



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

MCPB
Item # 8
7/31/08

July 23, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *GK*
Community-Based Planning Division

Rose Krasnow, Chief *RK*
Development Review Division

FROM: Frederick Vernon Boyd, Community Planner (301.495.4654) *fvb*
Georgia Avenue Planning Team
Community-Based Planning Division

Robert Kronenberg, Site Plan Supervisor *RAK*
Development Review Division

SUBJECT: Discussion—CBD/TOMX Amenity Fund Guidelines

INTRODUCTION

Department staff has prepared very preliminary guidelines for the administration of a fund that will hold and disburse payments made by optional method development projects in certain zones in lieu of providing required on-site public use or public facilities/amenities space. Staff seeks guidance from the Planning Board on the basic provisions of the guidelines and wishes to highlight for the Board several issues that may challenge successful implementation of the guidelines. The draft preliminary guidelines may be found in Attachment 1.

BACKGROUND

The County Council approved Zoning Text Amendment (ZTA) 07-10 on April 22, 2008. This ZTA amends the Montgomery County Zoning Ordinance's requirements for provision of on-site public use space and public facilities and amenities in Central Business District and Transit Oriented Mixed Use zones. Among other things, the ordinance now allows the developers of optional method projects to make a payment, rather than providing all or part of a project's required public use space on site. The option is not available for projects using the standard method.

The approved zoning text amendment requires that:

1. Funds paid in lieu of providing on-site public use space must be used for public use space that has been identified in the applicable master plan;
2. If such space has not been identified in the master plan, the Planning Board must adopt a list of possible public use space projects (no list of possible facilities/amenities is needed);
3. The payment must be enough to achieve improved public use space equivalent to the requirement for on-site improvements;
4. Funds paid in lieu of providing on-site public facilities and amenities must be used for facilities/amenities identified in the applicable master plan or other space the Planning Board finds consistent with the goals of the applicable plan;
5. Developers opting to make a fund payment must identify, and the Planning Board must approve, the proposed location of the off-site public use space and its phasing, and the Planning Board approve both the off-site location and the phasing. The implication of this requirement is that the developer would choose the public use or public facilities/amenities space from the sites identified in the master plan or on the Planning Board's list. Assuming that phasing means the timing of construction for a public use space or facilities/amenities project, this requirement also appears to allow the Planning Board to consider how the timing of such a project relates to the overall development project.

The ordinance defines public use space and public facilities and amenities in considerable detail. In general, public use space can include green areas, gardens, plazas, urban parks, squares and other recreational areas. The space must be "easily and readily accessible to the public" and must be identified by a sign. Facilities and amenities can include green areas or open space, streetscaping, performance space, pedestrian walkways, museums or art galleries, day care facilities and public art.

FUND ADMINISTRATION

Staff from the Community-Based Planning, Development Review and Management Services divisions have worked with legal and financial staff of the Commission to devise a process for administering the payment process. The following paragraphs outline the administrative elements of the program.

The money should go into an account specifically created for holding off-site payments. The account should contain separate "pots" for each Central Business District and for the master/sector plan in which a TOMX project is located. Developer's checks would be written to M-NCPPC and deposited into the account, whose financial elements would be administered by the Finance Department. The Finance Department can create the necessary account soon after the overall guidelines are approved. The Planning Department has received a payment of \$148,500 from Discovery Communications as part of its Silver Spring Central Business District development. Department staff recommends that these funds be included in the proposed amenity fund, and, following adoption of the guidelines, will seek Planning Board approval of an appropriate location and timing for a project to be supported by this payment.

The Finance Department would deal with the management of actual contributions (deposit, records management, disbursement). The Development Review Division would be responsible for tracking the proposed public use space or facilities/amenities through the project plan and site plan processes and would accept the payments for approved off-site projects at the time building permits were issued. There are uncertainties, outlined in the section below on other issues, about how to satisfy the Council's intent that money from the fund be directed to designated projects in light of the way the county pays for some of the types of projects envisioned as part of the program.

The fund would be used for three types of projects specified in the ZTA:

- repayments to the Advanced Land Acquisition Revolving Fund when that fund is used to acquire land for parks that are designated as public use space;
- new capital improvement projects that create public use space or amenities under the ordinance's guidelines;
- expansion or completion of existing capital improvement projects for public use space or amenities.

The list of eligible projects to be included in sector plans or on the Planning Board's project list will be identified by the Community-Based Planning and Development Review divisions, in consultation with other groups in the Department. The upcoming Wheaton CBD Sector Plan and Germantown Master Plan efforts will include identification of potential locations, projects or public use elements; the Woodmont Triangle Sector Plan includes such a list, and there is also a list of urban parks in the Bethesda CBD Plan. The Silver Spring Green Space effort can be used to identify locations as well; this initiative will come to the Board for approval in October. Independent lists will need to be developed for eligible zones in Shady Grove and for the Friendship Heights CBD.

Community outreach and notification would be part of the regulatory approval process for each project and is generally initiated before an applicant submits an application. For areas whose master plans do not include identified public use or public facilities/amenities spaces, the requirement that the Board adopt a list of possible spaces should occur through a public session as a way to allow community review and discussion of likely sites. More generally, the use of the master plan development process to identify public use spaces includes opportunities for community review and discussion.

Calculating Payments

The formula for calculating a payment for off-site provision of public use space would combine land assessment value—which, it should be noted, may understate actual market value—with a monetary value for construction of a square foot of streetscape, thought to be the most quantifiable element likely to be found for public use space. This formula accounts for the cost of land associated with the creation of public use space and the cost of the actual improvements. The ordinance also requires provision of public facilities and amenities. The formula for calculating this payment is based on the difference in allowable densities between the standard and optional methods of development. It “translates” the difference in densities into a percentage of the net lot area, then uses the streetscape construction cost to calculate the public facilities/amenities payment. The step-by-step outline of the process includes an example of how payments would be calculated, in Attachment 2.

ISSUES TO BE ADDRESSED

Staff research and analysis in connection with development of the guidelines has turned up several issues involving both the drafting of the original text amendment and the mechanics of managing accounts that contain payments made under the approved text amendment.

1. Authorization Language in the TOMX Zone

The ability to make a payment instead of providing on site public use or public facilities space in the CBD zones is provided in Section 59-C-6.215(b), which describes the optional method of development in those zones. The new language states that “The Planning Board may, under Division 59-D-2: (1) authorize a payment instead of all or some of the required public facilities and 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.” The prospective developer learns that this opportunity exists in the CBD zones by reviewing Section 59-C-6.215(b), then moves to Section 59-D-2 to learn the steps necessary to take advantage of the opportunity.

The intent of the original text amendment was to confer the opportunity on development in the CBD and TOMX zones. But the text amendment did not include the authorization language in Section 59-C-13.215(b), which describes the optional method of development in the TOMX zones. The prospective developer of a project in that zone has no direct way of knowing that the opportunity exists to make the payment instead of meeting the requirement on site. The authorizing language should also stipulate that the in-lieu payments must be devoted to projects in the same master or sector plan area.

Recommendation: Staff believes that the Zoning Ordinance should be amended to include for the TOMX and TMX zones the same authorization language drafted for the CBD zones.

2. Identifying Appropriate Projects

The Zoning Ordinance now anticipates that payments made for off-site improvements are likely to be for projects in the county’s Capital Improvements Program (CIP). It notes three uses for payments: replacing money used by the Advanced Land Acquisition Fund to buy land for a public use; new capital improvement projects; or expanding or completing an existing capital improvement project. The current CIP contains individual project description forms for the Wheaton and Silver Spring Redevelopment programs and indicates that those programs provide funds for streetscaping and other improvements of the type likely to appear in master plans or on the lists of projects to be considered for funding under the off-site improvements program. Neither project description form lists individual streetscape or public space projects and conversations with the Wheaton Redevelopment Program’s staff indicate that project lists are less formally kept. In addition, program staff notes that individual projects can be subject to significant revision as actual construction continues. Without more formal lists of projects and without very specific schedules and funding schemes in the Capital Improvements Program for streetscape and other projects in urban districts, meeting the ordinance’s requirements for identification of specific projects and phasing may be a challenge. These uncertainties also complicate the ability to insure timely completion of projects being supported by in-lieu payments.

More generally, the intent of the requirement for optional method projects to provide public facilities/amenities is to achieve public activity spaces “beyond the minimum.” Applicants provide these public activity spaces in return for the right to add density through the optional method of development. By definition, “public facilities and amenities” are intended to provide an appropriate environment or satisfy the public needs resulting from a particular project. Funds for public facilities and amenities should result in public spaces beyond those that would ordinarily be provided.

The ordinance’s requirement that amenity fund payments largely support CIP projects also poses challenges to timely use of amenity funds. Not all worthy projects have been previously identified and placed in the CIP. Conversely, CIP projects generally have identified funding streams.

Recommendation: The Planning Department should work with relevant Executive Branch agencies to determine if creation of the in-lieu payment process requires revision to the way CIP projects in Central Business Districts are identified. It may be necessary to separate some projects from the more general Redevelopment Programs project description to enable money to be transferred from the amenity fund account to the accounts disbursing funds for CIP projects.

3. Administrative Costs

Finally, there is the issue of costs in staff time associated with administering the fund—the approved legislation does not include a provision for administrative fees. Development Review staff will have to devise a mechanism for monitoring the building permit process for projects whose developers will be making payments instead of off-site improvements, in order to be sure that payments arrive within 30 days of the issuing of the permit, as now required by the Zoning Ordinance. (Development Review staff generally tracks payments with the release of a permit, rather than afterwards, and may be able to use the Hansen tracking system to follow the progress of a project, but it may not be useful as a tool to enforce the 30-day requirement.) Development Review staff will keep track of any lists of prospective public use space or public facilities/amenities space projects in the CBD, TOMX and TMX zones as well as the priorities set for such projects in each zone, so that payments are properly directed to designated projects. Development Review staff will be responsible for handling payments and forwarding them appropriately for deposit. Finance Department staff will also assist by administering aspects of the payment program.

Two questions arise from this issue: What percentage administrative fee is appropriate? Should the fee be taken from the calculated payment, or added to it, so that the actual payment consists of the calculated payment plus the administrative fee? It may be difficult to assess the costs of administering the payment program until there have been enough projects to know the amounts of staff time necessary to monitor aspects of program administration. The time needed for administration is likely to be independent of the size of the project for which a payment is proposed. At the same time, larger projects on bigger properties will attract larger fees than smaller ones, because the calculations are based in part on square feet of prospective space. It will be necessary to estimate more formally the time needed to administer the program once the guidelines are finalized, which will allow a more precise determination of the size of an administrative fee.

Recommendation: Staff endorses the concept of an administrative fee to cover costs associated with tracking amenity fund projects and managing the fund account, but believes that details of the management method should be worked out before settling on a fee percentage.

NEXT STEPS

Staff seeks the Board's guidance on the three issues raised in the previous section. Should the Board endorse the staff recommendations on those issues, planning staff will implement those recommendations.

Community-Based Planning and Development Review staff will finalize the guidelines based on the Planning Board's comments, observations and suggestions. Community-Based Planning staff continues to develop lists of prospective projects for those plans not under revision and will bring those lists to the Board for approval. Master and sector plans, like Germantown and Wheaton, that are currently underway will include prospective projects that will be approved as part of the overall master plan review. Department staff will also continue to evaluate the additional cost in staff time needed to administer the plan so that an appropriate administrative fee percentage can be determined.

FVB:ha: g:\boyd\amenity fund staff report

Attachments

1. Draft Preliminary Guidelines for Implementing Payments for Off-Site Public Use/Public Facilities and Amenities Space
2. Public Use Space Example
3. Council Resolution approving ZTA 07-10

ATTACHMENT 1

Draft Preliminary Guidelines for Implementing Payments for Off-Site Public Use/Public Facilities and Amenities Space

1. Applicants who are proposing a payment instead of on-site provision of space prepare the required statements as part of the Project Plan application. The statement should clearly indicate that the applicant proposes to make a payment instead of providing required public use space or public facilities and amenities. It should describe the intended use of the payment and demonstrate that making the payment is consistent with the applicable master plan and is more efficient than providing the public use space or public facilities/amenities on site. The applicant also identifies the proposed location of the public use space or public facility/amenity and the phasing of the project.

If an applicant proposes an on-site public use or public facilities/amenities space that Development Review staff reviews and deems unacceptable, staff may propose that the applicant consider an in-lieu payment. The applicant will provide the necessary statements as outlined above.

2. Development Review staff consults with Community-Based Planning and other departments/agencies as needed about the proposed location and phasing. Community-Based Planning reviews the proposed location for consistency with the applicable master plan and includes its findings in the division memo on the project.
3. Payments are calculated using the assessed value of land at the time the Planning Board reviews a detailed site plan and the expected cost per square foot of streetscape improvements, which has been derived from discussions with developers who pay for such improvements and with county construction managers. The payment for public use space is calculated as follows:

Step 1

Determine public use space requirement in square feet of the net lot area
Determine assessed value per square foot using State Department of Assessment and Taxation records
Multiply public use space requirement by assessed value per square foot to determine equivalent cost of land (cost A)

Step 2

Use prevailing factor for cost per square foot of streetscape improvements
Multiply factor by public use space requirement in square feet to determine equivalent cost of improvements (cost B)

Step 3

Add equivalent cost of land to equivalent cost of improvements to determine in-lieu amenity payment (cost A + cost B)

The payment for off-site public facilities/amenities is calculated using this method:

Step 1

Determine the additional density achieved by optional method development over standard method development and express as a percentage

Step 2

Calculate square footage associated with determined increase in density

Step 3

Multiply associated square footage by prevailing factor for cost per square foot of streetscape improvements

Development Review staff also informs the applicant that the assessment calculation will be based on the assessed value of the land at the time the Planning Board reviews the detailed site plan.

4. Planning Board reviews the in-lieu payment proposal as part of the project plan review. The Board makes the necessary findings and, if a payment is approved, includes a requirement to make payment as a condition of approval.
5. The applicant drafts a formal agreement codifying approval of the in-lieu payment, the off-site location and project that will be funded by the payment and the phasing of that project.
6. As part of the site plan application, the applicant calculates the payment, using the formulas set out above, and submits the calculation and payment amount to be reviewed as part of the site plan review process. The Planning Board can be advised of the payment amount during its review and the requirement to make the payment can be reiterated as a condition of site plan approval. The Board can amend the payment based on revisions to the site plan or changes in the assessed value of the land.
7. Applicant delivers payment to Planning Department.
8. Fund payments will be deposited in an account set up by the Finance Department.

ATTACHMENT 2

Public Use Space Example

The applicant owns a lot or piece of property with a net area of 40,000 square feet in the CBD-2 Zone. The assessed value of the land is \$1,000,000. She has decided to make a payment instead of providing the required 20 percent public use space on site. She calculates her payment as follows:

$$20 \text{ percent of } 40,000 \text{ square feet} = 8,000 \text{ square feet}$$

$$\$1,000,000 \text{ total assessed land value} / 40,000 \text{ square foot net lot area} = \$25 \text{ per square foot}$$

$$8,000 \text{ square feet} \times \$25 \text{ per square foot} = \$200,000, \text{ (the assessed value of 20 percent of the net lot area)}$$

She continues by calculating the equivalent cost of streetscape improvements on the required public use space:

$$8,000 \text{ square feet} \times \$35 \text{ (the prevailing cost of a square foot of streetscape)} \\ = \$280,000$$

She adds the equivalent cost of improvements to the equivalent cost of the land.

$$\$200,000 + \$280,000 = \mathbf{\$480,000} \text{ (the payment amount)}$$

Public Facilities/Amenities Example

The applicant in the above example will also make a payment for off-site public facilities/amenities. She is achieving a floor area ratio of 5, the maximum allowable under the Optional Method. The Standard Method allows an FAR of 3.

$$5 \text{ FAR (optional)} - 3 \text{ FAR (standard)} = 2 \text{ FAR additional density} \\ 2 \text{ FAR} / 5 \text{ FAR} = 40 \text{ percent additional density}$$

$$40,000 \text{ square feet net lot area} \times 0.40 = 16,000 \text{ square feet}$$

$$16,000 \text{ square feet additional density} \times \$35 \text{ per square foot (streetscape costs)} \\ = \mathbf{\$560,000} \text{ (the payment amount)}$$

ATTACHMENT 3

Ordinance No.: 16-18
Zoning Text Amendment No: 07-10
Concerning: CBD Zone Revisions
Draft No. & Date: 5 - 4/18/2008
Introduced: July 31, 2007
Public Hearing: 9/11/07; 1:30 p.m.
Adopted: April 22, 2008
Effective: May 12, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Planning Board and Councilmember Floreen

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

DIVISION 59-A-2	"DEFINITIONS AND INTERPRETATION"
Section 59-A-2.1	"DEFINITIONS"
DIVISION 59-C-6	"CENTRAL BUSINESS DISTRICT ZONES"
Section 59-C-6.215	"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"

Section 59-D-2.42 "Findings required for approval"
Section 59-D-2.43 "Basis for consideration"

Add the following new section:

Section 59-D-[[2.3.1]]2.31 "Procedure – Payment instead of providing public use space, public facilities, or amenities on-site"

*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.*

OPINION

Zoning Text Amendment (ZTA) 07-10, sponsored by the District Council at the request of the Planning Board and Councilmember Floreen, was introduced on July 31, 2007. ZTA 07-10 as introduced would: 1) amend the definition of public facilities and amenities and public use space; 2) require signs designating public use space; 3) revise provisions for a transfer of public use space in certain overlay zones; 4) define an arts and entertainment entity; 5) require the Planning Board to accept space for an arts or entertainment entity as public use; 6) exclude arts and entertainment space from the maximum floor area allowed by the zone; and 7) clarify the text of the CBD zones.

The Woodmont Triangle Sector Plan recommended optional method of development projects on any size parcel and the option of a payment instead of requiring on-site public use space or public facilities and amenities. ZTA 07-10 would change the Zoning Ordinance to allow a payment instead of fulfilling the public use space or public facilities and amenities requirement on-site. The ZTA provides a general approach to calculate any such payment. The detailed method to calculate the payment required would be in regulations approved by the Council. ZTA 07-10 would also allow the provision of off-site public use space.

The Planning Board supported ZTA 07-10 in a memo dated September 20, 2007 with amendments to:

1. allow the Planning Board the discretion to fund spaces and amenities not identified on a master plan before funding all the master plan recommended items;
2. allow the Planning Board to administer the ZTA by guidelines instead of Council adopted regulations; and

3. make technical clarifications in the ZTA as introduced.

The Council held a public hearing on ZTA 07-10 on September 11, 2007. The testimony received generally supported the ZTA with amendments.

The Planning, Housing, and Economic Development Committee held worksessions on January 22, 2008 and April 7, 2008 to review the text amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-10 be approved with amendments to:

1. allow the Planning Board discretion to develop detailed guidelines on calculating the cost of off-site amenities and public use space;
2. allow the Planning Board discretion to develop lists of possible public use space and public amenities;
3. retain day care uses and add public art as possible public facilities and amenities;
4. add the outdoor area of a day care facility as public use space; and
5. remove the definition of "arts or entertainment entity" and the footnote related to it from the ZTA.

On April 22, 2008 the District Council agreed with the Committee's recommendation.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 07-10 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

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

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

3 **59-A-2.1. Definitions.**

4 * * *

5 **[[Arts or entertainment entity.** A publicly or privately owned and operated
6 entity located in a state approved Arts and Entertainment District under Article
7 83A, Section 4-701 of the Annotated Code of Maryland, and dedicated to one of
8 the following visual, or performing arts:

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

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

11 * * *

12 **Public facilities and amenities:** Those facilities and amenities of a type and scale
13 necessary to provide an appropriate environment or to satisfy public needs
14 resulting from the development of a particular project. Facilities and amenities may
15 include, but are not limited [to,] to:

16 (a) green area or open space which exceeds the minimum required, with
17 appropriate landscaping and pedestrian circulation;

18 (b) streetscaping that includes elements such as [street] plantings, special
19 pavers, [furniture,] bus shelters, benches, and decorative lighting;

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

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

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

24 (f) dedicated [uses] spaces open to the public such as museums, art galleries,
25 cultural arts centers, community rooms, [[and]] recreation areas[, and day
26 care for child or senior adults and persons with disabilities.];

27 (g) day care for children or senior adults and persons with disabilities; and

28 (h) public art.

29 [Facilities] Public facilities and amenities may be recommended or identified [on]
30 in an approved and adopted master or sector plan. Public amenities do not include
31 road improvements or other capital projects that are required to provide adequate
32 facilities to serve the property.

33 **Public use space:** Space [required by the sector plan and other space] devoted to
34 [such uses as space for] public enjoyment, [consisting of] such [things] as, but not
35 limited to, green areas, gardens, [malls,] plazas, walks, pathways, promenades,
36 arcades, urban parks, town squares, public plazas with elements such as water
37 features, and [lawns, fountains, decorative plantings,] passive [or] and active
38 recreational areas including outdoor recreation areas for a child day care facility.

39 [Such] Public use space may also consist of space and/or amenities recommended
40 by an approved urban renewal plan. [Such] Public use space [shall] must not
41 include parking or maneuvering areas for vehicles. [Area devoted to this purpose
42 shall] [[Public]] Except for an outdoor recreation area for a child day care facility,
43 public use space must be easily and readily accessible to the public [without
44 restrictions to particular segments of the public] and be identified by a sign placed
45 in public view. [In areas where] If public pedestrian walkways are [shown on]
46 recommended in an approved and adopted master plan or sector plan, [such area
47 within the percentage required for] [[they]] it may be counted as public use space
48 [as is necessary shall be devoted to the provision of pedestrian walkways or paths
49 for general public use].

50

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

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

53 * * *

54 **59-C-6.215. Methods of development and approval procedures.** Two methods
55 of development are possible in each of these zones.

56 * * *

57 (b) **Optional method.** Under the optional method, greater densities may be permitted and
58 there are fewer specific standards, but [certain public facilities and amenities must be
59 provided by the developer] the developer must provide certain public facilities and
60 amenities. The presence of these facilities and amenities is intended to make possible the
61 creation of an environment capable of supporting the greater densities and intensities of
62 development permitted. The Planning Board may, under Division 59-D-2: (1) authorize a
63 payment instead of all or some of the required public facilities and amenities, or any
64 required public use space; or (2) permit any required public use space to be provided off-
65 site on private or public property in the same CBD. If residential uses are included in a
66 development, Moderately Priced Dwelling Units must be provided [as required by] under
67 Chapter 25A and Work Force Housing Units must be provided [as required by] under
68 Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential
69 FAR may be increased in proportion to any MPDU density bonus provided on-site. The
70 procedure for approval of an optional method project is specified in Division 59-D-2,
71 and the procedure for approval of a site plan is specified in Division 59-D-3.

72 * * *

73 **59-C-6.23. Development Standards.**

74 * * *

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

	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ⁹¹	O	S	O	S ⁹¹	O	S ⁹¹	O	S ⁹¹	O	S	O
<u>A payment instead of all or some of the required public use space may be made if approved under Division 59-D-2.</u>												
59-C-6.234. Maximum Density of Development.												
(a) Standard method of development (see section 59-C-6.21(a))												
(i) For projects that are 100 percent residential (dwelling units per acre) (FAR):	35		43		43		80		120		80	
(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 ^{10,14}		1.0		1.0 ¹⁰		2.0 ¹⁰		3.0 ¹⁰		1.0 ¹⁸	
Total (FAR) ¹⁵	1.0 ⁹		1.0		2.0 ⁹		3.0 ⁹		4.0 ⁹		1.0	
(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]												

	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ^[9]	O	S	O	S ^[9]	O	S ^[9]	O	S ^[9]	O	S	O
<u>density allowed must not exceed either the following densities or the density recommended by the applicable master plan or sector plan.</u>												
[(1)] (i) For projects that are 100 percent [R]residential (dwelling units per acre):		100		125		125		200		200		200
[(2)] (ii) Non-residential, including transient lodging (FAR):		1.0				2.0 ¹⁹		4.0		6.0		
[(3)] (iii) Mixed-use [residential and nonresidential.] - [Nonresidential, including transient lodging (FAR)] <u>Maximum permitted non-residential, including transient lodging (FAR) limited to:</u>		1.0 ⁴		0.6 ⁷ , 17		2.0 ⁴		3.0 ⁵		5.0 ⁶		1.0 ^{3,1} 8
-Total FAR ^{13, 15}		1.5		3.0		3.0		5.0		8.0		5.0 ³
* * *												

75 * * *

76 9. Additional density for housing purposes may be permitted, so long as the degree of
 77 nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public
 78 open space (59-C-6.233) requirements is not increased. The maximum density [cannot]
 79 must not exceed the density provisions for mixed-use projects in section (59-C-
 80 6.234)(a)(ii).

81 * * *

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

84 * * *

85 [[* The optional method public use space requirement is satisfied if the applicant
86 conveys to the County an appropriate amount of land or building space for use by an arts
87 or entertainment entity that contributes to the revitalization of a Central Business District.
88 The gross floor area provided for the arts or entertainment entity may be excluded from
89 the gross floor area of the optional method project for the purpose of calculating
90 density.]]

91 * * *

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

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

94 * * *

95 **59-C18.19. Fenton Village Overlay Zone.**

96 * * *

97 **59-C-18.192. Regulations.**

98 * * *

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

106 [(4)] (3) * * *

107 [(5)] (4) * * *

108 * * *

109 **59-C18.20. Ripley/South Silver Spring Overlay Zone.**

110 * * *

111 **59-C-18.202. Regulations.**

112 * * *

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

115 * * *

116 [(4) The transfer of public use space to other properties in the overlay zone
117 is allowed, and must be shown on an approved project plan or site
118 plan for both the property transferring the public use space and the
119 property receiving the public use space in accordance with Division
120 59-D-2 and 59-D-3. The public use space may only be transferred
121 between property owners under an agreement approved by the
122 Planning Board.]

123 [(5)] (4) * * *

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

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

127 The Planning Board is authorized to approve development under the
128 optional method of development procedures described in Section 59-C-6.2 of the
129 CBD zones, Section 59-C-10 of the RMX Zones, Section 59-C-13 of the TOMX
130 Zones and the approval procedure set forth in this Division, for the following
131 zones:

132 * * *

133 RMX-3C—Residential—Mixed Use Development, Regional Center,
134 Commercial Base

135 TOMX-1—Transit Oriented Mixed-Use, 1.0

136 TOMX-2—Transit Oriented Mixed-Use, 2.0

137 TOMX-1/TDR—Transit Oriented Mixed-Use/ Transferable Development

138 Rights, 1.0

139 TOMX-2/TDR—Transit Oriented Mixed-Use/ Transferable Development

140 Rights, 2.0

141 * * *

142 **59-D-2.11. Project plan required.**

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

158 **59-D-2.12. Contents of project plan.** The project plan must clearly indicate how
159 the proposed development meets the standards and purposes of the applicable
160 zone. It must include the following, in addition to any other information [which]
161 the applicant considers necessary to support the application:

162 * * *

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

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

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

175 * * *

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

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

187 * * *

188 **59-D-2.3. Same—Procedure.**

189 * * *

190 **59- D- 2.31. Procedure – Payment instead of providing public use space, or**
191 **public facilities and amenities on-site.**

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

195 (a) Any payment accepted for public use space must be sufficient to secure an
196 equivalent amount of improved public use space off-site. The amount of any
197 payment accepted for public facilities and amenities must be not less than
198 the cost of constructing an equal amount of the public facilities and
199 amenities on-site. The Planning Board must issue [[regulations]] guidelines
200 to implement this [[section]] Section and notify the Council of those
201 guidelines as if the guidelines were regulations adopted under method 3 of
202 Section 2A-15.

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

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

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

210 (2) other space and improvements to that space that the Planning Board
211 finds to be consistent with [[to]] the goals of the applicable master
212 plan or sector plan if the Planning Board adopts a list of such possible
213 spaces and improvements and notifies the Council of that list as if the
214 list were regulations adopted under method 3 of Section 2A-15.

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

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

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

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

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

226 (2) fund a new capital improvement project; or

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

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

233 * * *

234 **59-D-2.42. Findings required for approval.**

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

240 * * *

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

243 * * *

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

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

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

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

257 (g) When a project plan includes more than one lot under common ownership,
258 or is a single lot containing two or more CBD zones, and [is shown to]
259 would transfer public open space or development density from one lot to
260 another, or transfer densities within a lot with two or more CBD zones,
261 [pursuant to the special standards of either section] under Section 59-C-
262 6.2351 or 59-C-6.2352 [(whichever is applicable)], the Planning Board may
263 approve the project plan [may be approved by the planning board based on
264 the following findings] only if:

265 * * *

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

270 * * *

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

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

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

277 **59-D-2.43 Basis for consideration.**

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

281 * * *

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

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

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

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

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

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

308 * * *

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

312 * * *

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

315

316 This is a correct copy of Council action.

317 Linda M. Lauer

318 Linda M. Lauer, Clerk of the Council