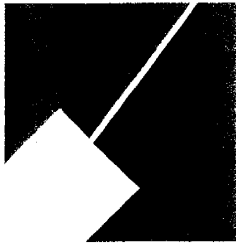


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item # 4
7/22/04

DATE: July 16, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor *CG*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to eliminate the requirement for a special exception to establish an eating and drinking establishment in the O-M, C-O, and C-P zones and to allow these zones to provide a patron entrance directly from the exterior of the building; and to generally amend the special exceptions provisions for a retail establishment in an office building.

TEXT AMENDMENT: No. 04-09
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Perez and Praisner
INTRODUCED DATE: March 16, 2004

PLANNING BOARD REVIEW: July 22, 2004
PUBLIC HEARING: July 27, 2004

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

- To eliminate the requirement for a special exception to establish an eating and drinking establishment in the O-M, C-O, and C-P zones and to allow these zones to provide a patron entrance directly from the exterior of the building; and to generally amend the special exceptions provisions for a retail establishment in an office building.

BACKGROUND

- The ZTA would permit a restaurant by right, rather than by special exception, in an office building and to have a patron entrance directly from the exterior of the building. The

ZTA broadens the applicability of ZTA 04-05, which dealt only with the outside patron entrance issue for restaurants in the C-O zone. Eating and drinking establishments are now regulated along with newsstands and similar convenience services that are often found inside an office building lobby, and except for the O-M zone, allowed only by special exception. Restaurants and quality office buildings now are considered to go well together and the proposed ZTA would facilitate, not impede compatible development.

- On July 12, 2004, the PHED Committee recommended, by a vote of 3:0, to recommend to the full County Council that ZTA 04-05 be approved. The text amendment is scheduled for action on July 20, 2004.
- Zoning Ordinance Text Amendment No 77005 (Ordinance No. 8-51, as adopted by the County Council) originally amended the Zoning Ordinance on September 27, 1977, to give authority to the Board of Appeals to permit restaurants located within office buildings in the C-O Zone to remain open for business on weeknights, Saturdays and Sundays. Testimony in the public hearing also stated that a restaurant in an office building could provide service for the immediate surrounding residential population in the evening and on weekends. According to Board of Appeals' records, only two restaurants have been approved through the special exception process since the adoption of this text amendment.

ANALYSIS

As mentioned above, the proposed text amendment would allow eating and drinking establishments by right in an office building located in the O-M, C-O and C-P Zones. As such, the text eliminates the Special Exception Standards and Requirements' Section 59-G-2.181 (Eating and Drinking Establishments in the O-M Zone") and any footnote references to the restaurants within office buildings in these zones (land use tables). Also, the references to the C-O and C-P Zones in Section 59-G-2.48 (Retail establishments in an office building) have been removed. The text amendment also eliminates any reference to "no outside patron entrance" for restaurants in the C-5 Zone, a low-density office commercial designation. Additionally, several plain language changes are proposed.

Citizen Concerns

Several citizens have expressed concern with the proposed removal of the special exception requirement for eating and drinking establishments in office buildings. Their concerns are not related to the exterior patron entrance, but the loss of citizen input for these establishments when they are located adjacent to residential properties. Several other issues relate to hours of operation, traffic and parking.

As with ZTA 04-05, staff believes that allowing an eating and drinking establishment to have an exterior entrance would have minimal, if any impact on surrounding residential properties. During the weekday office hours, patrons are generated mainly from the surrounding vicinity, including the office building itself, thereby minimizing traffic impacts. Further, permitting a direct outside entrance for a restaurant would allow an office building to be secured on nights and weekends. However, staff feels that some

form of public input should be maintained in deciding the compatibility and impacts of the proposed restaurant on surrounding properties when those adjacent sites are either residentially used or planned for residential development. Currently, the O-M and C-P Zones require site plan review for new development or modifications of existing development. The C-O Zone requires site plan review only when a new building is over 3 stories or 42 feet in height. Should the text amendment be adopted, staff also believes that site plan review should be required for eating and drinking establishments in office buildings located in the C-O Zone.

RECOMMENDATION

The staff supports the proposed text amendment to allow an eating and drinking establishment in the O-M, C-O, and C-P zones to have an entrance directly from the exterior of a building and to be permitted by-right but believes that site plan review should be required in all three zones to ensure that impacts of the use are addressed. Attachment 1 includes the proposed text amendment, as modified by staff to include a footnote requiring site plan review for restaurants in an office building located in the O-M, C-O and C-P Zones.

Attachment 1 depicts the proposed text amendment as modified by staff. 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 (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

Attachments

1. Proposed Text Amendment 04-09 (as amended by staff)

ATTACHMENT 1

Zoning Text Amendment No: 04-09
Concerning: Eating and Drinking
Establishments in C-O, C-P and O-M Zones
Draft No. & Date: 1 – 6/15/04
Introduced: June 22, 2004
Public Hearing: July 27, 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**

By: Councilmember Perez and Praisner

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

- eliminating the requirement for a special exception to establish an eating and drinking establishment in the O-M, C-O, and C-P zones
- allowing an eating and drinking establishment in the O-M, C-O, and C-P zones to provide a patron entrance directly from the exterior of the building
- generally amending the special exceptions provisions for a retail establishment in an office building.

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

DIVISION 59-C-4 “COMMERCIAL ZONES”
Section 59-C-2 “Land uses”
DIVISION 59-G-2 “SPECIAL EXCEPTIONS—STANDARDS AND
REQUIREMENTS”
Section 59-G-2.181 “Eating and Drinking Establishments in the O-M Zone”
Section 59-G-2.48 “Retail establishments in an office building”

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.*

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-4 is amended as follows:**

2 **DIVISION 59-C-4. COMMERCIAL ZONES.**

3 * * *

4 **59-C-4.2. Land uses.**

5 * * *

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
(d) Commercial:												
* * *												
Eating and drinking establishment, excluding a drive-in.	SE ¹⁵	P* [SE ¹⁶]	P* [SE ¹¹]	P* [SE ¹¹]	P ¹⁷	P		P ¹⁷	P ^[16]	P	P	

6

7 *Only in an office building and subject to site plan review under Division D-3. An
 8 eating and drinking establishment in an office building may have a patron entrance
 9 directly from the exterior of the building

10

11 [11 See “Retail establishments in an office building.” Section 59-G-2.48.]

12 * * *

13 15 See “Retail and service establishments.” Section 59-G-2.46.

14 [16 Provided there is no direct patron entrance to the facility from the exterior of
 15 the building. In the O-M zone, a restaurant with an exterior patron entrance
 16 is permitted for an interim period of time from November 14, 1994 to July 1,
 17 1997. A restaurant constructed under this provision may continue as a
 18 conforming use after July 1, 1997 subject to the provisions of Sec. 59-G-
 19 2.181.]

20 17 [Provided that no dancing, or] No entertainment, except music [is] may be
 21 offered; however, patron dancing is permitted if the area designated for

22 dancing purposes does not occupy more than 10 percent of the total gross
23 area of the restaurant, not to exceed 200 square feet.

24 **Sec. 2. Article 59-G.2 is amended as follows:**

25 **DIVISION 59-G.2. SPECIAL EXCEPTIONS—STANDARDS AND**
26 **REQUIREMENTS.**

27 * * *

28 **[59-G-2.181. Eating and Drinking Establishments in the O-M Zone”**

29 In the O-M zone, a restaurant with an exterior patron entrance may be allowed
30 upon a finding , in addition to the general findings required in Division 59-G-1.2,
31 that the following conditions are met:

- 32 (a) the proposed restaurant must obtain a building permit before July 1,
33 1997;
- 34 (b) the restaurant must not exceed 9,000 square feet;
- 35 (c) the lot on which the restaurant is to be built does not abut residentially
36 zoned land;
- 37 (d) the lot on which the restaurant is to be built must abut an existing
38 office building of at least 100,000 square feet; and
- 39 (e) the location of the proposed restaurant must not be more than 1500
40 feet from an existing Metro station.]

41 * * *

42 **59-G-2.48. Retail establishments in an office building.**

43 Retail sales and personal services establishments in an office building [may be
44 permitted] are subject to the following requirements:

- 45 (a) Only the following types of establishments are allowed [shall be
46 permitted]:
47 Barber and beauty shop[s].
48 Delicatessen[s].

49 Drug store[s].

50 Dry cleaning and laundry pick-up station[s].

51 Newsstand[s].

52 Eating and drinking establishment[s,] in the C-T zone.

53 Specialty shop[s].

54 (b) The establishment must be primarily for the service of tenants and
55 employees of the building or group of buildings on the same lot or
56 group of contiguous lots in common ownership or control, and the
57 tenants and employees of adjoining and confronting lots.

58 (c) There must be no entrances directly from the exterior to the
59 establishment [, except in the C-O zone where an eating and drinking
60 establishment may have a direct entrance from the exterior of a
61 building].

62 (d) The establishment [shall] must be so located and constructed as to
63 protect tenants of the building from noise, traffic, odors and
64 interference with privacy.

65 [(e) In the C-P zone such establishments shall occupy not more than 5
66 percent of the total floor area of the building or group of buildings.]

67 [(f) In the C-O zone the requirements of this section shall not be deemed
68 to limit the patronage of an eating and dinking establishment on
69 weeknights, Saturdays and Sundays provided that: (1) there exists
70 sufficient off-street parking to accommodate the patrons of the eating
71 and drinking establishment, and (2) the operation of the eating and
72 drinking establishment will have no adverse effect upon the use and
73 enjoyment of surrounding properties An eating and drinking

74 establishment in the C-O zone may have an entrance directly from the
75 exterior of a building.]

76 **Sec. 4. Effective date.** This ordinance becomes effective 20 days
77 after the date of Council adoption.

78

79 This is a correct copy of Council action.

80

81

82

83



84 Mary A. Edgar, CMC

85 Clerk of the Council