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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
12/02/04**

DATE: November 24, 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 allow 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 permit certain commercial uses by right.

TEXT AMENDMENT: No. 04-24
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Praisner and Perez
INTRODUCED DATE: October 19, 2004

PLANNING BOARD REVIEW: December 2, 2004
PUBLIC HEARING: November 23, 2004, 1:30pm

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To allow 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 permit certain commercial uses by right.

BACKGROUND

The Text Amendment proposes two changes: (1) remove eating and drinking establishments from the retail commercial category so the 5,000 square foot commercial retail limit per lot in the overlay zone no longer applies to eating and drinking establishments and (2) clarify the development standards of the overlay zone 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 developed with light industrial uses and some commercial and service uses such as a hardware store (Home Depot) and hotel (Courtyard by Marriott). 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 Food and Drug Administration (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 square feet per zone, 5,000 square feet 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 the eastern part of the county, especially near the employment area.

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 license regulations to the eastern part of the county in anticipation of the FDA relocation and the need for more restaurants in the eastern part of the 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.

ANALYSIS

U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan

The purpose of this overlay zone is to:

- (a) Develop a compatible mix of office, regional commercial, and light industrial uses within a designated employment area.
- (b) Establish a uniform set of development standards for the zone.
- (c) Allow local and regional retail and service uses.
- (d) Encourage the use of appropriate traffic-limiting measures, where such measures are not already in place, such as car pools and use of mass transit.
- (e) Eliminate uses not considered compatible with the intent of this overlay zone.

Restaurant Issues.

There has been difficulty in attracting full service restaurant uses to the Employment Center due to the limitations on liquor licenses in the County. The State law was changed in 2004 (HB 561) to allow an additional special license (the "East County License") in the area along Route 29, from the beltway to the Howard County line. This change in law has made the Employment Center more attractive for the variety of larger, multiple-location restaurants.

The Overlay Zone currently limits the maximum amount of retail commercial use on a single lot to 5,000 square feet. However, the prototype buildings for these multi-location restaurants have typical footprints that generally exceed 5,000 square feet. These would not be able to be developed under the current standards of the Overlay Zone. Further, most of these multiple-location restaurants want an individual, freestanding location, rather than being part of an office or other building structure. Each restaurant also has design criteria that are unique to its product, often reflected in its building style.

The Employment Center has also had difficulty attracting some smaller, service retail uses to provide support to employees. The proposed Text Amendment will facilitate the creation of smaller in-line structures to accommodate these service uses. These types of multiple tenant buildings, with small bay sizes, can also accommodate smaller food service uses, particularly carry-outs, (ice cream parlors, delis, bagel shops, etc) that would not be built in a freestanding individual format. Once again, the 5,000 square foot limitation affects the economics of these kinds of buildings. Some freestanding service uses, such as branch banks, also exceed 5,000 square feet. For this reason, **the text amendment proposes to increase the amount of retail commercial use that can be developed on an individual lot from 5,000 to 15,000 square feet.** This will allow multiple-tenant structures that will accommodate a number of smaller uses.

The text amendment limits the size of single-tenant, freestanding retail commercial use structures to a maximum of 10,000 square feet. This will help assure that the retail uses facilitated through this text amendment will not encourage larger operations. The 10,000 square foot maximum size in the text amendment dovetails well with the 10,000 square foot minimum size required in the C-6 Zone portion of the Employment Center (where the "big-box" type uses are located).

As stated above, the proposed text amendment will also modify the current maximum limits of 5,000 square feet of retail use on a single lot. Numerous desirable restaurants exceed 5,000 square feet with their standard, prototype designs, and thus could not be accommodated on a single lot under the existing Overlay Zone text. In order to cure this problem and continue to provide retail capacity for other service uses in the Employment Center (in addition to restaurants/food service), **the text amendment proposes to exclude restaurants/food service uses from the calculation of retail commercial use**

square footage for purposes of the density limits. To that end, the text amendment also removes restaurant/food service uses (eating and drinking establishments, excluding a drive-in) from the listing of retail commercial uses in the Overlay Zone and creates for them a new category of “commercial uses.”

The text amendment seeks to be clear and expansive with respect to the scope of “food service uses,” enumerating as examples other food service uses which are listed elsewhere in the Zoning Ordinance, such as snack bar, cafeteria, delicatessen, etc. In this way, the text amendment will be clear that these uses will be allowed under the umbrella for restaurant and food service uses, in addition to the traditional “eating and drinking establishments.” This will encourage a variety of food service uses--traditional, full service, sit-down restaurants, as well as carry-out and other casual food service uses. Both types of food service uses will be supportive of the Employment Center. The Board should note that **no change is proposed in the existing prohibition on restaurants with drive-ins.**

The result of this text amendment is to allow the continued availability of support retail services in the employment center area of the overlay zone, but to enhance the ability to implement restaurant and other food service uses. As a result of the subject proposal, development of restaurants and food service uses will no longer eat away at the ability to develop other support retail uses, because the food service elements will not reduce the amount of available retail space in the base zone area or on each individual lot.

Setbacks.

The setback provision of the proposed text amendment is intended to address the fact that, at certain locations, the overlay zone boundary is located along the inside of the RE-2 zoned buffer strip (50 feet wide) around the industrial zones that form the Employment Center. In these areas along Route 29, the only residential land adjoining the overlay zone is this buffer strip, which, while zoned residential, is not recommended for actual residential use and development in the Master Plan.

The original setback limitations were intended to address the eastern side of the Employment Center (generally, along Cherry Hill Road), where there is true residential use on the other side of the road. Along Route 29, the RE-2 Zone buffer strip does not represent a real residential use. In addition, the width of the Route 29 right-of-way, particularly when taken in conjunction with the Prosperity Drive service road, is so wide that the land uses on the west side are unlikely to be affected by the uses in the Employment Center on the east side. In this area, the goal of the Master Plan was to provide a consistent set back from Route 29 along the edge of the Overlay Zone/Employment Center. This proposed setback revision accomplishes that goal and will assure that the area of the buffer strip remains as a green buffer at the edge of the Overlay Zone.

The buffer strip is outside of the Overlay Zone; the industrial parcels are inside the Overlay Zone. Without this Text Amendment, a building containing exclusively retail commercial uses that is located on the industrial parcels facing Route 29, would be required to set back 200 feet from the Overlay boundary (in actuality, the setback would be 250 feet from the right-of-way, as the RE-2 buffer strip is 50 feet wide). This was not the intention of the Master Plan in this area.

Where the RE-2 buffer strip is not intended for actual residential use, or as a separator from active residential uses, staff believes that the 200 foot setback under the Overlay Zone for retail commercial use is not necessary and may be reduced so that parking can adjoin such residential zone buffer and buildings can be closer.

Community-Based Planning Comments

Community-Based Planning believes that the proposed changes to the overlay zone are consistent with the area sector plan and are necessary to support current and future employment in the vicinity.

RECOMMENDATION

The staff supports the proposed text amendment to allow 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 permit certain commercial uses by right. This amendment can be accomplished through the proposed language in Attachment 1 that includes one minor plain language change.

GR

Attachments

1. Proposed Text Amendment 04-24
2. Memorandum from Community-Based Planning