

ATTACHMENT 1

Zoning Text Amendment No: 04-22
Concerning: Building height – South Silver
Spring Overlay Zone
Draft No. & Date: 1 – 10/13/04
Introduced: October 19, 2004
Public Hearing: 11/23/04; 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**

By: Councilmember Perez

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

- allowing an increase in building height in the Ripley/South Silver Spring Overlay zone, under certain circumstances.

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

DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.20	“Ripley/South Silver Spring Overlay Zone”
Section 59-C-18.202	“Regulations”

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.

1 **Sec. 1. Division 59-C-18 is amended as follows:**

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

3 * * *

4 **59-C-18.20. Ripley/South Silver Spring Overlay Zone.**

5 * * *

6 **59-C-18.202. Regulations.**

7 * * *

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

- 10 (1) Building height in the Overlay Zone along Newell Street and Eastern
11 Avenue that confronts a residential zone in the District of Columbia
12 must not exceed a height of 45 feet. However, [T]this building height
13 may be increased to: (i) a maximum of 90 feet for any building or
14 portion of a building that is set back at least 60 feet from the street, or
15 as allowed in 59-C-18.204(b), Transfer of Development Credits; or
16 (ii) [[a maximum of 125 feet]] for residential development that is set
17 back at least 60 feet from Eastern Avenue and Newell Street, and that
18 includes a public parking garage constructed under a General
19 Development Agreement with Montgomery County, Maryland, the
20 height of any existing building located within the same block, and the
21 Planning Board finds that: (a) The proposed development is
22 compatible with the surrounding development, considering but not
23 limited to the relationship of the building or buildings to the
24 surrounding uses, the need to preserve light and air for the residents of
25 the development and residents of surrounding properties, and any
26 other factors relevant to the height of the building; and (b) The
27 proposed development will produce a substantial amount of

28 consolidated public open space in excess of that which would
29 normally be required.

30 * * *

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

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34 This is a correct copy of Council action.

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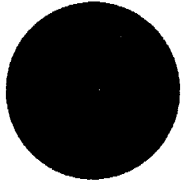
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39 Mary A. Edgar, CMC

40 Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Montgomery County Department of Park and Planning

November 17, 2004

MEMORANDUM

TO: Greg Russ, Zoning Coordinator
Development Review Division

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

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

SUBJECT: Zoning Text Amendment 04-22

This memorandum is intended to convey the Community-Based Planning Division's comments on Zoning Text Amendment 04-22.

I. Overview

Zoning Text Amendment 04-22 proposes an increase in the maximum building height for CBD-1 property within the Ripley/South Silver Spring Overlay District (Figure 1) for projects that include a public parking garage constructed under an agreement with Montgomery County. The proposed ZTA would permit building heights up to 125' along the southern edge of the CBD. This is an area where the Silver Spring CBD Sector Plan and the Overlay Zone specifically sought to restrict building heights to ensure compatibility with single family zoned property in the District of Columbia.

The 125' height limit proposed in the ZTA is well in excess of the normal 60' height limit for Optional Method projects in the base CBD-1 zone (see Figure 2). It exceeds the 90' height limit for those CBD-1 properties where the Planning Board can approve additional height after making a finding that the increased height would have no adverse impact on surrounding properties. The 125' building height proposed in the ZTA is well into the range that the Planning Board can only grant where it is specifically recommended by the applicable sector or urban renewal plan and several other criteria are met. Among these criteria are requirements that the property be surrounded by property in the commercial CBD zones—not single family zoned property—and that the proposed project will provide substantially more public use space than would otherwise be the case.

In theory, the proposed ZTA could apply to multiple properties. However, the development that generated the ZTA is a proposed partnership between RST Development LLC (RST) and the County for most of the block bounded by Eastern Avenue, 13th Street and King Street (Figure 3). The current language in the Ripley/South Silver Spring Overlay Zone stipulates that “building height in the Overlay Zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. This building height may be increased to a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street.” (Section 59-C-18.202 (b)(1))

The proposed ZTA would amend this provision in the Overlay Zone so that buildings that are set back at least 60 feet from the street can go up to 125 feet instead of 90 feet. RST believes that the additional height is necessary for them to achieve the development program for the site, which includes approximately 450 dwelling units; one private parking space per unit; 60 replacement public parking spaces and 50 new public parking spaces. A portion of the underlying property is presently owned by the Parking District and is occupied by Parking Lot 16. The RFP issued by the County in March 2004 for Parking Lot 16 stipulated that the developer of a mixed-use project incorporating Lot 16 would have to replace the existing 60 public parking spaces and provide a significant number of additional public spaces. At this time, RST proposes to build 110 total public spaces—50 more than now exist on Lot 16—in return for the right to incorporate Lot 16 into their project. Since the number of private parking spaces would be less than the parking requirement in the Code, RST would have to pay the parking district tax for the balance.*

Generally speaking, the building heights prescribed for the CBD zones in the Zoning Ordinance are sufficient to accommodate the allowable FARs, even if the parking requirements for projects are satisfied on-site. Silver Spring has a physical problem (shallow bedrock) that forces buildings upward because excavation (e.g., for underground parking) is very costly. This may make it more difficult to achieve the maximum FARs within the normal height limits (e.g., the normal 60' height limit for the RST property). RST has the additional burden of providing 50 more public parking spaces than presently exist on Lot 16.

* Within the Parking District, developers have the option of paying the Parking District tax rather than providing parking on-site. The Parking District is expected to use the funds to provide public parking where needed. The Department of Public Works and Transportation has recently commenced a study to determine whether additional parking facilities are needed to accommodate development in Silver Spring.

II. Sector Plan Consistency

ZTA 04-22 is intended to encourage new public parking in the Ripley/South Silver Spring Overlay District by providing additional building height for developers who incorporate public parking into their projects. At first glance, it might not appear that providing additional parking is consistent with the Silver Spring CBD Sector Plan. The Sector Plan clearly seeks to encourage transit use and discourage driving. In fact, there has long been a cap on total parking spaces in Silver Spring in the Annual Growth Policy. The intent of this theoretical cap is to discourage people from driving alone to the CBD.

Silver Spring is nowhere near the cap on parking and South Silver Spring clearly needs additional parking. The demand for additional parking stems from a number of positive developments in Silver Spring, including the unanticipated—but clearly welcome—renovation and reuse of several buildings in South Silver Spring that have inadequate parking on-site (e.g., the Gramax, Williams and Wilste buildings). Marketing new projects—and avoiding negative impacts on surrounding neighborhoods-- requires that a certain amount of parking be provided on site. The provision of parking on-site is related to the achievement of other master plan goals (e.g., encouraging housing throughout the CBD and revitalizing several designated areas outside the Core).

The real issue concerning the proposed ZTA isn't whether or not additional parking is needed. The issue is whether or not the proposed increase in permitted building heights in South Silver Spring is desirable or compatible. The *Approved and Adopted Silver Spring CBD Sector Plan* and the relevant overlay zones sought to focus the tallest buildings in the Core and transition building heights downward as one moves toward the edges of the CBD. The Ripley/South Silver Spring Overlay Zone specifically limited building heights at the southern edge of the CBD to ensure compatibility with single family ground in the District of Columbia. The 45' height limit along Eastern Avenue is approximately four stories; this was considered to be the maximum desirable along Eastern Avenue given the single family zoning across the street (Note: Even if the Overlay Zone didn't exist, the base CBD-1 zone would not have allowed height in excess of 90' on the RST property because the additional height was not recommended in the Sector Plan and the abutting property in the District of Columbia is zoned for single family residential).

Buildings taller than 45' exist in this edge area. When the Sector Plan and Overlay Zone were approved, it was believed (based on economic analysis) that such buildings were obsolete and could not be reused economically. The transfer of density credits provision in the Ripley/South Silver Spring Overlay Zone was specifically intended to spur the demolition of such buildings.

Since RST has successfully renovated these buildings, one could argue that the Sector Plan vision for this area should be adjusted. Perhaps taller buildings should now be considered acceptable in this area since three renovated buildings that exceed the prescribed height limit already exist. Alternatively, one could regard these three

buildings as aberrations that should not be replicated in terms of the permitted building height.

III. Impacts on the RST Site

It is difficult to say if someone at ground level would actually perceive a difference between a 90' tall building set back 60' from Eastern Avenue and a 125' tall building set back the same distance from the street (see Figure 4). At a site-specific level, the perceived impact of the increased height limit in ZTA 04-22 would probably be minimal given the topography of the property and the tall buildings that already exist on (or in close proximity) to the site. The comparison between a 90' tall building and a 125' tall building is not entirely valid since the normal height limit under the Optional Method of Development is actually only 60'. As mentioned above, the Planning Board must make a special (no adverse impact) finding for the project to exceed 60'. Also, we do not know at this point how the project will actually be designed since we have seen only a concept plan.

Based on the developer's concept plan, we are not certain that the additional height provided for in ZTA 04-22 is necessary. In our view, the current design for the site is inefficient. We suspect that a better layout could achieve the maximum residential density and provide the additional parking without exceeding the height limits in the Overlay Zone. It is possible that this revitalization project could be accomplished without sacrificing the provisions recommended in the Sector Plan and the Overlay Zone that were intended to ensure compatibility with the adjoining neighborhood. We believe that the developer should attempt to study the site more creatively before the Council legislates additional height flexibility. We may discover that the ZTA is premature and the goals for the project can be achieved within the existing height limits.

IV. Findings

Community-Based Planning staff believes the South Silver Spring area could use additional parking, in part because of the successful renovation of three formerly abandoned buildings with limited on-site parking. We see no need to wait for DPWT to finish their parking analysis of Silver Spring to reach this conclusion. Given the three existing tall buildings in South Silver Spring—at 140', 110' and 90'—it would be reasonable to conclude that other buildings with similar heights should be approved.

Clearly, the primary objective in South Silver Spring is to spur redevelopment, thereby furthering the revitalization and housing goals in the Sector Plan. We generally support partnerships--like the one between RST and the Parking District--that help to make such redevelopment possible. At the same time, we do have some concerns regarding ZTA 04-22:

1. ZTA 04-22 could affect a class of properties. While the height of the proposed buildings on the RST property might not result in incompatible development due to the existing tall buildings and the topography on that block, additional height might be less desirable on other blocks with the same

- zoning (e.g., the adjacent block south of King Street). If the ZTA is approved as proposed, one must depend on a) the PLD to show appropriate sensitivity with regard to the design of potential facilities on other property in the same area, and b) the Planning Board to require that site plans for other properties be compatible with surrounding development.
2. We are not yet convinced that the additional height is necessary in order for RST to accommodate their proposed development, including the public parking component. The developer has not yet demonstrated that the desired program for the project can only be achieved with the design shown in their concept plan. Staff believes that an alternative design with the buildings configured differently might achieve the desired density and preserve the 90' height limit. We question the argument that there is only one potential solution to the constraints on this site.
 3. RST secured the right to include Parking Lot 16 in their project by agreeing to replace the existing 60 spaces and provide 50 more; there was a quid pro quo. If the Council is going to change the zoning envelope for properties in this area by permitting more than twice the normal height for optional method projects in the CBD-1 zone, there should be some major public benefit provided in return. At this time, the only benefit we are aware of is the relative certainty that RST will construct the additional 50 public parking spaces compared to the likelihood that the Parking District will eventually provide additional public parking.
 4. We do not believe that the incremental increase in public parking will solve the parking problem in this area. Furthermore, the amount of private parking to be constructed (i.e., 1 space per dwelling unit) will not even satisfy the parking requirement for the new units; RST will still have to pay the parking district tax for the deficit. Overall, the new private parking plus the additional 50 public spaces may do little more than satisfy the parking demand from the new residential development. This will make the RST project more marketable—which is positive for both the developer and the revitalization of South Silver Spring. However, the existing parking shortage in the neighborhood won't be alleviated significantly if the new private and public parking spaces are used predominantly by new residents. Under these circumstances, it is imperative that the Parking District continue to search for ways to augment the supply of public parking in South Silver Spring.

V. Recommendations

If the Council chooses to approve ZTA 04-22, we would recommend the following modifications:

1. As proposed, ZTA 04-22 would allow new residential development that is set back at least 60' from Eastern Avenue and Newell Street to go up to 125' in building height--instead of the existing 90' cap in the Overlay Zone--if the developer provides new public parking under an agreement with the County. **We recommend that the building height stipulated in the Overlay Zone for these two streets be the existing 90' cap or the height of any existing**

building on the same block, whichever is higher. This modification would recognize the two existing tall buildings on the same block as the proposed RST project— the Wilste building on Eastern Avenue being the tallest at 110'-- and modify the building envelope permitted under the Overlay Zone to reflect the buildings that already exist. It would also limit the development on other blocks adjoining Eastern Avenue and Newell Street by allowing maximum building heights that are consistent with the existing buildings on those blocks.

2. Two additional criteria (i.e., criteria #4-5 in footnote #1 to the table in Section 59-C- 6.23) should be added to the requirements for additional height in the CBD-1/South Silver Spring Overlay Zone. These requirements are among those stipulated for projects in the base CBD-1 zone to be eligible for height in excess of 90'.

GRK:ha: N:\dept\divcp\kreger\ZTA 04-22 comments2