorized by the Planning Board. The contribution will be an amount equivalent to the tax assessed value of 20 percent of the net lot area of the proposed development. The contribution for required improvements to that space will be calculated by multiplying the cost of streetscape improvements by the net lot area.<sup>2</sup> Thus the contribution is a combined value of the value of the "space" and the cost of improvements.

$$\text{Contribution} = \text{Net lot area} \times 20\% \times \text{Tax Assessed Value Per Square Foot}$$

### Calculating Contributions for Public Facilities and Amenities

The Zoning Ordinance also requires the provision of certain public facilities and amenities under the optional method of development in the Central Business Districts (CBD) Zones and Transit Oriented Mixed Use (TOMX) Zones. The Planning Board may authorize a contribution to a Fund as an alternative to providing the required public facilities or amenities on-site. The minimum contribution to that Fund will be a value equal to the cost of streetscape improvements for the density on the site above the standard method in relation to the size of the property.<sup>2</sup>

$$\text{Contribution} = \text{Net lot area} \times \% \text{Density Above Standard Method} \times \text{Cost of Streetscape}$$

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<sup>1</sup> Public Use Space is calculated as a minimum of 20 percent of the value of the net lot area of the proposed development, plus improvements on that public use space.

<sup>2</sup> Streetscaping is determined on a per square foot basis. The cost of the streetscape improvements will be based on the regularly updated cost of providing and installing streetscape with utilities placed underground, as determined by M-NCPPC staff.



## **Calculating Combined Contribution – Improved Public Use Space and Public Amenities and Facilities**

Under the recommended guidelines, the combined requirement for public use space and public facilities and amenities, will be related to the requested density above the standard method. The requirement for public use space, and public facilities and amenities can be achieved in any combination of on-site or off-site area as approved by the Planning Board. Three examples below based on a standard method 1.0 FAR in the CBD 1.0 Zone, and a range of proposed densities possible in that zone, illustrate the principle:

1. If the standard method is 1.0 FAR, and the optional method is 2.0 FAR, the amount of density allowed is two times that of the standard method. Thus the full requirement combining public use space (a 20 percent requirement) and public amenities and facilities would be 40 percent of the net lot area (20 percent x 2 = 40 percent).
2. If the development proposes a 1.5 FAR, the amount of density allowed is 1½ times the standard method; and the full requirement combining public use space and public amenities and facilities would be 30 percent (20 percent X 1.5 = 30 percent).
3. If the development proposes a 3.0 FAR, the amount of density allowed is three times the standard method; and the full requirement for public use space and public facilities and amenities would be 60 percent of the net lot area (20 percent x 3 = 60 percent).

## **Calculation of Total Contribution**

The total contribution is a combination of the public use space value and the Public Facilities and Amenities Value

## **Timeframe for Determining Fund Contribution**

The calculation of a contribution to a Public Use Space Fund or a Public Facilities and Amenities Fund will be determined within 30 days before a building permit is requested. The contribution must be made within 30 days after a building permit has been issued for all or the first phase of the development.

**REAL COST EXAMPLES**

The staff estimates the total cost of a payment-in-lieu of providing improvements on site for a 20,473 S. F. site in the Bethesda CBD would be approximately \$544,582. The cost estimate was determined using the following methodology:

**Public Use Space**

Site in the Bethesda CBD:

- Site Area = 20,473 S.F.
- Tax Assessment Based on the Most Recent Tax Records = \$2,047,000  
(Based on a site in the Woodmont Triangle of the Bethesda CBD)

Cost of Required Public Use Space:

- Public Use Space Requirement = 20,473 S.F. X 20 percent = 4,094.6 S.F.
- Cost per S.F. of an Equivalent Land Area =  $\$2,047,000 / 20,473 = \$100$  per S.F.
- Cost of Providing Land = 4,094.6 S.F. X \$100 per S.F. = \$409,460

Cost of Improvements to the Required Public Use Space:

- Cost of Improvements = \$33.00 per S.F. (Based on recent cost estimates for streetscape improvements in CBDs)
- Cost =  $\$33.00 \times 4,094.6 \text{ S.F.} = \$135,102$

Total Cost Contribution for Public Use Space:

- Total Cost of a Payment-in-lieu of Providing Improvements On-site =  
\$409,460 (Cost of Land) + \$135,102 (Cost of Improvements) = \$544,582

**Combined Public Use Space and Public Amenities**

Unimproved Public Use Space Cost Per Prior Calculation = \$409,460

Improvements for Combined Public Use Space and Public Amenities:

- \* Density Above Standard Method = 40%
- \* Site Size x 40% = 8,189 square feet
- \* Per Square Foot Improvements Cost (cost of per square foot streetscape) = \$33
- \* Cost of Improvements: 8,189 sf x \$33 = \$270,237

Total Cost Contribution of Improved Public Use Space and Public Amenities/Facilities

$$\$409,460 \text{ (PUS)} + \$270,237 \text{ (improvement)} = \$679,697$$