

Zoning Text Amendment No.: 03-26  
Concerning: Self storage in the central business  
district (arts and entertainment district)  
Draft No. & Date: 1 – 11/18/03  
Introduced: November 18, 2003  
Public Hearing: January 13, 2004; 1:30 PM  
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: Councilmembers Leventhal and Perez

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

- permitting 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.

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

DIVISION 59-C-6.    **“CENTRAL BUSINESS DISTRICT ZONES”**  
Section 59-C-6.2.    **“Provisions of CBD Zones”**  
Section 59-C-6.22    **“Land uses”**  
DIVISION 59-D-2.    **“PROJECT PLAN FOR OPTIONAL METHOD OF  
DEVELOPMENT, CBD ZONES AND RMX ZONES”**  
Section 59-D-2.4    **“Action by planning board”**

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

Section 59-D-2.44    **“Optional method of development – self storage”**

<p><b>EXPLANATION:</b>    <b><i>Boldface</i></b> indicates a heading or a defined term.                           <u><i>Underlining</i></u> indicates text that is added to existing laws by the original text amendment.                           [<i>Single boldface brackets</i>] indicates text that is deleted from existing law by the original text amendment.</p>
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Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicates 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:*

1       **Sec. 1. Division 59-C-6 is amended as follows:**

2       \*   \*   \*

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

4       \*   \*   \*

5       **59-C-6.2. Provisions of CBD zones.**

6       \*   \*   \*

7       **59-C-6.22. Land uses.**

8       \*   \*   \*

	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
<b>(e) Services.</b>	S	O	S	O	S	O	S	O	S	O	S	O
* * *												
<u>Self storage.</u>						<u>P</u> *						

9       \*   \*   \*

10      \*       Must be in an arts and entertainment district designated pursuant to Article  
 11       83A, Section 4-701 et. seq. of the Annotated Code of Maryland, in a  
 12       building that exists as (ZTA Effective Date), and comply with the provisions  
 13       of Section 59-D-2.44.

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

15      \*   \*   \*

16      **DIVISION 59-D-2. PROJECT PLAN OPTIONAL METHOD OF**  
 17      **DEVELOPMENT, CBD ZONES AND RMX ZONES.**

18 \* \* \*

19 **59-D-2.4. Action by planning board.**

20 \* \* \*

21 59-D-2.44. Optional method of development – self storage. In addition to the  
22 other findings required for approval of an optional method project set forth in  
23 Section 59-D-2.4, an optional method project for a self-storage facility may be  
24 approved in the CBD-1 zone provided:

25 (1) The public space requirement is satisfied through the provision of a  
26 portion of the gross rentable square footage of the optional method  
27 project equivalent to 20% of the net lot area for use by start-up artists  
28 and cultural organizations. However, a combination of gross rentable  
29 square footage of building area and land area may satisfy the public  
30 use space requirement if determined by the Planning Board to be more  
31 suitable and appropriate for promotion of the arts. Space for start-up  
32 artists and cultural organizations may include space to work, create,  
33 rehearse, convene, exhibit and be educated on aspects of artistic or  
34 cultural management and a wide range of specialized management  
35 services;

36 (2) At the time of project plan approval, a lease agreement between the  
37 applicant for the optional method project and the County governing

38 the details of the space, occupancy and use of the public use space  
39 must be executed and made a condition to the approval;

40 (3) The space devoted to artists and cultural organizations is provided rent  
41 free to the County to oversee the tenancy and operations within the  
42 space pursuant to terms and conditions established by Montgomery  
43 County Government; and

44 (4) The finished space is highly visible to pedestrian and street traffic, and  
45 easily accessible to visitors.

46 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
47 date of Council adoption.

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49 This is a correct copy of Council action.

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Mary A. Edgar, CMC

55 Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

December 23, 2003

**MEMORANDUM**

**TO:** Greg Russ, Zoning Coordinator  
Development Review Division

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

**FROM:** Glenn Kreger, Team Leader *GK*  
Silver Spring/Takoma Park

**SUBJECT:** Proposed Zoning Text Amendment 03-26  
(Self-storage warehouses in CBD-1 Zone)

**INTRODUCED BY:** Councilmembers Leventhal and Perez

**INTRODUCTION DATE:** November 18, 2003

**COUNCIL PUBLIC HEARING:** January 13, 2004

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The Community-Based Planning Division recommends denial of the proposed Zoning Text Amendment (ZTA) to the CBD-1 Zone 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 allow one property—an existing self-storage warehouse in South Silver Spring—to expand by declaring it a Permitted Use rather than a Non-Conforming Use. This would be detrimental to the ongoing revitalization in this area and a waste of valuable CBD-zoned property. While we recognize the need and support 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.

**DISCUSSION**

The purpose of Zoning Text Amendment No. 03-26 will allow the expansion of existing self-storage warehouses in the CBD-1 Zone within an Approved Arts and Entertainment District. In return for permitting such uses under the Optional Method of Development, an applicant would be permitted to provide workspace for artists to satisfy the public use

space requirement. The workspace for artists could include any space devoted to the promotion of the arts, including space for start-up artists and cultural organizations. A project plan and site plan would be required for approval.

Like Zoning Text Amendment 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).

## **ANALYSIS**

### **1. Planning/Zoning Process**

Zoning Text Amendment 03-26 would apply to 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
- Property is a self-storage warehouse that exists as of the date the ZTA is effective

To the best of our knowledge, this “class” of properties includes only one site, the Extra Space Warehouse on Newell Street in South Silver Spring. Pursuant to the Silver Spring CBD Sector Plan, the County Council zoned this 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.

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

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. Maps are enclosed to delineate the areas in the Silver Spring CBD and the Bethesda CBD to be included in the text amendment.

**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.

### **3. 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)). 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-18.203 (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.

#### **4. 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. We are 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.

#### **CONCLUSION**

The Community-Based Planning Division recommends that Zoning Text Amendment No. 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 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.

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.

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

December 31, 2003

MEMORANDUM

TO: Greg Russ, Zoning Coordinator  
Development Review Division

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

SUBJECT: Proposed Zoning Text Amendment 03-26  
(Self-storage facilities in CBD-1 Zone)

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This memo augments the previous comments that John Carter and I sent you regarding proposed Zoning Text Amendment 03-26. I have recently become aware that the ZTA was revised just prior to introduction so that it no longer applies simply to the Extra Space warehouse on Newell Street in South Silver Spring. Apparently it would now apply to dozens of properties in both the Silver Spring and Bethesda Central Business Districts (CBDs), as well as CBDs like Wheaton that might be designated as Arts and Entertainment Districts in the future.

As revised, the proposed ZTA would make self-storage a Permitted Use in buildings that exist as of the effective date of the legislation on CBD-1 property in Arts and Entertainment Districts designated by the State. (Please note that the Silver Spring Arts and Entertainment District is proposed for expansion to encompass the entire CBD.) The property would have to be eligible for Optional Method development and would have to satisfy its minimum 20 percent Public Use Space requirement by providing space for the arts. Currently, self-storage facilities are only Permitted Uses in two industrial and two commercial zones. They are not Permitted Uses in any of the CBD zones. As a result, the existing Extra Space warehouse is a non-conforming use that cannot be expanded without a change to the Zoning Ordinance.

It is unclear to me how providing for "an Optional Method project for a self-storage facility" relates to the requirement that the building must already exist by the time the legislation is effective. (Would the "building that exists as of the ZTA effective date" be the existing Extra Space warehouse or the one that might result from future Optional Method development?) It is clear, however, that the revised language opens up the possibility that self-storage warehouses would be possible on numerous sites in both Silver Spring and Bethesda.

I have previously provided you with maps that illustrate the CBD-1 properties within the current Silver Spring and Bethesda Arts and Entertainment Districts that are eligible for Optional Method development. Apparently, the intent of the proposed ZTA is to allow existing structures on these properties to contain self-storage facilities as a Permitted Use and be eligible for expansion under the Optional Method of Development. In theory, even the MRO could be converted to a self-storage warehouse—and expanded to a larger facility—once the Silver Spring Arts and Entertainment District is expanded to become coterminous with the CBD boundary. I doubt that the residents of Woodside Park would see this as desirable. The residents of the neighborhoods and new residential buildings surrounding the Extra Space warehouse and the residents near eligible buildings elsewhere in Silver Spring and Bethesda deserve the same consideration.

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cc: John Carter  
Debra Daniel