



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

**MCPB**  
**Item # 7**  
**6/05/08**

**DATE:** May 22, 2008  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review  
Ralph Wilson, Zoning Supervisor *RK*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the Zoning Ordinance to allow optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units.

**TEXT AMENDMENT:** No. 08-08  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** The District Council at the request of the County Executive  
**INTRODUCED DATE:** April 29, 2008  
**PLANNING BOARD REVIEW:** June 5, 2008  
**PUBLIC HEARING:** June 17, 2008; 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 Sector Plan recommendations for Fenton Village;
- Greater building heights for Fenton Village should be considered through a sector plan amendment, not through a Zoning Text Amendment; and
- Notwithstanding the intent of the ZTA, subdivision approval would require the Planning Board to find the sector plan recommendations for a portion of Fenton Village no longer applicable.

Increasing the building heights for certain properties in Fenton Village conflicts with recommendations of the Silver Spring CBD Sector Plan and the Fenton Village Overlay Zone. Consideration of the development envelope for Fenton Village may be appropriate, but better served if done through a Sector Plan amendment. Any effort to change important sector plan recommendations by Zoning Text Amendment should be discouraged.

## **ANALYSIS**

Zoning Text Amendment 08-08 (Attachment 1) proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) that would allow the approval of an optional method of development project up to the maximum height allowed in the underlying CBD-1 zone for the construction of workforce housing between Georgia Avenue and Fenton Street. Under the ZTA, the additional height would be limited to the minimum necessary to accommodate the construction of workforce housing units, and any building height along the west side of Fenton Street must not exceed 60'.

The underlying zone (CBD-1) allows a height limit of 90' under the optional method of development and up to 143' with approval of the Planning Board to accommodate workforce housing. A building height at 143' on the east side of Fenton would create an abrupt transition to the 60' allowed on the west side of Fenton Street. A 143' building height on the east of Georgia Avenue, transitioning down to 90' at mid-block, and terminating at 60' on the west side of Fenton Street could be a solution more in keeping with the Fenton Village redevelopment objectives. This is especially the case with the increase in maximum building height up to 200' on the west side of Georgia Avenue in the Ripley District. As such, raising the height limit along the east side of Georgia Avenue to 143' (as part of a Sector Plan amendment) could be appropriate if done with a requirement for street activating uses (see sketch attached to Community-Based Planning Memorandum-Attachment 2). Attachment 3 provides a graphic massing study of existing, proposed and potential development in Fenton Village. The section below provides a more detailed explanation of the massing study.

### Massing Study (Attachment 3)

Two massing diagrams are included as Attachment 3 to the staff report. Both diagrams include existing, currently approved and "in planning" buildings. Potential development sites also have theoretical buildings massed to show how the blocks could be built out.

In the first diagram the height is increased to 143 feet only for those properties fronting Georgia Avenue. The other heights across the block through to Fenton Street are shown in compliance as currently regulated. The massing study shows that the floor area ratios currently allowed floor areas are insufficient to fill out the blocks at heights of 143' as well as the rest of the block. The increase in height to 143' on the east side of Georgia cannot properly be utilized to create a desirable building wall because there is not enough floor area available under the current CBD-1 zone.

The second diagram shows the same buildings stretched to a height of 143' across the entire area from Georgia to Fenton, as proposed in the ZTA. Note that

the densities are considerably over the allowable floor areas permitted under the Zoning Ordinance. To get these buildings up to that height would require floor area increases. The building bulk is also undesirable. The heights should step down as they reach Fenton Street.

#### Subdivision and Project Plan Review

Another issue to be considered is the basic rule that a subdivision must substantially conform to the master plan unless the Board finds that the master plan is no longer applicable still would apply to a subdivision submitted in Fenton Village. Sector plan and subdivision provisions cannot be changed by amendment of the zoning code. Notwithstanding any approval of ZTA 08-08 by the District Council, the sector plan recommended building height for the affected Fenton Village properties would be from 60' to 90' (based on location and use restrictions) and, to approve a preliminary plan with higher heights would require a finding that the sector plan recommendation is no longer applicable. It should be further noted that any optional method of development project plan must conform to the applicable sector plan.

#### **Conformance with the Applicable Sector Plan**

The Approved and Adopted Sector Plan envisioned Fenton Village as a “diverse community of people living and working to create a tightly-knit urban neighborhood conducive to strolling and browsing ... providing ... a traditional town atmosphere not found in shopping centers or malls” (Silver Spring CBD Sector Plan, 2000, pg 60). To this end, the Sector Plan envisioned maintaining and improving small-scale retail; capturing some of the Class C and Class B office space market in Montgomery County; and bringing new housing development to Fenton Village. A height incentive for housing in Fenton Village was recommended in the Sector Plan and implemented via an Overlay Zone to spur residential development and create a mixed use aspect to Fenton Village. It was expected that new housing development would improve the physical environment, activate the streets and provide resident markets for businesses within the overlay zone.

Height limitations were also recommended by the Sector Plan in order ensure the compatibility of new development in Fenton Village with the adjacent neighborhoods (East Silver Spring and north Takoma Park) and to sustain Fenton Village as a *transitional* area between the Core and the surrounding single family residences (i.e. the tent effect goal of the Sector Plan). The Sector Plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core which allows building heights from 143' to 200'. Per the Sector Plan recommendation, the Fenton Village Overlay Zone (which implements the recommendations in the Sector Plan) limits height to 90' on the east side of Georgia Avenue and 60' on the west side of Fenton Street. For properties in between and not fronting on either Georgia or Fenton Street, the

height may go up to 90' if that project is at least 33% residential; this reflects the aforementioned height incentive that was created specifically to achieve the housing goal in the Sector Plan. Exceeding 90' may do even more to encourage housing opportunities, but it would be inconsistent with the Sector Plan vision for Fenton Village.

## **RECOMMENDATION**

Based on the above analysis, staff recommends that ZTA 08-08 not be approved. The proposed text amendment conflicts with the recommendations of the approved and adopted Silver Spring CBD Sector Plan and the maximum building heights established in the Fenton Village Overlay Zone. Although some further consideration of the development envelope in Fenton Village may be appropriate, this is best done through a Sector Plan amendment.

GR

### **Attachments**

1. Proposed Text Amendment No. 08-08
2. Memorandum to Greg Russ from Community-Based Planning
3. Massing Study of development potential in the Fenton Village Overlay Zone

# ATTACHMENT 1

Ordinance No.:  
Zoning Text Amendment No.: 08-08  
Concerning: Fenton Village Overlay Zone –  
Workforce Housing Height  
Draft No. & Date: 1- 4/17/08  
Introduced: April 29, 2008  
Public Hearing: June 10, 2008  
Adopted:  
Effective:

**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: The District Council at the request of the County Executive

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow optional method of development projects in the Fenton Village Overlay Zone additional building height to accommodate workforce housing units; and
- generally amend building height limits in the Fenton Village Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance:

Division 59-C-18      OVERLAY ZONES  
Section 59-C-18.192 Fenton Village Overlay Zone - Regulations

<p><b>EXPLANATION:</b>    <b>Boldface</b> indicates a heading or a defined term.                          <u>Underlining</u> 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.                          <u>Double underlining</u> 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.</p>
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*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 **Section 1. Division 59-C-18 is amended as follows:**

2  
3 **59-C-18. OVERLAY ZONES.**

4 \* \* \*

5 59-C-18.19. Fenton Village Overlay Zone.

6 \* \* \*

7 59-C-18.192. Regulations.

8 \* \* \*

9 (1) Building height in the Overlay Zone:

10  
11 (A) along the east side of Georgia Avenue must not exceed 90 feet; along  
12 the west side of Fenton Street must not exceed 60 feet; within the area  
13 between Georgia Avenue and Fenton Street must not exceed 60 feet  
14 but may increase up to 90 feet for projects that are at least 33%  
15 residential and where the additional height is placed closest to Georgia  
16 Avenue and decreases as you move east to Fenton Street; [and]

17 (B) along the east side of Fenton Street must not exceed 45 feet for all  
18 uses except housing, which must not exceed 60 feet[.]; and

19 (C) between Georgia Avenue and Fenton Street, any optional method of  
20 development project may be approved up to the maximum height limit  
21 in the underlying zone for the construction of workforce housing units  
22 as defined in Chapter 25B if the additional height is the minimum  
23 necessary to allow for the construction of workforce housing units.  
24 The additional building height for workforce housing units may be  
25 approved notwithstanding any limits recommended in a sector plan;  
26 however, the building height along the west side of Fenton Street  
27 must not exceed 60 feet.

28 \* \* \*

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

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33 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council





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

**ATTACHMENT 2**

May 20, 2008

**MEMORANDUM**

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

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

**FROM:** John Marcolin, ASLA, Planner Coordinator *JM*  
Community-Based Planning Division

**SUBJECT:** Proposed ZTA No. 08-08  
Fenton Village Height Limit

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**RECOMMENDATION:** Denial for the following reasons:

- This Zoning Text Amendment is inconsistent with the Sector Plan recommendations for Fenton Village.
- Reconsidering this vision should be done via a sector plan amendment, not through a Zoning Text Amendment.
- Leaving the existing language in the Sector Plan will make it very difficult for the Planning Board to find that project plans exceeding the existing height limits are in conformance with the Sector Plan.

**Sector Plan Guidance**

The Approved and Adopted Sector Plan envisioned Fenton Village as a “diverse community of people living and working to create a tightly-knit urban neighborhood conducive to strolling and browsing ... providing ... a traditional town atmosphere not found in shopping centers or malls” (Silver Spring CBD Sector Plan, 2000, page 60). To this end, the Sector Plan envisioned maintaining and improving small-scale retail; capturing some of the Class C and Class B office space market in Montgomery County; and bringing new housing development to Fenton Village. A height incentive for housing in Fenton Village was recommended in the Sector Plan and implemented via an Overlay Zone to spur residential development and create a mixed use aspect to Fenton Village. It was expected that new housing development would improve the physical environment, activate the streets and provide resident markets for businesses within the Overlay Zone.

Height limitations were also recommended by the Sector Plan in order ensure the compatibility of new development in Fenton Village with the adjacent neighborhoods (East Silver Spring and north Takoma Park) and to sustain Fenton Village as a *transitional* area between the Core and

the surrounding single-family residences (i.e. the tent effect goal of the Sector Plan). The Sector Plan intended for Fenton Village to maintain the scale of a village, not the scale of the adjacent CBD core which allows building heights from 143' to 200'. Per the Sector Plan recommendation, the Fenton Village Overlay Zone (which implements the recommendations in the Sector Plan) limits height to 90' on the east side of Georgia Avenue and 60' on the west side of Fenton Street. For properties in between and not fronting on either Georgia or Fenton Street, the height may go up to 90' if that project is at least 33 percent residential; this reflects the aforementioned height incentive that was created specifically to achieve the housing goal in the Sector Plan. Exceeding 90' may do even more to encourage housing opportunities, but it would be inconsistent with the Sector Plan vision for Fenton Village.

### **Urban Design**

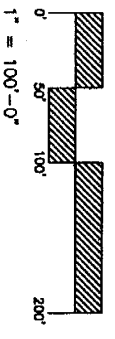
Zoning Text Amendment 08-08 proposes a revision to the Zoning Ordinance (Section 59-C-18.19. Fenton Village Overlay Zone) that would allow the approval of an optional method of development project up to the maximum height limit in the underlying zone for the construction of work force housing units between Georgia Avenue and Fenton Street. The underlying zone allows 90' heights under the optional method of development and up to 143' with approval of the Planning Board to accommodate the work force housing requirement. If the 143' height was approved, it would create a rather abrupt transition from 143' to 60' at the west side of Fenton Street. A 143' maximum building height on the east side of Georgia Avenue only, transitioning down to 90' at mid-block and terminating at 60' on the west side of Fenton Street is a solution that is more in keeping with goals and vision of the CBD Sector Plan for the Fenton Village Overlay Zone. Given the increase for maximum building height on the west side of Georgia Avenue in the Ripley District, raising the height limit along the east side of Georgia to 143' is probably appropriate; however, it should be done with a requirement for street activating uses (see attachment).

### **Conclusion**

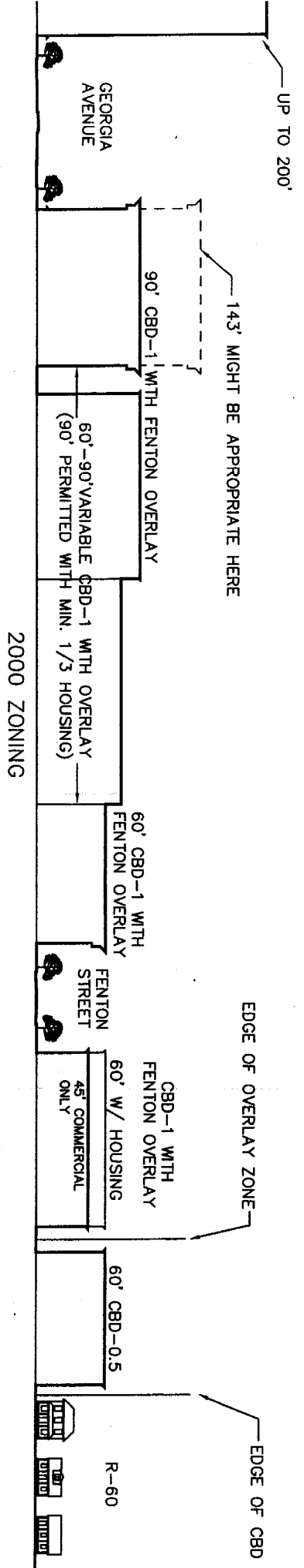
The proposed Zoning Text Amendment is contrary to the recommendations in the approved and adopted Sector Plan and the height limits in the Fenton Village Overlay Zone. Further consideration of the development envelope in Fenton Village may be appropriate. This could be done through a sector plan amendment if added to the work program by the County Council. In the meantime, planning via zoning text amendment should be discouraged.

cc: Bill Barron, Acting Team Leader, Silver Spring Team  
Robert Kronenberg, Supervisor, Development Review Division

Attachment



OPTIONAL METHOD MAXIMUM HEIGHTS



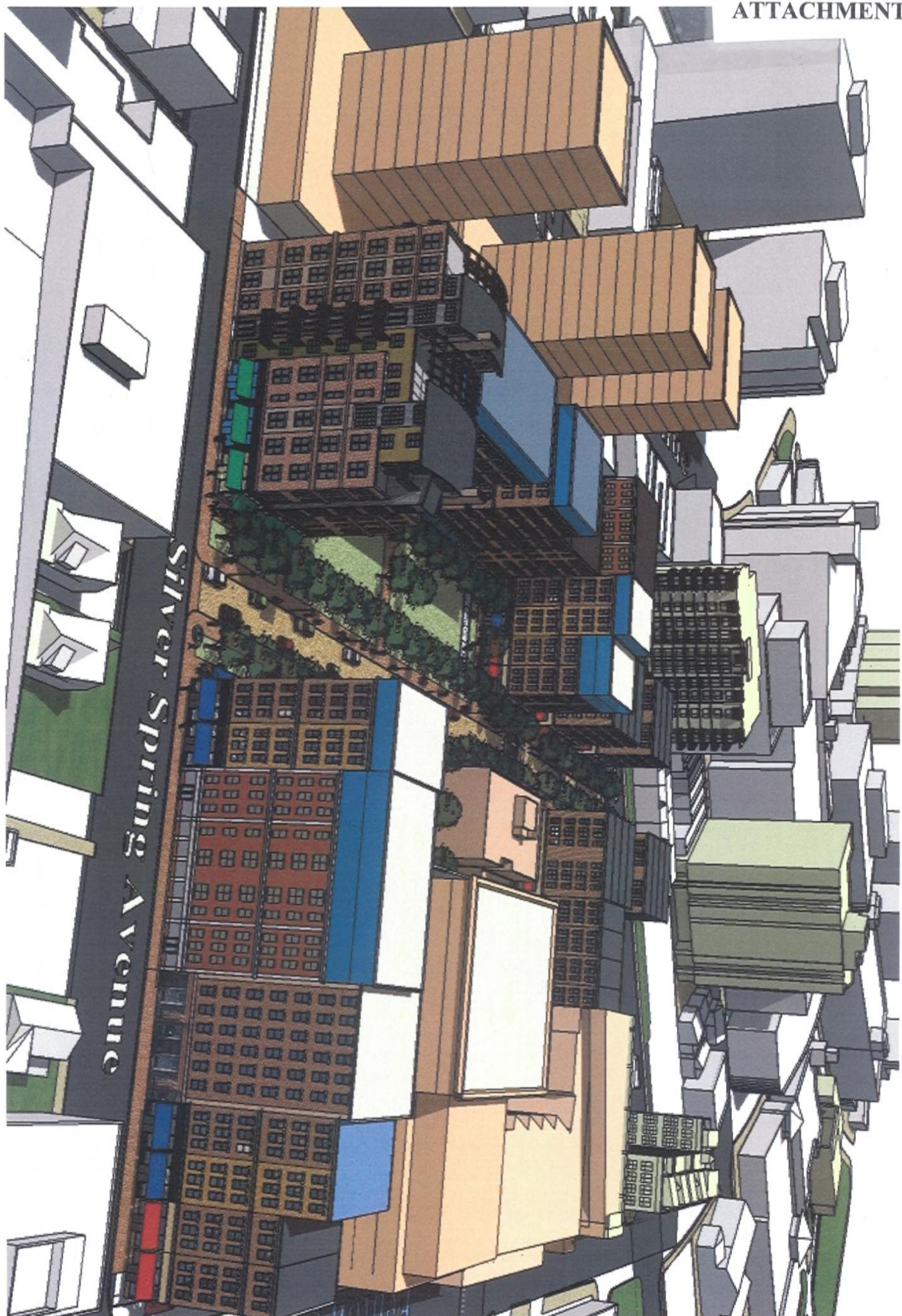


Diagram 1



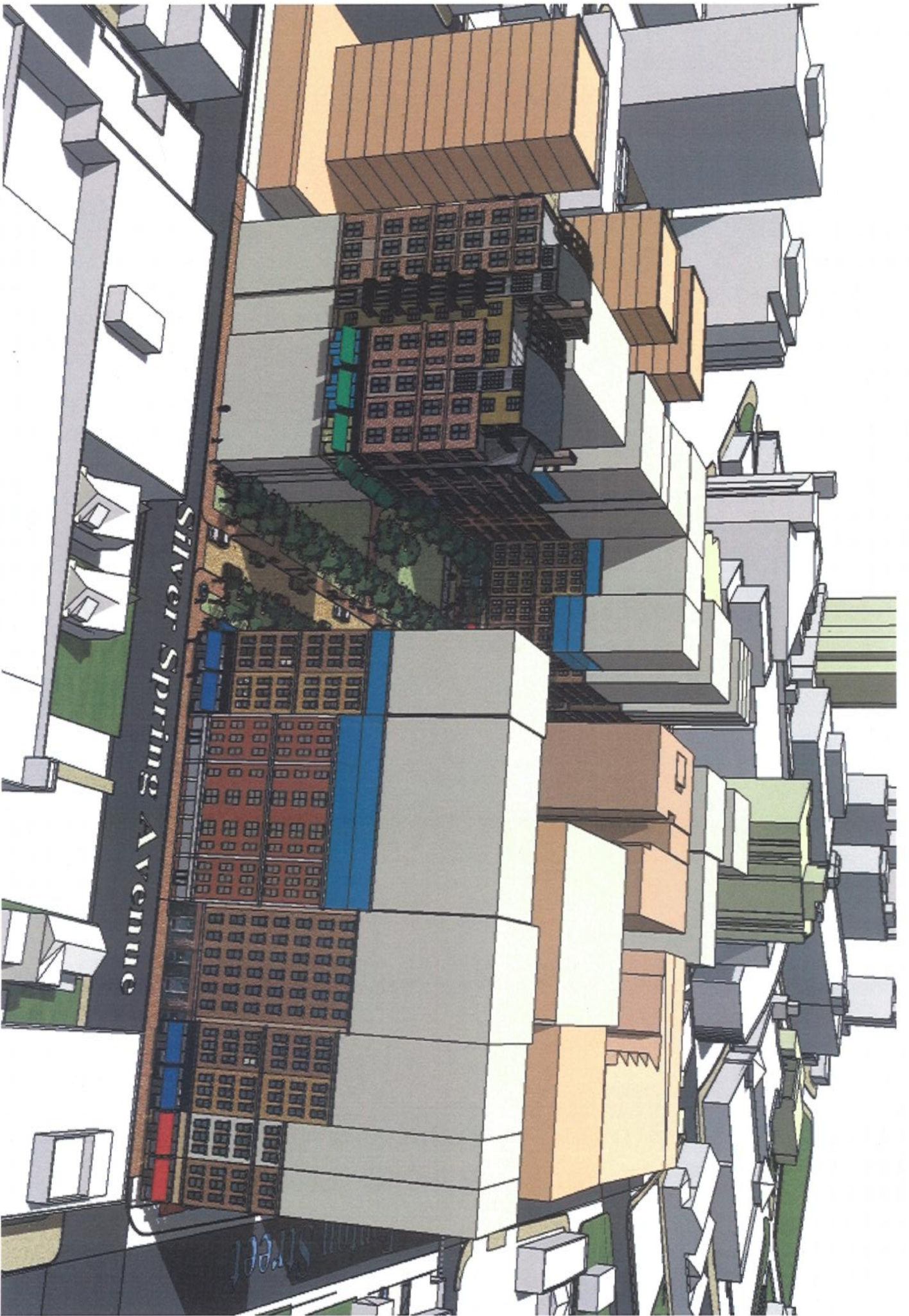


Diagram 2