

# ATTACHMENT 1

Zoning Text Amendment No: 04-24  
Concerning: U.S. 29/Cherry Hill Road  
Employment Area Overlay Zone-Revisions  
Draft No. & Date: 1 – 10/10/04  
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**

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By: Councilmembers Praisner and Perez

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

- allowing reduced building setbacks in the Cherry Hill Employment Area Overlay Zone where the overlay zone adjoins residentially zoned land not recommended for residential use; and
- permitting certain commercial uses by right.

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-18.132                    “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-18.13. U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the**  
5   **Fairland Master Plan.**

6   \* \* \*

7   **59-C-18.132. Regulations.**

8   (a)   Land uses.

9           (1)   The following uses are permitted in the U.S. 29/Cherry Hill Road  
10           Employment Area overlay zone:

11           (A)   All permitted [or] and special exception uses allowed in the  
12           underlying zones are allowed in the U.S. 29/Cherry Hill Road  
13           Employment Area overlay zone, except as specifically modified  
14           and set forth in this overlay zone.

15           (i)   The following additional retail commercial uses are  
16           permitted:

17           Beauty supply stores.

18           Computer and computer supply stores.

19           [Eating and drinking establishment, excluding a drive-  
20           in.]

21           Electronics stores.

22           Express or mailing offices.

23           Food and beverage stores.

24           Music stores.

25           Office supply stores.

26           Pet supply stores.

27           Shoe stores.

Theaters, indoor.

(ii) The following additional commercial uses are permitted:

Eating and drinking establishment, excluding a drive-in

Delicatessen

Cafeteria

Snack Bar

Ice Cream Parlor

[(ii)](iii) \* \* \*

[(iii)] (iv)\* \* \*

\* \* \*

(b) **Development standards.** Development will proceed under the standards of the underlying zones except as modified by the provisions of this overlay zone.

(1) **Setbacks.**

(A) Where the overlay zone adjoins, or is separated only by a public road from residentially zoned land that is recommended for residential use and development in the Fairland Master Plan, all buildings must be set back at least 100 feet from such residential land. All parking and maneuvering areas must be set back at least 50 feet from such residential land and be appropriately screened from such adjoining uses.

(B) [A] Any building that devotes 50 percent or more of its gross floor area to a [containing principally] retail commercial use [(i.e., 50 percent or more of the gross floor area)] must be located at least 200 feet from the boundary of the overlay zone, unless a waiver is granted by the Planning Board. The 200 foot building setback requirement must not be reduced below 150

55 feet. The parking and maneuvering areas for such a building  
56 must be located at least 100 feet from the boundary of the  
57 overlay zone. A [No] setback is not required from lot lines,  
58 zoning lines, utility rights-of-way or road rights-of-way within  
59 this overlay zone.

60 (C) Where the overlay zone adjoins residentially zoned land that  
61 adjoins US 29 or a service road that adjoins US 29, and the  
62 residentially zoned land is not used or recommended for  
63 residential use and development in the Fairland Master Plan,  
64 [[then,]] the following setback and screening requirements  
65 apply:

66 (i) A setback is not required from the overlay zone  
67 boundary; however, notwithstanding the preceding sub-  
68 paragraph (B) above, buildings and parking areas must be  
69 setback at least 50 feet from US 29 or a service road that  
70 adjoins US 29, and

71 (ii) Screening and landscaping requirements must be  
72 established by the Planning Board through site plan  
73 review. The parking facility setback and screening  
74 requirements of Sections 59-E2.81 and 59-E-2.9 do not  
75 apply.

76 (2) **Retail commercial area.**

77 (A) Where the underlying base zone is other than the C-6 Zone:

78 (i) the cumulative square footage of retail commercial uses  
79 permitted on land classified in each particular base zone  
80 within the boundaries of the overlay zone must not  
81 exceed a total of 50,000<sup>1</sup> gross square feet[,]; and

82 (ii) development of retail commercial use cannot exceed  
83 [5,000] 15,000<sup>1</sup> square feet on any individual lot [.] and

84 (iii) no single tenant free-standing structure that devotes 50  
85 percent or more of its gross floor area to a retail  
86 commercial use may exceed a total of 10,000 gross  
87 square feet.

88 (B) Subsection (A) also applies where the underlying  
89 base zone is C-6, and when development occurs  
90 pursuant to Section 59-C-18.132(b)(6)(B).

91 <sup>1</sup> Any square footage devoted to an eating and drinking establishment use,  
92 excluding a drive-in, is in addition to this amount.

93  
94 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
95 date of Council adoption.

96  
97 This is a correct copy of Council action.

98  
99  
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102 Mary A. Edgar, CMC

103 Clerk of the Council

104

November 4, 2004

## MEMORANDUM

TO: Greg Russ, Development Review

FROM: Piera Weiss, Community-Based Planning

SUBJECT: Text Amendment 04-02

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**Staff Recommendation:** Approval of Text Amendment 04-02

**Background and Analysis:** The Text Amendment proposes two changes: (1) remove eating and drinking establishments from the retail commercial category so the 5,000 SF commercial retail limit per lot in the overlay zone no longer applies to eating and drinking establishments and (2) clarify the development standards to ensure a consistent building and parking setback along the US 29 frontage.

In 1997 staff developed the US 29 Cherry Hill Employment Area Overlay Zone to implement the recommendations of the *1997 Approved and Adopted Fairland Master Plan*. The overlay zone was applied to a 500-acre area with four different types of industrial zoning including light (I-1 and I-4), heavy (I-2) and research/development (I-3) zoning. During the 1980s the area had developed with light industrial uses and some commercial and service uses such as a hardware store (Home Depot) and hotel (Courtyard Inn). One hundred acres served as the Site II WSSC composting facility (I-2 zone) and 180 acres contained the Percontee gravel washing facility (I-2). The area was strategically located at the intersection of US 29 and Cherry Hill Road and a mile or so from the Powder Mill/I-95 interchange. Adjoining the site to the south was the future FDA site.

The idea of the overlay zone was to provide services for the local residential communities and new development once FDA relocated, Site II closed and Percontee ended gravel operations. The overlay zone intended to create a self-supporting employment area with on-site services. Commercial uses were to be added in two ways: by rezoning a forty-acre area to allow for large-scale regional retail (C-6) and allowing a smaller amount of commercial retail per underlying zone (50,000 SF per zone, 5,000 SF per lot) to provide for smaller scale goods and services throughout the 500 acre area. Restaurants, but not drive-ins, were especially desirable because that type of restaurant was lacking in eastern county especially near the employment area.

In 1998, a regional shopping center containing 480,000 SF of large scale retail, including Target, Kohl's etc, was built on the 40 acre, C-6 property. The project was approved with five restaurant pads that house McDonald's, Friendly's and Starbucks/Chipotle, a bank and gas station. The property owners were unable to attract two more restaurants to the site contrary to what had been discussed at the time of approval. The inability to

attract non-drive-in franchise restaurants to eastern county was attributed to a number of market forces.

After 1997, Congress approved the FDA relocation and the current schedule is to be completed by 2010 with approximately 7,200 employees. The County shut down the WSSC composting facility and the Office of Economic Development contracted with a private developer to develop the East County Tech Center there. The County also loosened liquor licenses regulations to the eastern part of the county in anticipation of the FDA relocation and the need for more restaurants in eastern county between White Oak and Burtonsville.

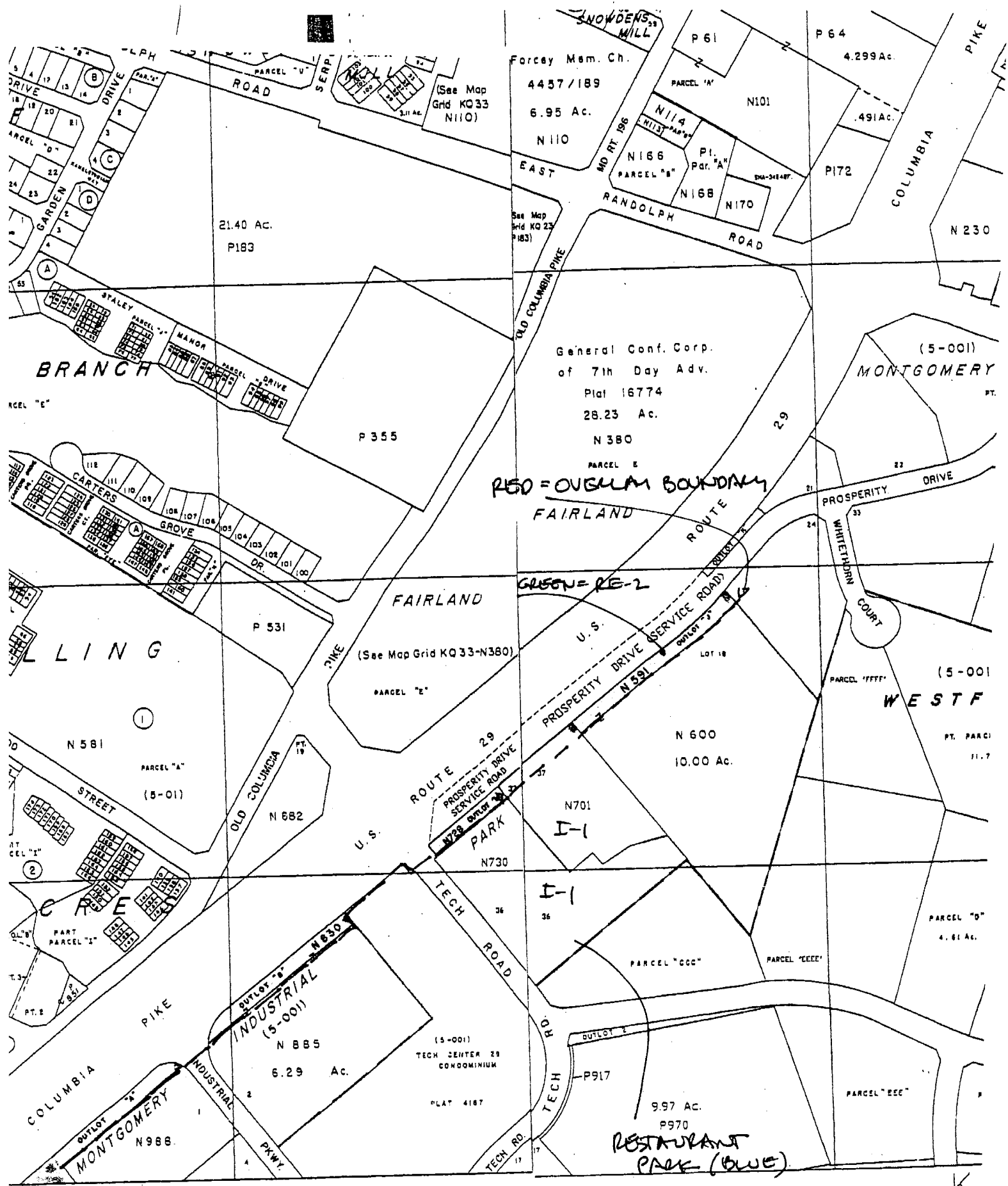
Property owners of the older development within the overlay zone are interested in taking advantage of the provisions of the overlay zone, particularly restaurants. Discussions with property owners has led to staff's understanding that contemporary franchise restaurants are interested in leasing more than the 5,000 SF maximum permitted per lot in the overlay zone. The proposed text amendment eliminates the square foot limit for restaurants by removing eating and drinking establishments from the category "retail commercial". The text amendment expands the definition of eating and drinking establishments so as not to limit the types of food services. The text amendment also increases the limit per lot of retail commercial to 10,000 SF, in anticipation of other small-scale retail uses that might be in excess of the 5,000 SF lot limit. The overall commercial limit of 50,000 SF per zone remains.

The second problem staff encountered in using the overlay zone has been regulating setbacks along the US 29 boundary. The language in the zoning ordinance states that all buildings in the overlay zone will be setback 100 feet from any land recommended in the Fairland Master Plan for residential use and development. The overlay area confronts or adjoins residentially zoned land as follows:

- West and south, RE-2 zoning
- North, RT 12.5 and R-200 zoning opposite US 29
- East, R-60 and RE-2/TDR opposite Cherry Hill Road

At the time of the 1997 master plan, all existing buildings within the overlay zone measured between 100-150 feet from these boundaries. While the 100 feet setback still exists for the boundaries where residential development confronts or adjoins the overlay zone, a self-storage facility was built along the US 29 boundary using the standards of the underlying zone (I-1) resulting in a lesser setback.

Staff at MNCPPC and DPS determined that the 100-foot requirement was not enforceable at that specific location because the master plan did not recommend residential use for the RE-2 zoned land adjoining the overlay zone at the specific location. The proposed text amendment establishes that the building and parking setback is to be measured from the US 29, or service road, right-of-way rather than a zoning line to ensure a consistent setback along the US 29.



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MONTGOMERY CO.,  
MARYLAND

MAP KC  
W.S.S.C. 216  
Location: ROL

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