



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Executive Director

MCPB  
Item # 3  
1/08/04

**DATE:** January 2, 2003  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor *[Signature]*  
**FROM:** Greg Russ, Zoning Coordinator *[Signature]*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the Zoning Ordinance to permit a self storage facility by right in the CBD-1 zone under the optional method of development procedure within an area designated as an arts and entertainment district.

**TEXT AMENDMENT:** No. 03-26  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Leventhal and Perez  
**INTRODUCED DATE:** November 18, 2003

**PLANNING BOARD REVIEW:** January 8, 2004  
**PUBLIC HEARING:** January 13, 2004; 1:30pm

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**STAFF RECOMMENDATION: DENIAL**

Staff recommends denial of the proposed Zoning Text Amendment (ZTA) for the following reasons:

- Inconsistency with established zoning process
- Inconsistency with guidance in the relevant Sector Plans
- Failure to address the relevant Overlay Zones
- Inconsistency with the Optional Method process

Approval of the proposed ZTA would facilitate the expansion of an existing self-storage warehouse in South Silver Spring—by declaring it a Permitted Use rather than a Non-Conforming Use. This would be detrimental to the ongoing revitalization in this area and an underutilization of valuable CBD-zoned property. Theoretically, the proposed text amendment could also apply to a number of existing buildings located on CBD-1 zoned properties within the arts and

entertainment districts of Silver Spring and Bethesda. While staff recognizes the need and supports the efforts to provide workspaces for artists in the designated Arts and Entertainment Districts, other more appropriate methods are available to provide workspaces for artists.

## **PURPOSE OF THE TEXT AMENDMENT**

To amend the Zoning Ordinance to permit a self-storage facility by right in the CBD-1 zone under the optional method of development procedure within an area designated as an arts and entertainment district.

## **BACKGROUND/DISCUSSION**

- ZTA 03-26 was introduced as an alternative to ZTA 03-23, which recommended to allow existing nonconforming buildings in CBD-1 zoned areas within an arts and entertainment district to expand subject to the optional method of development process in return for a portion of the space being devoted to the promotion of the arts. The public use space requirement could be satisfied by an equivalent contribution of incubator space for start-up artists and cultural organizations. The space would have to be provided rent-free to the Arts and Humanities Council, which would be responsible for overseeing the tenancy and operations of the space. Like ZTA No. 03-23 which preceded it, ZTA 03-26 was proposed to facilitate the expansion of a self-storage warehouse in South Silver Spring, the Extra Space warehouse at 8001 Newell Street. This warehouse is currently a non-conforming use in a building with a floor area ratio of 1.0, located on a parcel of 41,000 square feet in the CBD-1/South Silver Spring Overlay Zone. The property owner would like to add a second floor to the warehouse, thereby doubling the existing space to a floor area ratio of 2.0. Since warehouses are currently non-conforming uses in all CBD zones, the property owner cannot expand the existing building without the proposed legislation. The owner of the self-storage warehouse has offered to provide space for a Silver Spring arts incubator in return for the potential to expand the warehouse to a floor area ratio of 2.0 as allowed under the Optional Method of Development. The Arts and Humanities Council of Montgomery County (AHCMC) is seeking 5,000 square feet of free space in Silver Spring to implement the following recommendation in their cultural plan (*Creative Montgomery: A Vision for the Arts and Humanities in Montgomery County, MD*):

“The County should support the development of one or more incubator spaces accompanied by support services to assist emerging artists and arts and humanities organizations, with particular attention to the needs of culturally specific communities. The cultural usage of these incubators should be overseen by the AHCMC” (p. 60).

- The Planning Board opposed ZTA 03-23 stating that it would be a bad precedent to encourage a non-conforming use to expand, even to provide office space for start-up artists. It is the Board's position that to allow additional investment in a non-conforming use would make it even less likely that a non-conforming use would be replaced by a more appropriate use. The most immediate application of ZTA 03-23 would likely be for expansion of an existing self-storage warehouse in South Silver Spring. The Planning Board believes that from a public policy perspective the existing warehouse is no longer an appropriate use at the South Silver Spring location and the existing warehouse should not be encouraged to expand (See Attachment 5). The County Executive believes that the ZTA would meet certain revitalization needs of the Silver Spring Central Business District, but does not support the concept of expanding a non-conforming use.

## **ANALYSIS**

Analyses of the aforementioned reasons for recommending denial are discussed below.

### **Planning/Zoning Process**

Zoning Text Amendment 03-26 (Attachment 1) would apply to existing properties that meet the following criteria:

- CBD-1 zoning
- Location in an approved Arts and Entertainment District
- Eligible for the Optional Method of Development (OMD) and able to satisfy the requirements of the process
- The use is located in a building that exists as of the date the ZTA is effective

This "class" of properties includes not only, the Extra Space Warehouse on Newell Street in South Silver Spring, but a number of buildings that could theoretically be retrofitted to establish a self-storage facility (Should the entire Silver Spring CBD become an arts and entertainment district, the MNCPPC building located at 8787 Georgia Avenue would meet the criteria for a self-storage facility). Pursuant to the Silver Spring CBD Sector Plan, the County Council zoned the Newell Street property CBD-1/South Silver Spring Overlay in 2000. Under this zoning—as well as the prior zoning—a self-storage warehouse is a non-conforming use, i.e., a use that should be replaced at some point with a more appropriate use. The current owner of the Extra Space warehouse purchased the property in 2002 with full knowledge of these zoning constraints.

There are four commercial and industrial zones that permit self-storage warehouses by right: C-2 (general commercial), C-3 (highway commercial), I-1 (light industrial) and I-4 (low intensity, light industrial). The County Council has chosen at least twice—in 1993 and 2000—not to apply any of these zones to the

property containing the Extra Space warehouse. In contrast, the self-storage warehouse between Fenton Street and the railroad tracks was zoned I-1 which permits self-storage warehouses. The proposed ZTA now seeks to change the outcome of the sector plan/SMA process by making the warehouse on Newell Street into a Permitted use that could be expanded. In effect, this circumvents the master planning and zoning process with regard to this one property.

### **Conformance with the Applicable Sector Plans**

Currently, portions of the Silver Spring CBD and the entire Bethesda Sector Plan CBD are designated as Arts and Entertainment Districts. (The boundaries of the Silver Spring Arts and Entertainment District may be expanded in the near future to include the remainder of the CBD, subject to approval by the State of Maryland.) The Wheaton CBD and Friendship Heights CBD could also be designated as Arts and Entertainment Districts in the future. The present CBD Zones prohibit self-storage warehouses.

**Silver Spring Sector Plan** – The proposed text amendment is not in conformance with the Silver Spring Sector Plan including the goals in the CBD-1/South Silver Spring Overlay District. In the areas zoned for CBD uses, the Approved and Adopted Silver Spring CBD Sector Plan “encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure....The feel of a community is created on its streets and paths, and Silver Spring’s sidewalks should be bustling and active” (p. 24). Self-storage warehouses, including the Extra Space facility on Newell Street, are inconsistent with this vision. They are essentially dead space along the street no matter how nice their facades might look. Stipulating that the Public Use Space required for approval of an Optional Method of Development (e.g. a minimum of 20% of the net lot) be provided as arts space does not solve this problem; up to 80% of the warehouse space would still be dead space including the bulk of the ground floor.

The Silver Spring CBD Sector Plan addresses the need for self-storage uses by designating specific areas for industrial uses. The industrial areas are located along the existing railroad tracks in the South Silver Spring area and away from the proposed site.

**Bethesda Sector Plan** - The proposed text amendment is not in conformance with the Bethesda Sector Plan. The CBD-1 Zone is used in the Wisconsin North Corridor and in the Woodmont Triangle Area. The Optional Method of Development in these areas is limited to residential development. The areas in the Wisconsin North Area are located adjacent to the existing East Bethesda residential community and specific concerns include the height and bulk of future uses and encouraging residential development. The Woodmont Triangle Area includes a mix of retail and office development and the Sector Plan also encourages additional residential development. Allowing the expansion of

industrial uses, including self-storage warehouses, would not conform to the goals of the Bethesda Sector Plan.

**Friendship Heights and Wheaton Sector Plans** - The proposed text amendment is not in conformance with the Friendship Heights Sector Plan. The proposed Text Amendment would include the Friendship Heights and Wheaton areas if designated in the future as Arts and Entertainment Districts. The Friendship Heights Sector Plan includes one parcel within the CBD-1 Zone, the existing Chevy Chase Land Company parcel. This parcel is designated for neighborhood oriented retail and office uses. The range of uses designated in this Sector Plan does not include self-storage warehouses.

The Wheaton Sector Plan includes one parcel in the CBD-1 Zone. Townhouses have recently been constructed on this parcel, and this property is not expected to redevelop. The Wheaton Sector Plan recommended the CBD-1 Zone along the boundary of the Central Business District that abuts single-family residential property.

### **Silver Spring Overlay Zones**

Overlay zones provide regulations beyond the standards of the various base zones. These regulations may address the development standards in the underlying zone and the list of permitted uses. An overlay zone may provide more flexibility for development or be more restrictive.

Two overlay zones apply to portions of the Silver Spring CBD and portions of the Silver Spring Arts and Entertainment District: the Fenton Village Overlay Zone and the Ripley/South Silver Spring Overlay Zone. They provide both additional flexibility to encourage redevelopment and additional restrictions to ensure compatibility with surrounding uses.

- Additional flexibility is provided through such mechanisms as the transfer of Public Use Space within the overlay districts and the addition of several new permitted uses. The Fenton Village Overlay Zone also allows one additional FAR for standard method development in the CBD-1 Zone (with site plan approval) and additional height for projects that include housing.
- The additional restrictions in the two Silver Spring overlay zones include more restrictive height limits in certain areas to ensure neighborhood compatibility and the prohibition of front yard parking along Georgia Avenue.

**In order for ZTA 03-26 to affect properties covered by overlay zones, it must address both the base zones and the overlays.** Addressing solely the underlying zone(s) is inadequate because the Zoning Ordinance states explicitly that development in such areas may proceed under the standards of the

underlying zones *except as regulated by the overlay zones* (Section 59-C-18.204(a)). The overlay zones specifically address how existing buildings (like the Extra Space warehouse) are to be treated with regard to non-conformities.

Both Silver Spring overlay zones “grandfathered” those buildings which existed at the time the overlay zones were applied, including many which would otherwise have been non-conforming (Section 59-C-18.204(f) - See Attachment 6). Buildings that were constructed with a valid building permit prior to the application of the overlay zones became conforming structures that could be altered or reconstructed, *with certain exceptions*. These exceptions apply to the Extra Space warehouse which is located within the CBD-1/South Silver Spring Overlay Zone. Both overlay zones specifically prohibit buildings that already exceed the standards of the underlying zone from increasing their gross floor area (Section 59-C-18.204 (f)(1)). Unless this provision is amended, ZTA 03-26 will not permit the Extra Space warehouse to expand since it already exceeds the standards of the underlying CBD-1 Zone.

### **Optional Method of Development Process**

ZTA 03-26 indicates that arts space provided in satisfaction of the Optional Method Public Use Space requirement for self-storage warehouses on CBD-1 property in an Arts and Entertainment District must only be 20 percent of the net lot area. This is not necessarily so. The Public Use Space requirement for an Optional Method project is a minimum of 20% of the net lot area. For projects that substantially exceed the density allowed under the Standard Method of Development, significantly more than the 20% minimum public use space is typically required. Staff is also concerned that ZTA 03-26 fails to address what happens with a project’s Public Use Space if the arts space that satisfied the requirement is vacated. It is unclear what happens if the workspace for artists is not used or is abandoned. Staff is further concerned that the more fundamental requirement of providing public use space is being adhered to. As defined, public use space is “space required by the sector plan and other space devoted to such uses as space for public enjoyment. Area devoted to this purpose shall be easily and readily accessible to the public without restrictions to particular segments of the public.” Although the details of this particular project are not currently available, staff questions how space being rented to a particular segment can qualify as public use space.

### **RECOMMENDATION**

Based on the analysis as discussed above, staff recommends that ZTA 03-26 be denied. If the Council proceeds with this Zoning Text Amendment, it could be limited to the South Silver Spring Overlay Zone, although modifications to the overlay zone requirements would be necessary to permit an increase in floor area since the overlay zone specifically prohibits buildings that already exceed the standards of the underlying zone from increasing their gross floor area

(Section 18-C-18.204 (f)(1)). Although the proposed Zoning Text Amendment applies to all property in the CBD-1 Zone, the property which instigated the proposal is located in the CBD-1/South Silver Spring Overlay Zone. This zone allows the transfer of public use space to off-site locations to provide additional flexibility for an applicant. Since the CBD-1/South Silver Spring Overlay Zone permits Public Use Space to be provided off-site within the Overlay District, this should be less of a problem for the owner of the Extra Space warehouse since he also owns other property in the South Silver Spring Overlay Zone. As such, the owner of the property could provide adequate public use space off-site that adheres more closely to the intent of this requirement.

The 5,000 square feet of space needed for Silver Spring artists could also be provided through other methods. The State or Montgomery County could provide the space, as with the Silver Spring Innovations Center—an incubator for small businesses to be constructed at Georgia Avenue/Blair Mill Road in the CBD-2 Zone. Available publicly owned space could be used as workspace for artists (e.g., the former Giant bakery acquired by Montgomery College, surplus space within existing public parking garages or even a portion of the new civic building already programmed). Future private developments might also be convinced to provide such space.

GR

#### Attachments

1. Proposed Text Amendment No. 03-26
2. Memorandum to Greg Russ from Community-Based Planning & Addendum
3. Bethesda CBD, with and without building footprints (2 maps)
4. Silver Spring CBD, with and without building footprints (2 maps)
5. Planning Board Opinion on ZTA 03-23
6. Excerpts from the Zoning Ordinance from the South Silver Spring Overlay Zone