

CORRECTED COPY

Ordinance No.: 16-24
Zoning Text Amendment No.: 08-08
Concerning: Fenton Village Overlay Zone --
 Workforce Housing Height
Draft No. & Date: 4 - 7/28/08
Introduced: April 29, 2008
Public Hearing: June 10, 2008
Adopted: July 29, 2008
Effective: August 18, 2008

**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: District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow additional building height for mixed-use, optional method of development projects with a hotel in the Fenton Village Overlay Zone ;
- 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>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>
--

Clerk's Note: underlining added in Line 19

OPINION

Zoning Text Amendment (ZTA) 08-08, sponsored by the District Council at the request of the County Executive, was introduced on April 29, 2008. Currently, Central Business District (CBD) zones allow building height limits recommended by the applicable sector plan to be exceeded to accommodate workforce housing. The Fenton Village Overlay zone was adopted on top of CBD zones. The Overlay Zone does not have a provision to exceed the sector plan-recommended height limits. ZTA 08-08, as introduced, would allow additional building height, up to the height limits of the underlying zone, for workforce housing in the Fenton Village Overlay Zone.

Zoning Text Amendment (ZTA) 08-10, sponsored by Councilmembers Ervin and Elrich, was introduced on May 6, 2008. ZTA 08-10 would amend the Zoning Ordinance to allow additional building height to accommodate a hotel in a mixed-use optional method of development project on the east side of Fenton Street in the Fenton Village Overlay Zone. Currently, the Fenton Village Overlay Zone limits building heights on the east side of Fenton Street to 45 feet except for multi-family buildings, which may be 60 feet tall. ZTA 08-10 would allow a maximum building height of 60 feet for a mixed-use optional method of development project that includes a hotel on the east side of Fenton Street.

Planning Staff recommended not approving ZTA 08-08 because it allows building heights that are inconsistent with the adopted Sector Plan. The Planning Board also recommended not approving ZTA 08-08. A Sector Plan Amendment was recommended to consider the issue of additional height in the Fenton Village area.

The Planning Staff, consistent with its recommendations on ZTA 08-08, recommended against approving ZTA 08-10. The core principle for the Planning Staff is the ZTA's disregard for the recommendations of the sector plan. The Planning Board recommended the adoption of ZTA 08-10. The Planning Board was swayed by the community's support and not dissuaded by the Planning Staff reasoning.

The Council held a public hearing on ZTA 08-08 and 08-10 on June 17, 2008. The Greater Silver Spring Chamber of Commerce supported ZTA 08-08. A developer testified in support of ZTA 08-08, claiming that the requirements of the Overlay Zone and the CBD zoning do not allow for the market rate units, given the combination of public use space and height limits. He provided text to limit the allowable building height. Civic associations opposed the ZTA. In the view of some residents, the integrity of the Sector Plan is more important than requiring housing at a price point that is already provided by the market.

Civic organizations supported ZTA 08-10. Testimony noted that a hotel was much like multi-family projects; its occupants would support local businesses at times when office workers are absent. The fact that the height for any hotel would be limited to the maximum height currently recommended by the Silver Spring CBD Sector Plan for the area was also noted.

The Planning, Housing, and Economic Development Committee held worksessions on June 26, 2008 and July 28, 2008. After careful review of the materials of record, the Committee recommended that ZTA 08-08 be approved with the following amendments:

- 1) Allow a maximum height of 90 feet **along** Georgia Avenue;
- 2) Allow 110 foot building height **near** Georgia Avenue to accommodate workforce housing;
- 3) Require building heights to taper down at the Planning Board's discretion, from the highest buildings near Georgia Avenue to the maximum 60 foot heights allowed along Fenton Street;
- 4) East of Fenton Street, allow mixed-use optional method of development projects that include both residential and hotel uses with a maximum building height of 60 feet;
- 5) Allow additional building height only if least 33 percent of the **floor area** of a project will be for housing;
- 6) Grandfather project plans and site plans approved before the ZTA's effective date (August 18, 2008); and
- 7) Replace the street names in the Overlay zone with generic descriptions that reflect the rationale for different building heights:
 - Georgia Avenue = major highway;
 - East side of Fenton Street = a street abutting a block that includes one-family zoning;
 - West side of Fenton Street = a street confronting a block that includes one-family zoning.

The Committee believed that these amendments would allow a modest amount of building height flexibility to accommodate workforce housing. It would also allow a hotel in a residential project the same height allowed for an all-residential project on blocks that include one-family zoned property. The recommendations of the Committee would not require any action by the Council on ZTA 08-10.

The District Council reviewed Zoning Text Amendment No. 08-08 at a worksession held on July 29, 2008. The Council agreed with the Committee recommendation to approve ZTA 08-08 as amended.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 08-08 will be approved as amended.

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]] a major highway must not
12 exceed 90 feet;

13 (B) along [[the west side of Fenton Street]] any street confronting any
14 block that includes property zoned in any one-family residential
15 classification, must not exceed 60 feet;

16 (C) within the area between [[Georgia Avenue and Fenton Street]] a major
17 highway and a street that confronts a block that includes property
18 zoned in any one-family residential classification, must not exceed 60
19 feet but may increase up to 90 feet the maximum height allowed [[for
20 projects that are]] if at least 33% of a project's floor area is
21 residential; however, if additional building height is necessary to
22 allow to accommodate workforce housing units and at least 33% of
23 the project's floor area is residential, up to 110 feet and where the
24 additional height is placed [[closest to Georgia Avenue]] near a major
25 highway and decreases [[as you move east to Fenton Street]] in the

26 direction of the closest property zoned in any one-family residential
27 classification; [and]

28 [(B)] (D) [[along the east side of Fenton Street]] property located in a
29 block that includes property zoned in any one-family residential
30 classification must not exceed 45 feet for all uses except [[housing,
31 which must not exceed 60 feet[.]; and]] the building height must not
32 exceed 60 feet for:

33 (i) residential use; or

34 (ii) mixed use optional method project, if at least 33% of the
35 project's floor area is residential and the project includes a
36 hotel.

37 (E) Building heights may be approved under the standards of this
38 subsection without regard to the building height recommendations of
39 the sector plan.

40 (F) Any project plan approved before August 18, 2008 may be
41 constructed under the conditions of its approval and any site plan
42 thereafter that implements the previously approved project plan. Any
43 site plan approved before the August 18, 2008 may be constructed
44 under the conditions of its approval. Any building constructed under
45 this subsection is conforming and may be maintained and
46 reconstructed under the conditions of their approval.

47 [(C) between Georgia Avenue and Fenton Street, any optional method of
48 development project may be approved up to the maximum height limit
49 in the underlying zone for the construction of workforce housing units
50 as defined in Chapter 25B if the additional height is the minimum
51 necessary to allow for the construction of workforce housing units.

52 The additional building height for workforce housing units may be
53 approved notwithstanding any limits recommended in a sector plan;
54 however, the building height along the west side of Fenton Street
55 must not exceed 60 feet.]]

56 * * *

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

59

60

61 This is a correct copy of Council action.

62

63

64

65

66

Linda M. Lauer

67

Linda M. Lauer, Clerk of the Council

68