



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

MCPB
Item #8
6/05/08

DATE: May 27, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *Red UK*
Ralph Wilson, Zoning Supervisor *RDW*
FROM: Greg Russ, Zoning Coordinator *SR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to allow additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone.

TEXT AMENDMENT: No. 08-10
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Ervin and Elrich
INTRODUCED DATE: May 6, 2008
PLANNING BOARD REVIEW: June 5, 2008
PUBLIC HEARING: June 17, 2008; 1:30pm

STAFF RECOMMENDATION: DENIAL

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

- Inconsistent with the Sector Plan building height recommendations for the east side of Fenton Street in Fenton Village

The Sector Plan limits building height for new construction fronting on the east side of Fenton street in Fenton Village to 45' for all uses except housing, which is allowed heights up to 60'. Although a 60' height does not violate the massing envelope for Fenton Village, this height on the east side of Fenton was provided only as an incentive for *housing*. *ZTA 08-08 would permit increased building height above the overlay zone limit of 45', up to 60', to accommodate a hotel use as part of a mixed-use optional method project. In staff's view, a hotel would not meet the Fenton Village housing objectives and does not qualify for an increase in building height under sector plan provisions.*

ZTA 08-10 also substitutes the overlay zone use of the word "housing" with the word "residential". This change creates unnecessary ambiguity and is not

supported by staff. ZTA 08-10 contains language on lines 21-23 to discount the sector plan conformity issue. Staff is not convinced that the proposed language is an effective or appropriate mechanism to amend a sector plan. .

ANALYSIS

Zoning Text Amendment 08-10 (Attachment 1) proposes a revision to Section 59-C-18.19 (Fenton Village Overlay Zone) that would allow up to 60' in height along the east side of Fenton Street for: 1) a residential use; or 2) an optional method mixed-use development that includes a hotel. Currently, the maximum height along the east side of Fenton Street is limited to 45', except a housing project may be increased to 60'.

The Sector Plan envisioned Fenton Village as a transitional area between the core and the surrounding neighborhoods. To fulfill that goal, it recommended building heights that step down from Georgia Avenue to the edge of the CBD. A 60' maximum height was recommended on the east side of Fenton Street specifically to encourage housing; otherwise, the maximum building height on the east side of Fenton Street was limited 45'. Allowing 60' tall buildings on both sides of Fenton Street would help to maintain a uniform and consistent street wall on both sides of Fenton Street. However, allowing buildings without housing to be more than 45' tall on the east side would violate the intent of the Sector Plan (see sketch attached to Community-Based Planning Memorandum-Attachment 2).

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 08-10 by the District Council, the sector plan recommended building height for the affected Fenton Village properties would still be 45' for all uses except housing, and a finding that the sector plan recommendation is no longer applicable would be required to approve a preliminary plan. 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 Plans

The Approved and Adopted Silver Spring CBD Sector Plan recommended height limits to "ensure compatibility with adjoining neighborhoods". (Silver Spring CBD Sector Plan, 2000, pg 60). These height limits were implemented by the Fenton Village Overlay Zone. Specifically, the Overlay Zone limits heights to 90' on the east side of Georgia Avenue and to 60' feet on the west side of Fenton Street, with all properties in between not exceeding 60' except in the case of housing, in which case 90' would be allowed. *On the east side of Fenton Street heights must*

not exceed 45' for all uses, except in the case of housing, where it may go to up to 60'.

A height incentive for housing in Fenton Village was recommended in the Sector Plan because it was expected that such development would do the following: 1) enhance the mix of uses by creating new housing opportunities; 2) activate the streets; and 3) provide resident markets for businesses within the overlay zone. Because a hotel use would not provide new housing opportunities (and the associated MPDUs and Workforce Housing), a hotel use fails to provide this very important benefit. The Planning Board would have serious difficulty finding that a preliminary plan or project plan is consistent with the Sector Plan if it proposed 60' tall buildings on the east side of Fenton Street without housing.

RECOMMENDATION

Based on the above analysis, staff recommends that ZTA 08-10 not be approved. A 60' tall hotel on the east side of Fenton Street is not housing and does not fulfill the goal for which the height incentive was provided. Revisions to the Sector Plan should be accomplished through the sector plan amendment process, not through a piecemeal zoning text amendment.

GR

Attachments

1. Proposed Text Amendment No. 08-10
2. Memorandum to Greg Russ from Community-Based Planning

ATTACHMENT 1

Ordinance No.:
Zoning Text Amendment No.: 08-10
Concerning: Fenton Village Overlay Zone –
Hotel Height
Draft No. & Date: 1- 4/22/08
Introduced: March 6, 2008
Public Hearing: June 17, 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**

By: Councilmembers Ervin and Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow additional building height to accommodate hotels in mixed-use optional method of development projects in the Fenton Village Overlay Zone; and
- generally amend allowable building heights 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>EXPLANATION: Boldface 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 uses,
18 except [housing, which must not exceed 60 feet] the building height
19 must not exceed 60 feet for:

20 (i) any residential use; or

21 (ii) any mixed use optional method of development project that
22 includes a hotel notwithstanding any building height limits
23 recommended in the sector plan.

24 * * *

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

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29 This is a correct copy of Council action.

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35 Linda M. Lauer, Clerk of the Council



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

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
 Community-Based Planning Division *JM*

SUBJECT: Draft ZTA No.08-10
 Fenton Village Hotel Use

RECOMMENDATION: Community-Based Planning recommends denial of this Zoning Text Amendment because the language in the Sector Plan clearly supports additional height solely for housing on the east side of Fenton Street in the Fenton Village.

- Though a 60' height does not violate massing envelope put forth by the Silver Spring Sector Plan, this height on the east side of Fenton was provided by the Sector Plan as an incentive for *Housing*.
- A hotel use is clearly not the same use as housing; it does not provide any MPDU's or workforce housing.

Sector Plan Guidance

The Approved and Adopted Silver Spring CBD Sector Plan recommended height limits to "ensure compatibility with adjoining neighborhoods." (Silver Spring CBD Sector Plan, 2000, page 60). These height limits were implemented by the Fenton Village Overlay Zone. Specifically, the Overlay Zone limits heights to 90' on the east side of Georgia Avenue and to 60' feet on the west side of Fenton Street; properties in between must not exceed 60' except in the case of housing, in which case 90' would be allowed. On the east side of Fenton Street heights must not exceed 45' for all uses, except in the case of housing, where it may go to up to 60'.

A height incentive for housing in Fenton Village was recommended in the Sector Plan because it was expected that such development would do the following: 1) enhance the mix of uses by creating new housing opportunities, 2) activate the streets, and 3) provide resident markets for businesses within the Overlay Zone. Because a hotel use would not provide new housing

opportunities (and the associated MPDUs and Work Force Housing), a hotel use fails to provide this very important benefit. The Planning Board would have serious difficulty finding that a preliminary plan or project plan is consistent with the Sector Plan if it proposed 60' tall buildings on the east side of Fenton Street without housing.

Urban Design

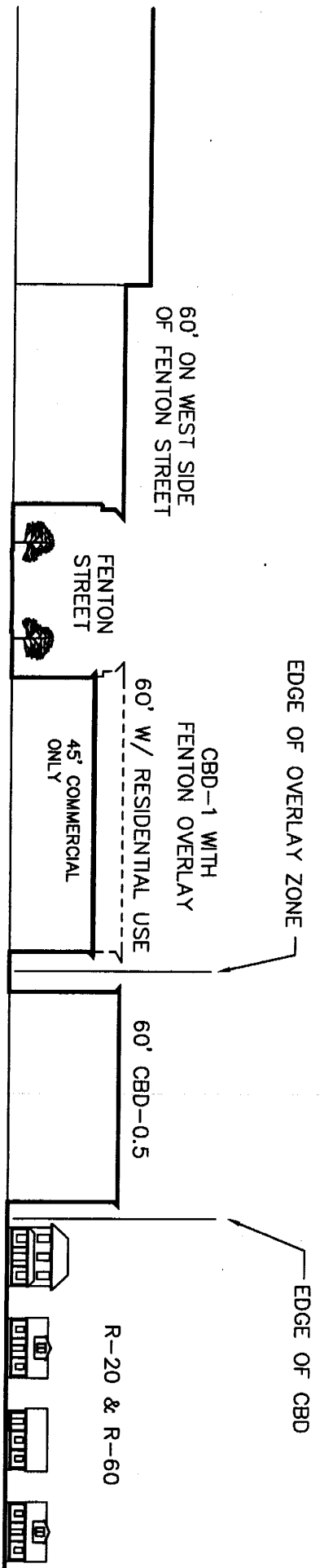
The Sector Plan envisioned Fenton Village as a transitional area between the core and the surrounding neighborhoods. To fulfill that goal, it recommended building heights that step down from Georgia Avenue to the edge of the CBD. A 60' maximum height was recommended on the east side of Fenton Street specifically to encourage housing; otherwise, the maximum building height on the east side of Fenton Street was limited to 45'. Allowing 60' tall buildings on both sides of Fenton Street would help to maintain a uniform and consistent street wall on both sides of Fenton Street. However, allowing buildings more than 45' tall on the east side without housing would violate the intent of the Sector Plan.

Conclusion

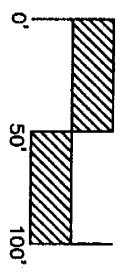
A 60' tall hotel on the east side of Fenton Street is not housing and does not fulfill the goal for which the height incentive was provided. Revisions to the Sector Plan vision should be accomplished through the sector plan amendment process, not through piecemeal zoning text amendments.

cc: Bill Barron, Acting Team Leader, Silver Spring Team
Robert Kronenberg, Supervisor, Development Review Division
Elza Hisel-McCoy, Senior Planner, Development Review Division

Attachment



2000 ZONING



OPTIONAL METHOD MAXIMUM HEIGHTS
IN FENTON VILLAGE OVERLAY ZONE