

Zoning Text Amendment No: 06-11
Concerning: Amendment to the Wheaton
Retail Preservation Overlay Zone
Draft No. & Date: 2 – 03/29/06
Introduced: April 4, 2006
Public Hearing: June 13, 2006; 1:30 p.m.
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: Councilmembers Perez and Praisner

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

- promoting higher density mixed-use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development;
- revitalizing and retaining the existing street level retail area in the Wheaton Central Business District as a major marketplace;
- amending the standards and approval procedures for optional and standard method of development projects under the Wheaton Overlay zone; and
- generally amending the Wheaton Retail Preservation Overlay zone.

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

DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.10	“Retail Preservation Overlay Zone for the Wheaton Central Business District”
Section 59-C-18.101	“Purpose”
Section 59-C-18.102	“Regulations”
Section 59-C-18.103	“Procedures for application and approval”
Section 59-C-18.104	“Site plan contents and exemptions”
Section 59-C-18.105	“Planning Board approval”

*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-18 is amended as follows:**

2 **DIVISION 59-C-18. OVERLAY ZONE**

3 * * *

4 **59-C-18.10. Retail preservation overlay zone for the Wheaton Central**
5 **Business District.**

6 **59-C-18.101. Purpose.**

7 It is the purpose of this overlay zone to:

8 (a) Retain a [the existing scale of development and] mix of retail and service
9 uses within the Wheaton Central Business District.

10 (b) [Regulate development to preserve] Provide opportunities to retain a variety
11 of small businesses, retail uses and services in the Wheaton Central
12 Business District and to encourage new businesses to meet the needs of
13 workers, shoppers, visitors and residents.

14 (c) Encourage building designs [to make new buildings] compatible with the
15 existing [buildings] character of street level uses found within and adjacent
16 to the overlay zone.

17 (d) Provide flexible standards to implement public objectives such as retention
18 of the small business character that exists in downtown Wheaton.

19 (e) Encourage higher-density, mixed-use, transit oriented development located
20 in close proximity to the Wheaton Transit Station, with an emphasis on
21 housing, office uses, commercial services, and arts and entertainment
22 establishments.

23 (f) Encourage both standard method of development and optional method of
24 development projects to include small, street level businesses to help retain
25 a small business identity.

26 **59-C-18.102. Regulations.**

27 (a) **[Restriction on use of o] Optional method of development.** [In the
28 Wheaton Retail Preservation Overlay Zone, the optional method of
29 development is prohibited.] The optional method of development
30 procedure may be used if authorized in the underlying zone. Use of the
31 optional method of development procedure is intended to promote higher
32 density mixed-use development in close proximity to the Wheaton Metro
33 Station and to revitalize and retain the existing retail area in Wheaton as a
34 major marketplace.

35 (1) **Optional Method of Development Standards.**

36 (A) The maximum height for any CBD-2 or CBD-3 zoned optional
37 method of development project located south of Ennals
38 Avenue, south of Price Avenue and west of Fern Street is 125
39 feet. The maximum building height for any CBD-2 or CBD-3
40 zoned optional method of development project located north of
41 Ennals Avenue, north of Price Avenue and east of Fern Street is
42 100 feet.

43 (B) Any optional method of development project must provide at
44 least 45 percent of the street level retail space for use by small
45 businesses with less than 3,000 gross square feet of floor space
46 and restaurants with less than 5,000 square feet of gross floor
47 space. The space must be restricted to such small business use

48 for a period of ten years after the issuance of the initial use and
49 occupancy permit. The ten year time period is binding upon
50 future owners and successors in title and must be stated as a
51 condition of any site plan approved by the Planning Board.

52 (C) The maximum FAR allowed in the underlying zone may be
53 increased by an amount equal to 15 percent of the street level
54 space if a total of 60 percent of the street level space is devoted
55 to small business use as described in subsection (B) above.

56 (D) At least one-half of the public use space required under 59-C-
57 6.233 must be green area and include landscape features that
58 will serve to enhance the amenity of the development.

59 (E) The Planning Board may allow any public use space
60 requirement under Sec. 59-C-6.233 that is less than 1,800
61 square feet to be provided off-site within the Wheaton CBD as
62 either public use space or streetscape on a one-for-one square
63 foot basis.

64 (b) **Standard Method of Development**

65 (1) For any standard method of development project that provides at least
66 30 percent of the street level retail floor space for use by businesses
67 with less than 3,000 gross square feet of floor space and restaurants
68 with less than 5,000 square feet of gross floor space, 30 percent of the
69 street level floor space must not be included in the maximum FAR
70 calculation allowed under the base zone. Space provided for small
71 business use must be maintained for small business use for a period of
72 ten years after the issuance of the initial use and occupancy permit.

73 The ten year time period is binding upon future owners and successors
74 in title and must be stated as a condition in any site plan approved by
75 the Planning Board.

76 (2) The maximum building coverage under Section 59-C-6.232, may be
77 increased from 75 percent to 85 percent for any standard method of
78 development project that provides street level retail space for use by
79 businesses with less than 3,000 gross square feet of floor space and
80 restaurants with less than 5,000 square feet of gross floor space, in the
81 amounts required in subsection (1) above.

82 (3) As part of the approval of a site plan for a standard method of
83 development project, the Planning Board may allow any public use
84 space requirement under Sec. 59-C-6.233 that is less than 1,800 square
85 feet to be provided off-site within the Wheaton Central Business
86 District as either public use space or streetscape on a one-for-one
87 square foot basis.

88 **[(b)](c)Land uses.** All permitted [or] and special exception uses allowed under the
89 standard method of development and the optional method of development
90 [in] of the underlying CBD Zone, are allowed in the Wheaton CBD overlay
91 zone, except that:

92 (1) [In new buildings over one story in height built after July 16, 1990,
93 the street level leasable space must be used for:] In any building
94 constructed after July 16, 1990, the street level leasable space must be
95 used only for the following purposes:

96 (A) hotel

97 (B) any of the commercial uses allowed under 59-C-6.22(d);

98 ([B] C) the following service uses allowed under 59-C-6.22(e):

99 appliance repair shop[s];

100 banking and financial institution[s];

101 barber and beauty shop[s];

102 child day care facility;

103 clinic

104 dry cleaning and laundry pickup station[s];

105 duplicati[on]ng service[s];

106 educational institution, private

107 health club

108 photographic studio[s];

109 self-service laundromat;

110 shoe repair shop[s];

111 tailoring or dressmaking shop[s]; or

112 ([C] D)[the following] all cultural, entertainment and recreational uses

113 [from subsection] allowed under 59-C-6.22(f) as well as art galleries

114 which are permitted as specialty shops under 59-C-6.22(d).[:]

115 [billiard parlors;

116 bowling alleys;

117 commercial recreational or entertainment establishments;
118 indoor theater;
119 libraries and museums.]

120 (2) In any new buildings constructed after July 16, 1990, all street level
121 [retail] uses must be directly accessible from a sidewalk, plaza, or other
122 public space.

123 [(3) Windows and apertures cover occupy at least 50 percent of the street-
124 level exterior wall area that fronts on sidewalks, plazas, or other public
125 open spaces.]

126 **59-C-18.103. Procedure for application and approval.**

127 (a) Standard Method of Development: If required, [A] a site plan for [any]
128 development in the Wheaton Retail Preservation Overlay Zone must be
129 approved under [the provisions of] Division 59-D-3. Development subject
130 to site plan approval [includes] is limited to the following:

131 [(a)] (1) construction of new buildings that include more than 20,000 square feet
132 of floor area or exceed 42 feet in height; and

133 [(b)] (2) additions and other exterior improvements to existing buildings that
134 cumulatively increase the total amount of [development] floor area on a
135 site to more than 20,000 square feet or increase the building height to
136 more than 42 feet[;]. [and]

137 [(c) addition of off-street parking spaces or revisions to parking facilities
138 that require the approval of a new parking facilities plan under Section
139 59-E-4.1.]

140 (b) **Optional Method of Development:**

141 (1) For projects that are subject to subdivision or resubdivision under
142 Chapter 50, a Division 59-D-2 Project Plan is not required. In order
143 to approve the preliminary plan of subdivision, the Planning Board
144 must find that the proposed subdivision will include public facilities,
145 amenities and design features that will create an environment capable
146 of supporting the greater densities and intensities permitted by the
147 limited optional method of development allowed in this Overlay Zone.

148 (2) For projects that are not subject to subdivision or resubdivision, under
149 the provisions of Chapter 50, a project plan must be submitted and
150 approved in accordance with the procedures of Division 59-D-2.

151 For any optional method of development proposal in the Wheaton Retail
152 Preservation Overlay Zone, a Division 59-D-3 Site Plan must be submitted and
153 approved by the Planning Board, in accordance with the provisions of Division 59-
154 D-3.

155 **59-C-18.104. Site plan contents and exemptions.**

156 (a) Sections 59-D-3.22 and 59-D-3.23 do not apply in the Wheaton CBD
157 overlay zone for standard method of development projects that require site
158 plan approval.

159 (b) A site plan for a standard method of development project in the Wheaton
160 CBD overlay zone must include:

161 (1) the location, height, ground coverage, and use of all structures;

- 162 (2) for each residential building, the number and type of dwelling units,
163 classified by the number of bedrooms, and the total floor area, if any,
164 to be used for commercial purposes;
- 165 (3) the floor areas of all nonresidential buildings and the proposed use of
166 each;
- 167 (4) the location of recreational and green areas and other open spaces;
- 168 (5) calculations of building coverage, density, green area, number of
169 parking spaces, and areas of land use;
- 170 (6) the location and dimensions of all roads, streets and driveways,
171 parking facilities, loading areas, points of access to surrounding streets,
172 and pedestrian walks;
- 173 (7) a landscaping plan (or final forest conservation plan, if required under
174 Chapter 22A), showing all man-made features and the location, height
175 or caliper, and species of all plant materials;
- 176 (8) an exterior lighting plan, including all parking areas, driveways and
177 pedestrian ways, alleys, building security lights, and the height,
178 number, and type of fixtures with a diagram showing their light
179 distribution characteristics; and
- 180 (9) a development program with the sequence in which all structures, open
181 spaces, vehicular and pedestrian circulation systems, landscaping, and
182 recreational facilities are to be developed. The applicant must
183 designate the point in the development program sequence when the
184 applicant will ask the Planning Board to inspect[ion] for compliance
185 with the approved site plan.

186 (10) a streetscape plan prepared in accordance with the Wheaton Central
187 Business District Streetscape Standards adopted by Executive
188 Regulation. The required streetscape must be provided before the
189 issuance of the final use and occupancy permit by the Department of
190 Permitting Services.

191 **59-C-18.105. [Planning Board] [a]Approval Requirements for All**
192 **Projects In the Wheaton Retail Preservation Overlay Zone.**

193 [(a)] [The Board must find that] [a]At least 50 percent of the street level
194 exterior wall area, fronting on sidewalks, plazas, or other public open
195 spaces, [has] must contain windows and apertures [before approving a
196 site plan for the Wheaton CBD overlay zone].

197 [(b)] The procedures for Planning Board approval under Section 59-D-3.4
198 are modified for this overlay zone to require the following findings:

199 (1) the site plan does not conflict with the recommendations in the
200 Wheaton CBD Sector Plan;

201 (2) the site plan meets all of the requirements of this overlay zone as
202 well as the applicable requirements of the underlying zone; and

203 (3) each structure and use is compatible with other uses and other
204 site plans and with existing and proposed adjacent
205 development.]

206 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
207 date of Council adoption.

208

209 This is a correct copy of Council action.

210

211

212

213 _____

214 Linda M. Lauer, Clerk of the Council